6–14–96
Vol. 61 No. 116
Pages 30127–30494

Federal Register

Friday
June 14, 1996

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WHO: Sponsored by the Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Three Sessions]

WHEN: June 18, 1996 at 9:00 am,
July 9, 1996 at 9:00 am, and
July 23, 1996 at 9:00 am.

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

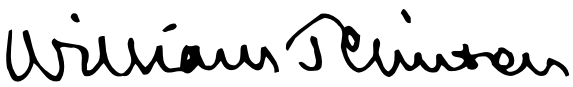
Presidential Determination No. 96–31 of June 6, 1996

Assistance Program for Russia

Memorandum for the Secretary of State

Pursuant to section 577 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994 (Public Law 103–87), I hereby certify that all of the armed forces of Russia and the Commonwealth of Independent States have withdrawn from Latvia and Estonia or that the status of those armed forces has been otherwise resolved by mutual agreement of the parties.

You are authorized and directed to notify the Congress of this certification and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, June 6, 1996.

[FR Doc. 96–15341
Filed 6–13–96; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF20

Production and Utilization Facilities; Emergency Planning and Preparedness Exercise Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its emergency planning regulations. This amendment allows greater flexibility in the licensee's emergency preparedness training activities in the 2-year period between biennial full-participation exercises. The amendment preserves the requirement that each licensee, at each site, conduct an emergency preparedness exercise biennially, with full participation by State and local governments that are within the plume exposure pathway emergency planning zone (EPZ); reduces the required frequency of exercising the licensee's onsite emergency plan from annual to biennial; requires licensees to ensure that adequate emergency response capabilities are maintained between biennial exercises by conducting drills, at least one of which must involve some of the principal functional areas of the licensee's onsite emergency response capabilities; and requires licensees to continue enabling State and local governments that are in the plume exposure pathway emergency planning zones (EPZs) to participate in drills. With this amendment, the Commission is granting, in part, a petition for rulemaking submitted by the Virginia Electric Power Company on December 9, 1992 (PRM–50–58).

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION: Contact Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–415–6534); E-mail MTJ1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The NRC received a petition for rulemaking submitted on December 9, 1992, by the Virginia Electric Power Company that was assigned Docket No. PRM–50–58. The petitioner requested that the NRC amend, Section IV.F.2., of 10 CFR part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' to change the requirement that each site exercise its emergency plan biennially rather than annually. The petitioner's proposed amendment would have required each licensee to conduct a biennial full participation exercise of the emergency plan at each site and to take actions necessary to ensure that its emergency response capability is maintained during the 2-year interval. The petitioner believes that the annual graded exercise is but one of many indicators designed to provide reasonable assurance that actions can and will be taken during an emergency situation that will provide for the health and safety of the public. The NRC published a notice of receipt for the petition on March 4, 1993 (58 FR 12341). A total of 32 comment letters were received and considered when developing a proposed rule concerning the issues raised by the petitions.

A notice of proposed rulemaking was published in the Federal Register on April 14, 1995 (60 FR 19002). Public comments were requested by July 13, 1995. A total of 18 comment letters were received, of which 12 utilities, 2 State emergency management agencies, and the Nuclear Energy Institute (NEI) supported the proposed rule change. One State emergency management agency and an environmental group opposed the proposed rule change. One letter received from a State emergency management agency had no comment on the proposed rule change.

NRC Response to Public Comments

The comment letters that were received provided many thought-provoking and constructive comments. The Commission's evaluation of and response to these comments is presented in the following section.

Issue 1. While the biennial exercise provides the opportunity for broad based State and local participation in exercising offsite plans and procedures, the annual graded utility exercises enhance the biennial exercise process by providing State liaison personnel and their utility counterparts the opportunity to remain proficient. A 2-year gap will lessen proficiency.

Response. It is clearly not the Commission's intent to lessen the proficiency at any level of the emergency planning organization (onsite or offsite) with the rule change. The Commission believes that interaction and training problems that might arise as a result of deleting the annual onsite exercise would be resolved by requiring licensees to enable any State or local Government to participate in the licensee's drills when requested by the State or local Government. The Commission is confident that, if a State governmental emergency response agency feels the need to participate in a drill that would require specific offsite interaction and decisionmaking capability, the licensee would accommodate the State agency's request within the framework of the drills that the licensee conducts throughout the 2-year period between the biennial full participation exercise. In fact, a State who was originally against granting the petition for rulemaking because of similar concerns stated the following in their comment on the proposed rule.

''We were among those initially opposed to the Virginia Electric Power Company petition that prompted this rule change, primarily because of a perceived potential for a diminution of emergency preparedness capability on the part of licensees. However, we acknowledge that the compromise embodied in the Commission's proposed rule change offers adequate assurance that ongoing licensee emergency preparedness activities will continue at a reasonable level. Because of the number of licensees and the capacity of the State's emergency response organizations, when appropriate (this State) will invoke the language of the proposed rule change that requires licensees to '* * * enable any State or local government located within the plume exposure pathway EPZ to participate in the licensee's drills when requested by such State or local government.'''

Issue 2. County, State, and utility emergency preparedness will degrade under a biennial schedule. Mini-drills will not take the place of annual

exercises as now constituted. Further, States have been encouraging more Federal exercise participation by the Federal Emergency Management Agency (FEMA) and NRC. The proposed change would cut back on the opportunities to test current personnel and train new personnel.

Response. The Commission disagrees. The rule change does not require ''mini-drills'' to replace annual exercises. The rule change does require that ''the licensee shall take actions necessary to ensure that adequate emergency response capabilities are maintained * * * by conducting drills, including at least one drill involving a combination of some of the principal functional areas of the licensee's onsite emergency response capabilities.'' (10 CFR part 50, appendix E, IV.F.2.b.)

Additionally, the opportunity to test and train new personnel is provided by requiring that ''Licensees shall enable any State or local Government * * * to participate in the licensee's drills.'' (Id at IV.F.2.e.)

Issue 3. There is a need for clarity regarding State and local participation in the exercises and drills that are proposed to replace the annual NRC graded exercise. At 60 FR 19002; dated April 14, 1995, licensees are charged to ''enable'' States and local governments to participate in these exercises and drills, but at 60 FR 19006, activating all response facilities (Technical Support Center, (TSC); Operations Support Center (OSC), and the Emergency Operations Facility (EOF)) is not necessary. Because State and local governments coordinate interaction through the EOF and Media Centers, clarification is required. For example, perhaps the utility would be charged with exercising the EOF and Media Centers as a part of at least one exercise and/or drill each year.

Response. Based on the extensive coordination and cooperation between licensees and State and local governments over the last 15 years, the Commission is confident that, if a State or local governmental emergency response agency felt the need to participate in a drill that included interaction at the EOF and Media Centers, the licensee would accommodate the request within the framework of the drills that the licensee conducts throughout the 2-year period between the biennial full participation exercises.

Issue 4. Rather than eliminating any requirements, it is suggested that each site initially be granted a waiver for ''off-year'' integrated exercises. The waiver would be effective only as long as an acceptable level of emergency response capability is maintained.

Response. The Commission disagrees. The Commission believes that the proposed rule would accomplish the commenter's objective without the extensive NRC resources that implementing the commenter's suggestion would require.

Issue 5. The Commission does not appear to have addressed the quantitative question about expected turnover rates that would be important in determining whether biennial exercises could substantially reduce local team skills.

Response. Please see the response to Issue 1. Additionally, the Commission has always been and continues to be committed to the principle that there exists ''reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.'' If, this finding is jeopardized either at the State or local governmental level, additional training would be warranted and would be provided by participating in the drills the licensee conducts between biennial exercises.

Issue 6. The Commission has not adequately addressed local Government comments on the importance of regular exercises for improving coordination and communication.

Response. The Commission did not receive any comments from local governments relating to this petition for rulemaking. Nonetheless, the Commission is confident that if a local Government wished to improve its coordination and communication capabilities, licensees would welcome its participation in one or more of the onsite drills that will be conducted between the biennial exercises.

Issue 7. The Commission has not addressed the FEMA concern that regular cooperation with offsite teams may play a critical role in their preparedness, which may be especially important in view of the potential role such teams may play as first responders in actual emergencies.

Response. Prior to publishing the proposed rule, the Commission received FEMA's assurance that their concerns with the petition for rulemaking had been resolved. Nonetheless, regular cooperation between offsite and licensee emergency response teams will be ensured by the requirement that licensees enable any state or local Government within the plume exposure pathway emergency planning zone to participate in the licensee's drills upon request.

Issues Raised by Petitioner

The petitioner characterizes the present requirement as one that is resource intensive but of marginal importance to safety. The petitioner has identified grounds for change for a number of issues associated with the current requirement to conduct an emergency plan exercise annually. The issues presented by the petitioner follow:

(1) The requirement to conduct an integrated annual exercise is not clearly defined. Therefore, the regulation should be clarified.

(2) The existing regulation, 10 CFR part 50, appendix E, is inconsistent with other regulations that govern the frequency of offsite response organization integrated exercises (i.e., 44 CFR part 350).

(3) The performance of offsite response organizations during biennial exercises has confirmed that a biennial frequency is sufficient to provide the reasonable assurance finding.

(4) The existing regulation, 10 CFR 50.54(t), provides for an independent review of the adequacy of the program.

(5) The existing requirement to conduct an annual exercise is not necessary to achieve the underlying purpose of the rule. A biennial exercise is sufficient to provide an acceptable formal confirmation of capability.

(6) Reconsideration of the requirement is warranted in light of the completion and implementation of enhanced emergency preparedness facilities, the current level of industry proficiency and performance, and the increased industry sensitivity to emergency preparedness.

(7) Personnel could be utilized more effectively in their normal professional function rather than by participating in a resource-intensive integrated test that only serves to confirm the already existing level of the response capability.

(8) Emergency planning resources could be utilized more effectively to further the development and maintenance of emergency preparedness activities.

Commission Response

The Commission believes that it is important, in light of public comment, as well as the discussion provided in the petition, to clarify NRC's intent (under the existing rule) that licensees need not conduct annual exercises with scenarios that progress to severe core damage or result in offsite releases. Historically, these scenarios were used in both the biennial full-participation exercise of offsite emergency plans and the annual exercise of the licensee's

onsite emergency plan; this is no longer necessary for the currently required annual exercises of the licensee's onsite emergency plan. Information Notice (IN) 87–54, ''Emergency Response Exercises,'' was issued to clarify NRC intent in this regard and to provide detailed guidance, specifically on the types of ''off-year'' training activities that licensees can perform during the interval between the biennial full participation exercises to maintain adequate EP response capabilities and to satisfy the rule.

Some licensees have availed themselves of the flexibility afforded by the IN 87–54 guidance to conduct realistic, interactive ''off-year'' training activities that simulate less severe events, such as a minor fire, loss of electric power, or equipment failure, and focus on the capability of the onsite emergency response organization to diagnose problems and develop actions to successfully mitigate the scenario event. However, as noted in the petition, many licensees continue to employ severe accident scenarios in annual exercises of their onsite emergency plans.

Accordingly, the Commission is revising Section IV.F.2.b. of 10 CFR part 50, appendix E, to (1) reduce from annual to biennial the frequency of exercising the licensee's onsite emergency plan (which may be included in the biennial full participation exercise specified in IV.F.2.c.) and (2) require licensees to conduct training drills, including at least one drill involving a combination of some of the principal functional areas of the licensee's onsite emergency response capabilities. This drill would be conducted between biennial full participation exercises to ensure that adequate emergency response capabilities are maintained. The principal functional areas of emergency response include activities such as management and coordination of emergency response, accident assessment, protective action decisionmaking, and plant system repair and corrective actions.

This approach is consistent with a comment from one State that favored the petition for rulemaking but preferred that some guidelines be included in appendix E requiring plant specific internal exercises during the ''off-year'' to ensure plant personnel familiarity with their response plans rather than the vague expectancy that this activity will be done. Furthermore, licensees would continue to enable State and local governments in the plume exposure pathway EPZs to participate in drills in the interval between exercises, thus, preserving their training opportunities.

The Commission believes that the final rule may result in the reallocation and more effective utilization of resources in some licensees' emergency preparedness (EP) programs as they further the development and maintenance of emergency preparedness capabilities during the ''off-year'' periods. However, it is not clear that these changes will result in significant overall cost savings. The Commission cautions specifically against expectations that the final rule will necessarily result in significant reductions in NRC inspection activity concerning licensees' ''off-year'' EP maintenance activities. Also, licensees will, upon request, submit scenarios for NRC review as may be deemed necessary by NRC in support of future inspections.

Conclusion

Having considered the arguments presented by the petitioner as well as evaluating all public comments received, and based on a further understanding of the issues involved gained from 14 years of experience evaluating licensee emergency preparedness exercises, the Commission concludes that (1) the required frequency for exercising the licensee's onsite emergency plan should be reduced from annual to biennial, (2) the means by which licensees are expected to train and maintain their emergency response capabilities and readiness in the 2-year interval between evaluated exercises should be changed to require licensees to conduct drills, including at least one drill involving a combination of some of the principal functional areas of the licensee's onsite emergency response capabilities, and (3) opportunities for training of State and local Government personnel must be preserved.

The principal functional areas of emergency response include management and coordination of emergency response, accident assessment, protective action decisionmaking, and plant system repair and corrective actions.

During the specified drills, activation of all of the licensee's emergency response facilities (Technical Support Center (TSC), Operations Support Center (OSC); and the Emergency Operations Facility (EOF)) would not be necessary. Licensees would have the opportunity to consider accident management strategies, supervised instruction would be permitted, operating staff would have the opportunity to resolve problems (success paths) rather than have controllers intervene, and the drills could focus on onsite training objectives.

The final rule relieves licensees from the current requirement to conduct a full formal exercise of the licensee's onsite emergency plan annually, and gives licensees the flexibility to choose the activities to be conducted in the 2-year period between biennial full-participation exercises in order to maintain their emergency response capabilities. Greater flexibility in the training of the onsite emergency response organization can provide significant benefits to some licensees. For example, licensees can eliminate the practice of developing scenarios that proceed to severe core damage, offsite releases, or to higher emergency classification levels. Licensees will have greater opportunity to conduct realistic emergency response training with supervised instruction that allows the operating staff to consider accident management strategies, diagnose problems, and be given credit for actions that would mitigate scenario events.

This approach is also responsive to public commenters who expressed concern about a possible decrease in licensee training and readiness in the period between biennial exercises. Under this approach, licensees will still be required to conduct emergency response training and drills of the onsite emergency response organization, as well as provide training opportunities to State and local Government personnel during the interval between biennial exercises. The final rule completes NRC action in response to PRM–50–58. The final rule grants the petitioner's request that the frequency of required onsite emergency response plan exercises be reduced from annual to biennial.

Additionally, 10 CFR 50.47(a)(1) is being revised in order to correct a typographical error that appeared in the 1993 edition of Title 10, Parts 0 to 50 of the Code of Federal Regulations. In the 1993 edition, the word ''protection'' was substituted for ''protective measures'' in 10 CFR 50.47(a)(1). This action corrects this paragraph to read as follows: ''* * * reasonable assurance that adequate protective measures can and will be taken * * *''

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR part 51, subpart A, that this rule is not a major Federal action significantly

affecting the quality of the human environment and therefore, an environmental impact statement is not required. The rule will update and clarify the emergency planning regulations relating to exercises. It does not involve any modification to any plant or revise the need for or the standards for emergency plans. There is no adverse effect on the quality of the environment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq.). Existing requirements were approved by the Office of Management and Budget approval Number 3150–0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–6534.

Regulatory Flexibility Act Certification

The final rule does not have a significant impact on a substantial number of small entities. The final rule updates and clarifies the emergency planning regulations relating to exercises at nuclear power plants. Nuclear power plant licensees do not fall within the definition of small business in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administration in 13 CFR part 121, or the Commission's Size Standards published at 56 FR 56671 (November 6, 1991). As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Backfit Analysis

The final rule clarifies the intent of the existing regulation and facilitates greater flexibility in licensees' conduct of ''off-year'' emergency response training activities. This action does not seek to impose any new or increased requirements in this area. The changes permit, but do not require, licensees to change their existing emergency plans and procedures to employ scenarios in ''off-year'' training or drills that do not go to severe core damage or result in offsite exposures. No backfitting is intended or approved in connection with this final rule change.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, reporting and record keeping requirements.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 50.47, paragraph (a)(1) is revised to read as follows:

§ 50.47 Emergency plans.

(a)(1) Except as provided in paragraph (d) of this section, no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.

* * * * *

3. Appendix E to part 50 is amended by revising section IV, F. paragraphs 2.b., and e. to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

IV. Content of Emergency Plans

F. *Training*

* * * * *

2. * * *

b. Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section. In addition, the licensee shall take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills, including at least one drill involving a combination of some of the principal functional areas of the licensee's onsite emergency response capabilities. The principal functional areas of emergency response include activities such as management and coordination of emergency response, accident assessment, protective action decisionmaking, and plant system repair and corrective actions. During these drills, activation of all of the licensee's emergency response facilities (Technical Support Center (TSC), Operations Support Center (OSC), and the Emergency Operations Facility (EOF)) would not be necessary, licensees would have the opportunity to consider accident management strategies, supervised instruction would be permitted, operating staff would have the opportunity to resolve problems (success paths) rather than have controllers intervene, and the drills could focus on onsite training objectives.

* * * * *

e. Licensees shall enable any State or local Government located within the plume exposure pathway EPZ to participate in the licensee's drills when requested by such State or local Government.

* * * * *

Dated at Rockville, MD., this 10th day of June, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–15155 Filed 6–13–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer Inc. The supplement provides for use of a 30% virginiamycin formulation of a Type A medicated article to be used for the manufacture of Type C medicated feeds for cattle fed in confinement for slaughter.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1674.

SUPPLEMENTARY INFORMATION: Pfizer Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 140–998 which provided for use of a 30% virginiamycin Type A medicated article formulation to be used in a micro-ingredient production process for the preparation of Type C medicated feeds for cattle fed in confinement for slaughter. The Type C medicated feed is fed at 11 to 16 grams per ton (g/t) for improved feed efficiency, 13.5 to 16 g/t for reduction of incidence of liver abscesses, and 16 to 22.5 g/t for increased rate of weight gain. The feed is not for animals intended for breeding. The supplement is approved as of May 3, 1996, and the regulations are amended in 21 CFR 558.635(b) to reflect the approval.

Approval of this supplement does not require submission of new safety or effectiveness data. The supplement provides for use of an additional level of Type A medicated article to make a Type C medicated feed fed at previously approved levels and for previously approved conditions of use.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant were not required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.635 [Amended]

2. Section 558.635 *Virginiamycin* is amended in paragraph (b)(1) by removing ''to 000069'' and by adding in its place ''used as in paragraph (f) of this section; and 30 percent activity (136.2 grams per pound) for the manufacture of Type C medicated feed for cattle used as in paragraph (f)(3); to 000069''.

Dated: June 7, 1996.

Andrew J. Beaulieau,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–15202 Filed 6–13–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8674]

RIN 1545–AQ86; 1545–AS35

Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment of debt instruments that provide for one or more contingent payments. This document also contains final regulations that treat a debt instrument and a related hedge as an integrated transaction. In addition, this document contains amendments to the original issue discount regulations, and finalizes the anti-abuse rule relating to those regulations. The final regulations in this document provide needed guidance to holders and issuers of contingent payment debt instruments.

DATES: Except as noted below, the regulations are effective August 13, 1996. The amendments to § 1.1275–5 are effective June 14, 1996, except for paragraphs (a)(6), (b)(2), and (c)(1), which are effective August 13, 1996. The removal of § 1.483–2T is effective June 14, 1996. The removal of § 1.1275–2T is effective August 13, 1996.

For dates of applicability of these regulations, see Effective Dates under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations (other than § 1.1275–6), William E. Blanchard, (202) 622–3950, or Jeffrey W. Maddrey, (202) 622–3940; or concerning § 1.1275–6, Michael S. Novey, (202) 622–3900 (not toll-free numbers).

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 Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1450. Responses to these collections of information are required to determine a taxpayer's interest income or deductions on a contingent payment debt instrument.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from .3 hours to .5 hours, depending on individual circumstances, with an estimated average of .47 hours.

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, T:FP, Washington, DC 20224, and 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.

Books or records relating to the collections of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1275(d) of the Internal Revenue Code (Code) grants the Secretary the authority to prescribe regulations under the original issue discount (OID) provisions of the Code (sections 163(e) and 1271 through 1275), including regulations relating to debt instruments that provide for contingent payments. On February 2, 1994, the IRS published final OID regulations in the Federal Register (59 FR 4799). However, the final OID regulations did not contain rules for contingent payment debt instruments.

On December 16, 1994, the IRS published a notice of proposed rulemaking in the Federal Register (59 FR 62884) relating to the tax treatment of debt instruments that provide for one or more contingent payments. The notice also contained proposed amendments to the regulations under sections 483 (relating to unstated interest), 1001 (relating to the amount realized on a sale, exchange, or other disposition of property), 1272 (relating to the accrual of OID), 1274 (relating to debt instruments issued for nonpublicly traded property), and 1275(c) (relating to OID information reporting requirements), and to § 1.1275–5 (relating to variable rate debt instruments). In addition, the notice contained proposed regulations relating to the integration of a contingent payment or variable rate debt instrument with a related hedge. The notice withdrew the proposed regulations relating to contingent payment debt instruments that were previously published in the Federal Register on April 8, 1986 (51 FR 12087), and February 28, 1991 (56 FR 8308).

On March 16, 1995, the IRS held a public hearing on the proposed regulations. In addition, the IRS received a number of written comments on the proposed regulations. The proposed regulations, with certain changes to respond to comments, are adopted as final regulations. In addition, certain clarifying and conforming amendments are made to the OID regulations that were published in the Federal Register on February 2, 1994. The comments and significant changes are discussed below.

Explanation of Provisions

Section 1.1275–4 Contingent Payment Debt Instruments

A. Noncontingent Bond Method

Under the noncontingent bond method in the proposed regulations, a taxpayer computes interest accruals on a contingent payment debt instrument by setting a payment schedule as of the issue date and applying the OID rules to the payment schedule. The payment schedule consists of all fixed payments on the debt instrument and a projected amount for each contingent payment. For market-based contingencies (i.e., contingencies for which price quotes are readily available), the projected amount is the forward price of the contingency. For other contingencies, the issuer first determines a reasonable yield for the debt instrument and then sets projected amounts equal to the relative expected payments on the contingencies so that the payment schedule produces the reasonable yield. These rules were designed to produce a yield similar to the yield the issuer would obtain on a fixed rate debt instrument.

Commentators suggested that the regulations could be simplified if they used the same basic methodology for both market-based and non-market-based contingencies. In addition, commentators suggested that forward price quotes would be variable or manipulable and that taxpayers will set more appropriate payment schedules if they first determine yield and then set the payment schedule to fit the yield.

The final regulations adopt these suggestions and generally conform the treatment of debt instruments that provide for either market-based or non-market-based contingent payments. Thus, for any contingent payment debt instrument subject to the noncontingent bond method, a taxpayer first determines the yield on the instrument and then sets the payment schedule to fit the yield. The yield is determined by the yield at which the issuer would issue a fixed rate debt instrument with terms and conditions similar to the contingent payment debt instrument (the comparable yield). Relevant terms and conditions include the level of subordination, term, timing of payments, and general market conditions. For example, if a hedge is available such that the issuer or holder could integrate the debt instrument and the hedge into a synthetic fixed-rate debt instrument under the rules of § 1.1275–6, the comparable yield is the yield that the synthetic fixed-rate debt instrument would have. If a § 1.1275–6 hedge (or the substantial equivalent) is not available, but similar fixed rate debt instruments of the issuer trade at a price that reflects a spread above a benchmark rate, the comparable yield is the sum of the value of the benchmark rate on the issue date and the spread. In all cases, the yield must be a reasonable yield for the issuer and may not be less than the applicable Federal rate (AFR).

Once the comparable yield is determined, the payment schedule is set to produce the comparable yield. The final regulations retain the general approach of the proposed regulations in determining the payment schedule. Thus, for market-based payments, the projected payment is the forward price of the payment. For non-market-based payments, the projected payment is the expected amount of the payment as of the issue date.

Commentators were concerned that a taxpayer could overstate the yield on a contingent payment debt instrument and, therefore, claim excess interest deductions during the term of the instrument. They were particularly concerned about a long-term debt instrument that has non-market-based payments because the taxpayer's determination would be hard to verify and any excess interest deductions would not be recaptured for a long time.

The final regulations address this concern by providing that the comparable yield for a debt instrument is presumed to be the AFR if the instrument provides for a non-market-based payment and is part of an issue that is marketed or sold in substantial part to tax-exempt investors or other investors for whom the treatment of the debt instrument is not expected to have a substantial effect on their U.S. tax liability. A taxpayer may overcome this presumption only with clear and convincing evidence that the comparable yield for the debt instrument should be a specific yield that is higher than the AFR. Appraisals and other valuations of nonpublicly traded property cannot be used to overcome the presumption, nor can references to general market rates. An issuer may, for example, overcome the presumption by showing that recently issued similar debt instruments of the issuer trade at a price that reflects a specific yield.

One commentator suggested that the use of the term *projected payment schedule* caused securities law problems because the issuer could be seen as making representations to the holder about the expected payments. The comparable yield and projected payment schedule determined under these regulations are for tax purposes only and are not assurances by the

issuer with respect to the payments. The final regulations retain the term *projected payment schedule*, but an issuer may use a different term to describe the payment schedule (e.g., payment schedule determined under § 1.1275–4) if the language used by the issuer is clear.

Under the proposed regulations, projected payments rather than actual payments are used to determine the adjusted issue price of a debt instrument, the holder's basis in a debt instrument, and the amount of any contingent payment treated as made on the scheduled retirement of a debt instrument. One commentator questioned the use of projected payments to make these determinations. The approach in the proposed regulations is appropriate, however, because a positive or negative adjustment is used to take into account the difference between the actual amount and the projected amount of a contingent payment. This difference would be counted twice if the adjusted issue price, the holder's basis, and the amount deemed paid on retirement were based on the actual amount rather than the projected amount of a contingent payment. Thus, the approach used in the proposed regulations is retained in the final regulations.

B. Tax-Exempt Obligations

In response to comments, the rules contained in § 1.1275–4(d) relating to tax-exempt contingent payment obligations have been revised. Under the proposed regulations, tax-exempt obligations are generally subject to the noncontingent bond method, with the following modifications: (1) The yield on which interest accruals are based may not exceed the greater of the yield on the obligation, determined without regard to the non-market-based contingent payments, and the tax-exempt AFR that applies to the obligation; (2) Positive adjustments are treated as gain from the sale or exchange of the obligation rather than as interest; and (3) Negative adjustments reduce the amount of tax-exempt interest, and, therefore, are generally not taken into account as deductible losses. These modifications to the noncontingent bond method for tax-exempt obligations were added because the IRS and Treasury believe that when a property right is embedded in a tax-exempt obligation it is generally inappropriate to treat payments on the right as interest on an obligation of a state or political subdivision.

Several commentators suggested that the proposed regulations relating to tax-exempt obligations are overly restrictive. These commentators questioned the reason for limiting the rate of accrual to the tax-exempt AFR and characterizing positive adjustments as taxable gain rather than interest. They also questioned the fairness of treating negative adjustments as nondeductible adjustments to tax-exempt interest when positive adjustments are treated as taxable gain. Some of the commentators suggested that, at a minimum, the interest limitations should not apply to contingent obligations that pay interest based on interest rate formulas that reflect the cost of funds rather than changes in the value of embedded property rights. Finally, commentators noted that programs involving municipal refinancings of real estate projects (for example, low-income multi-family housing projects) would be jeopardized by the proposed regulations because payments on tax-exempt obligations issued to finance these projects are in certain cases contingent in part on the revenues or appreciation in value of the project.

The IRS and Treasury continue to believe that gain from a property right should not be recharacterized as tax-exempt interest merely because the property right is embedded in a tax-exempt obligation. The IRS and Treasury nevertheless recognize that certain types of traditional tax-exempt financings should not be subject to the interest limitations of the proposed regulations (e.g., financings on which interest is computed in a manner that relates to the cost of funds). Accordingly, § 1.1275–4(d) has been revised to include a category of tax-exempt obligations that will be subject to the noncontingent bond method without the tax-exempt interest limitations contained in the proposed regulations. This category of tax-exempt obligations includes (1) obligations that would qualify as variable rate debt instruments (VRDIs) except for the failure to meet certain of the technical requirements of the VRDI definition (such as the cap and floor limitations, or the requirement that interest be paid or compounded at least annually), and (2) certain obligations issued to refinance an obligation, the proceeds of which were used to finance a project.

For other tax-exempt obligations, the interest restrictions of the proposed regulations are adopted in final form. Section 1.1275–4(d) has been revised, however, to provide that a negative adjustment is treated as a taxable loss from the sale or exchange of the obligation, rather than as a nondeductible adjustment to tax-exempt interest.

C. Prepaid Tuition Plans

A number of commentators asked whether contracts issued under state-sponsored prepaid tuition plans are subject to § 1.1275–4. Although the terms of the contracts vary, the contracts generally are issued pursuant to a plan created by a state to enable the participants in the plan to save for post-secondary education for themselves or other designated beneficiaries. In addition, the plans generally provide protection against increases in the costs of higher education or otherwise subsidize these costs, often by providing for contingent payments that are linked to the future costs of post-secondary education.

The commentators argue that § 1.1275–4 does not apply to the contracts because the contracts are not debt instruments for federal income tax purposes. In addition, the commentators argue that, even if the contracts are debt instruments, the noncontingent bond method would be unduly burdensome and inappropriate for contracts of this type.

The final regulations under § 1.1275–4 do not affect the treatment of contracts issued pursuant to state-sponsored prepaid tuition plans, whether or not the contracts are debt instruments. The final regulations, like the proposed regulations, only apply to debt instruments. Thus, the final regulations do not apply to contracts issued pursuant to a plan created by a state to enable participants to save for post-secondary education if the contracts are not debt instruments. In addition, the final regulations provide an exception for any debt instrument issued pursuant to a state-sponsored prepaid tuition plan.

This exception applies to a contract issued pursuant to a plan or arrangement if: The plan or arrangement is created by a state statute; the plan or arrangement has a primary objective of enabling the participants to pay for the costs of post-secondary education for themselves or their designated beneficiaries; and the contingencies under the contract are related to such purpose. These characteristics are intended to describe all existing state-sponsored prepaid tuition plans. Therefore, the final regulations do not change the tax treatment of a contract issued pursuant to these plans. As a result, if the contract is a debt instrument, the contingent payments on the contract are not taken into account by an individual until the payments are made.

The exception in the final regulations is intended to apply only to the existing

state-sponsored prepaid tuition plans and to any future plans that are substantially similar to the existing plans. In addition, no inference is intended as to whether contracts issued by any state-sponsored prepaid tuition plan are debt instruments.

D. Debt Instruments Subject to Section 1274

The proposed regulations provide a method for contingent payment debt instruments not subject to the noncontingent bond method (i.e., a nonpublicly traded debt instrument issued in a sale or exchange of nonpublicly traded property). Under the method, a debt instrument's noncontingent payments are treated as a separate debt instrument, which is generally taxed under the rules for noncontingent debt instruments. The debt instrument's contingent payments are taken into account when made. A portion of each contingent payment is treated as principal, based on the amount determined by discounting the payment at the AFR from the payment date to the issue date, and the remainder is treated as interest. Special rules are provided if a contingent payment becomes fixed more than 6 months before it is due.

The final regulations generally adopt the method in the proposed regulations. In addition, the final regulations contain rules for a holder whose basis in a debt instrument is different from the instrument's adjusted issue price (e.g., a subsequent holder).

E. Inflation-Indexed Bonds

The Treasury recently announced that it was considering issuing bonds indexed to inflation (61 FR 25164). Depending on their ultimate structure, the noncontingent bond method might be inappropriate for these bonds. If the Treasury issues these bonds, the Treasury and IRS may issue regulations to provide a simplified tax treatment for the bonds. The treatment would require current accrual of the inflation component.

Other Amendments to the OID Regulations

A. Alternative Payment Schedules Under § 1.1272–1(c)

Section 1.1272–1(c) provides rules to determine the yield and maturity of certain debt instruments that provide for one or more alternative payment schedules applicable upon the occurrence of a contingency (or contingencies), provided that the timing and amounts of the payments that comprise each payment schedule are known as of the issue date. Under these rules, the yield and maturity of a debt instrument are generally determined by assuming that the payments will be made under the payment schedule most likely to occur (based on all the facts and circumstances as of the issue date). Special rules are provided for unconditional options and mandatory sinking funds.

The general rules in § 1.1272–1(c) produce a reasonable result when a debt instrument has one stated payment schedule that is very likely to occur and one or more alternative payment schedules that are unlikely to occur. In this case, adherence to the stated payment schedule will result in accruals on the debt instrument that reasonably reflect the expected return on the instrument. The rules can lead to unreasonable results, however, if a debt instrument provides for a stated payment schedule and one or more alternative payment schedules that differ significantly and that have a comparable likelihood of occurring. In this case, the accruals based on the payment schedule identified as most likely to occur could differ significantly from the expected return on the debt instrument, which would reflect all the payment schedules and their relative probabilities of occurrence.

Because the general rules of § 1.1272–1(c) could produce unreasonable results, these rules have been modified. Under the final regulations, if a single payment schedule is significantly more likely than not to occur, the yield and maturity of the debt instrument are calculated based on that payment schedule. As a result, any other debt instrument that provides for an alternative payment schedule (other than because of an unconditional option or mandatory sinking fund) will generally be subject to the rules in § 1.1275–4 for contingent payment debt instruments. The final regulations generally retain the rules for mandatory sinking funds and unconditional options.

B. Remote and Incidental Contingencies

The proposed regulations provide that a payment subject to a remote or incidental contingency is not considered a contingent payment for purposes of § 1.1275–4. In response to a comment, the rule relating to remote and incidental contingencies has been broadened, through the addition of new § 1.1275–2(h), to provide that remote and incidental contingencies are generally ignored for purposes of sections 163(e) (other than section 163(e)(5)) and 1271 through 1275 and the regulations thereunder. Thus, for example, if an otherwise fixed payment debt instrument provides for an additional payment that will be made upon the occurrence of a contingency and there is a remote likelihood that the contingency will occur, the contingent payment is ignored for purposes of computing OID accruals on the instrument. If the contingency occurs, however, then, solely for purposes of sections 1272 and 1273, the debt instrument is treated as reissued. Therefore, OID on the debt instrument is redetermined.

C. Definition of Qualified Stated Interest

The addition of the rules for remote or incidental contingencies and the changes to the rules for alternative payment schedules allow simplification of the definition of qualified stated interest. Under § 1.1273–1(c), as published in the Federal Register on February 2, 1994, qualified stated interest must be unconditionally payable in cash or property at least annually at a single fixed rate. Interest is unconditionally payable only if late payment (other than a late payment that occurs within a reasonable grace period) or nonpayment is expected to be penalized or reasonable remedies exist to compel payment.

This definition of unconditionally payable can be read to conflict with the alternative payment schedule rules. For example, if a debt instrument has two alternative payment schedules, one schedule can be stated as the required payment schedule and the other schedule can be stated as a penalty if the required payments are not made. The required payments might then be treated as unconditionally payable and, therefore, as being qualified stated interest even if they would not be qualified stated interest if treated under the alternative payment schedule rules. Under this treatment, if a payment is not made, the reissuance rules of the alternative payment schedule regime do not apply. Holders can thus argue that no OID would accrue with respect to the debt instrument even though OID would accrue if the instrument were treated as having an alternative payment schedule and holders fully expect any unmade payment to be made in the future.

The remote or incidental rules in § 1.1275–2(h) provide a better mechanism for determining whether a payment is qualified stated interest and determining the treatment if no payment is made. Thus, the final regulations modify the definition of unconditionally payable so that interest is unconditionally payable only if reasonable legal remedies exist to compel payment or the debt instrument otherwise provides terms and

conditions that make the likelihood of late payment (other than a late payment that occurs within a reasonable grace period) or nonpayment remote. If the payment is not made (other than because of insolvency, default, or similar circumstances), the final regulations require a deemed reissuance for OID purposes, which ensures that OID will accrue. This approach should simplify the treatment of many debt instruments and yet ensure that OID accrues in appropriate circumstances.

D. OID Anti-Abuse Rule

On February 2, 1994, the IRS published in the Federal Register temporary and proposed regulations that contained an anti-abuse rule for purposes of the OID regulations (§ 1.1275–2T (59 FR 4831); § 1.1275–2(g) (59 FR 4878)). Under the anti-abuse rule, the Commissioner can apply or depart from the regulations under section 163(e) or sections 1271 through 1275 as necessary to achieve a reasonable result if a principal purpose in structuring a debt instrument or engaging in a transaction is to achieve a result under the regulations that is unreasonable in light of the applicable statutes. This rule is adopted as a final regulation with some clarifying changes and the addition of an example to illustrate its application to certain contingent payment debt instruments.

E. Determination of Issue Price Under Section 1274

Under the proposed regulations, the issue price of a contingent payment debt instrument that is subject to section 1274 (i.e., a debt instrument issued in exchange for nonpublicly traded property) is determined without taking into account the instrument's contingent payments. Thus, the issue price of the debt instrument (and the buyer's initial basis in the property) is limited to an amount determined by taking into account only the noncontingent payments. The buyer's basis in the property, however, is increased by the amount of a contingent payment treated as principal. This approach was adopted primarily because it is inappropriate to allow a buyer a basis in property that reflects anticipated contingent payments that are uncertain in amount. In addition, this approach limits the ability of the buyer to overstate interest deductions over the term of the debt instrument. The approach of the proposed regulations has been adopted in the final regulations for taxable debt instruments subject to section 1274. See § 1.1274–2(g).

It is not appropriate, however, to apply this approach to tax-exempt contingent payment obligations subject to section 1274. Because the present value of projected contingent payments generally is not included in the issue price of a taxable debt instrument subject to section 1274, the instrument is accounted for under § 1.1275–4(c). This regime is not appropriate for tax-exempt obligations because it does not distinguish between tax-exempt interest and gain attributable to an embedded property right. Thus, in order to permit tax-exempt obligations to be subject to the noncontingent bond method under § 1.1275–4(b), the final regulations provide special rules to determine the issue price of a tax-exempt contingent payment obligation subject to section 1274.

Under these rules, the issue price of a tax-exempt contingent payment obligation subject to section 1274 is equal to the fair market value of the obligation on the issue date (or, in the case of an obligation that provides for interest-based or revenue-based payments, the greater of the obligation's fair market value or stated principal amount). In addition, the obligation is subject to the rules of § 1.1275–4(d) (the noncontingent bond method for tax-exempt contingent payment obligations) rather than § 1.1275–4(c). However, to ensure that the buyer's basis is the same as if the buyer had issued a taxable debt instrument, the final regulations limit the buyer's basis to the present value of the fixed payments.

Section 1.1275–6 Integration Rules

Commentators generally approved of the integration rules in the proposed regulations, and those rules are adopted with only two significant changes.

First, the final regulations allow (but do not require) the integration of a hedge with a fixed rate debt instrument. For example, a taxpayer may integrate a fixed rate debt instrument and a swap into a VRDI. Although the hedging transaction regulations (§ 1.446–4) cover many of these transactions, the integration rules provide more certain treatment. The final regulations, however, do not allow the Commissioner to integrate a hedge with either a fixed rate debt instrument or a VRDI that provides for interest at a qualified floating rate. In these cases, treating the hedge and the debt instrument separately is a longstanding rule that generally clearly reflects income.

Second, in limited circumstances, the final regulations allow a hedge to be entered into prior to the date the taxpayer issues or acquires the debt instrument. In these circumstances, however, the taxpayer must identify the hedge as part of an integrated transaction on the day the hedge is entered into by the taxpayer. Under the final regulations, if the hedging transaction has not yet had any cash flows (including amounts paid to enter into or purchase the hedge), the integration rules work appropriately so that any built-in gain or loss on the hedge at the time of integration is included over the term of the synthetic debt instrument. Thus, the final regulations put no restriction on the time the hedging transaction has to be entered into in this case. If there have been cash flows on the hedge, the final regulations require the hedge to be entered into no earlier than a date that is substantially contemporaneous with the date on which the debt instrument is acquired. This approach should allow commercially reasonable transactions to be integrated without the need to create complex rules to determine the treatment of prior cash flows on the hedging transaction.

The rules for remote and incidental contingencies in § 1.1275–2(h) apply for purposes of the integration rules. Thus, if there is an incidental mismatch between a § 1.1275–6 hedge and a qualifying debt instrument, a taxpayer may still integrate the hedge and the instrument. The mismatch is dealt with according to the rules for incidental contingencies.

The final regulations also clarify the timing of income, deductions, gains, and losses from a hedge of a contingent payment debt instrument not subject to integration. Under § 1.446–4, the income, deductions, gains, and losses must match the income, deductions, gains, and losses from the debt instrument. The final regulations clarify that gain or loss realized on a transaction that hedges a contingent payment on a debt instrument subject to § 1.1275–4(c) is taken into account when the contingent payment is taken into account under § 1.1275–4(c). This treatment does not allow the taxpayer to change the timing of the income, deductions, gains, and losses from the debt instrument.

Effective Dates

In general, the final regulations apply to debt instruments issued on or after August 13, 1996. Section 1.1275–6 applies to a qualifying debt instrument issued on or after August 13, 1996. Section 1.1275–6 also applies to a qualifying debt instrument acquired by the taxpayer on or after August 13, 1996, if the qualifying debt instrument is a fixed rate debt instrument or a VRDI or if the qualifying debt instrument and the § 1.1275–6 hedge are acquired by the

taxpayer substantially contemporaneously. Except as otherwise provided in the regulations, the changes to § 1.1275–5 apply to debt instruments issued on or after April 4, 1994.

Debt Instruments Issued Before the Effective Date of the Final Regulations

For a contingent payment debt instrument issued before August 13, 1996, a taxpayer may use any reasonable method to account for the debt instrument, including a method that would have been required under the proposed regulations when the debt instrument was issued. However, unless § 1.1275–6 applies to the debt instrument, integration is not a reasonable method to account for the instrument.

Consent To Change Accounting Method

The Commissioner grants consent for a taxpayer to change its method of accounting to follow the final regulations in this document. This consent is granted, however, only for a change for the first taxable year in which the taxpayer must account for a debt instrument under the final regulations. The change is made on a cut-off basis (i.e., the new method only applies to debt instruments issued on or after August 13, 1996. Therefore, no items of income or deduction are omitted or duplicated, and no adjustment under section 481 is allowed.

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

Several persons from the Office of Chief Counsel and the Treasury Department, including Andrew C. Kittler, formerly of the Office of the Assistant Chief Counsel (Financial Institutions and Products), participated in developing these regulations.

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 entry for § 1.1275–2T and adding two entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.483–4 also issued under 26 U.S.C. 483(f). * * *
Section 1.1275–6 also issued under 26 U.S.C. 1275(d). * * *

Par. 2. Section 1.163–7 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 1.163–7 Deduction for OID on certain debt instruments.

(a) * * * To determine the amount of interest (OID) that is deductible each year on a debt instrument that provides for contingent payments, see § 1.1275–4.

* * * * *

Par. 3. Section 1.446–4 is amended by:

1. Redesignating paragraphs (a)(2)(ii) and (a)(2)(iii) as paragraphs (a)(2)(iii) and (a)(2)(iv), respectively.

2. Adding a new paragraph (a)(2)(ii).

3. Adding a sentence at the end of paragraph (e)(4).

The additions read as follows:

§ 1.446–4 Hedging transactions.

(a) * * *

(2) * * *

(ii) An integrated transaction subject to § 1.1275–6;

* * * * *

(e) * * *

(4) * * * Similarly, gain or loss realized on a transaction that hedges a contingent payment on a debt instrument subject to § 1.1275–4(c) (a contingent payment debt instrument issued for nonpublicly traded property) is taken into account when the contingent payment is taken into account under § 1.1275–4(c).

* * * * *

§ 1.483–2T [Removed]

Par. 4. Section 1.483–2T is removed effective June 14, 1996.

Par. 5. Section 1.483–4 is added to read as follows:

§ 1.483–4 Contingent payments.

(a) *In general.* This section applies to a contract for the sale or exchange of property (the overall contract) if the contract provides for one or more contingent payments and the contract is subject to section 483. This section applies even if the contract provides for adequate stated interest under § 1.483–2. If this section applies to a contract, interest under the contract is generally computed and accounted for using rules similar to those that would apply if the contract were a debt instrument subject to § 1.1275–4(c). Consequently, all noncontingent payments under the overall contract are treated as if made under a separate contract, and interest accruals on this separate contract are computed under rules similar to those contained in § 1.1275–4(c)(3). Each contingent payment under the overall contract is characterized as principal and interest under rules similar to those contained in § 1.1275–4(c)(4). However, any interest, or amount treated as interest, on a contract subject to this section is taken into account by a taxpayer under the taxpayer's regular method of accounting (e.g., an accrual method or the cash receipts and disbursements method).

(b) *Examples.* The following examples illustrate the provisions of paragraph (a) of this section:

Example 1. Deferred payment sale with contingent interest—(i) *Facts.* On December 31, 1996, A sells depreciable personal property to B. As consideration for the sale, B issues to A a debt instrument with a maturity date of December 31, 2001. The debt instrument provides for a principal payment of $200,000 on the maturity date, and a payment of interest on December 31 of each year, beginning in 1997, equal to a percentage of the total gross income derived from the property in that year. However, the total interest payable on the debt instrument over its entire term is limited to a maximum of $50,000. Assume that on December 31, 1996, the short-term applicable Federal rate is 4 percent, compounded annually, and the mid-term applicable Federal rate is 5 percent, compounded annually.

(ii) *Treatment of noncontingent payment as separate contract.* Each payment of interest is a contingent payment. Accordingly, under paragraph (a) of this section, for purposes of applying section 483 to the debt instrument, the right to the noncontingent payment of $200,000 is treated as a separate contract. The amount of unstated interest on this separate contract is equal to $43,295, which is the amount by which the payment ($200,000) exceeds the present value of the payment ($156,705), calculated using the test rate of 5 percent, compounded annually. The $200,000 payment is thus treated as consisting of a

payment of interest of $43,295 and a payment of principal of $156,705. The interest is includible in A's gross income, and deductible by B, under their respective methods of accounting.

(iii) *Treatment of contingent payments.* Assume that the amount of the contingent payment that is paid on December 31, 1997, is $20,000. Under paragraph (a) of this section, the $20,000 payment is treated as a payment of principal of $19,231 (the present value, as of the date of sale, of the $20,000 payment, calculated using a test rate equal to 4 percent, compounded annually) and a payment of interest of $769. The $769 interest payment is includible in A's gross income, and deductible by B, in their respective taxable years in which the payment occurs. The amount treated as principal gives B additional basis in the property on December 31, 1997. The remaining contingent payments on the debt instrument are accounted for similarly, using a test rate of 4 percent, compounded annually, for the payments made on December 31, 1998, and December 31, 1999, and a test rate of 5 percent, compounded annually, for the payments made on December 31, 2000, and December 31, 2001.

Example 2. Contingent stock payout—(i) *Facts.* M Corporation and N Corporation each owns one-half of the stock of O Corporation. On December 31, 1996, pursuant to a reorganization qualifying under section 368(a)(1)(B), M acquires the one-half interest of O held by N in exchange for 30,000 shares of M voting stock and a non-assignable right to receive up to 10,000 additional shares of M's voting stock during the next 3 years, provided the net profits of O exceed certain amounts specified in the contract. No interest is provided for in the contract. No additional shares are received in 1997 or in 1998. In 1999, the annual earnings of O exceed the specified amount, and, on December 31, 1999, an additional 3,000 M voting shares are transferred to N. The fair market value of the 3,000 shares on December 31, 1999, is $300,000. Assume that on December 31, 1996, the short-term applicable Federal rate is 4 percent, compounded annually. M and N are calendar year taxpayers.

(ii) *Allocation of interest.* Section 1274 does not apply to the right to receive the additional shares because the right is not a debt instrument for federal income tax purposes. As a result, the transfer of the 3,000 M voting shares to N is a deferred payment subject to section 483 and a portion of the shares is treated as unstated interest under that section. The amount of interest allocable to the shares is equal to the excess of $300,000 (the fair market value of the shares on December 31, 1999) over $266,699 (the present value of $300,000, determined by discounting the payment at the test rate of 4 percent, compounded annually, from December 31, 1999, to December 31, 1996). As a result, the amount of interest allocable to the payment of the shares is $33,301 ($300,000–$266,699). Both M and N take the interest into account in 1999.

(c) *Effective date.* This section applies to sales and exchanges that occur on or after August 13, 1996.

Par. 6. Section 1.1001–1 is amended by revising paragraph (g) to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(g) *Debt instruments issued in exchange for property*—(1) *In general.* If a debt instrument is issued in exchange for property, the amount realized attributable to the debt instrument is the issue price of the debt instrument as determined under § 1.1273–2 or § 1.1274–2, whichever is applicable. If, however, the issue price of the debt instrument is determined under section 1273(b)(4), the amount realized attributable to the debt instrument is its stated principal amount reduced by any unstated interest (as determined under section 483).

(2) *Certain debt instruments that provide for contingent payments*—(i) *In general.* Paragraph (g)(1) of this section does not apply to a debt instrument subject to either § 1.483–4 or § 1.1275–4(c) (certain contingent payment debt instruments issued for nonpublicly traded property).

(ii) *Special rule to determine amount realized.* If a debt instrument subject to § 1.1275–4(c) is issued in exchange for property, and the income from the exchange is not reported under the installment method of section 453, the amount realized attributable to the debt instrument is the issue price of the debt instrument as determined under § 1.1274–2(g), increased by the fair market value of the contingent payments payable on the debt instrument. If a debt instrument subject to § 1.483–4 is issued in exchange for property, and the income from the exchange is not reported under the installment method of section 453, the amount realized attributable to the debt instrument is its stated principal amount, reduced by any unstated interest (as determined under section 483), and increased by the fair market value of the contingent payments payable on the debt instrument. This paragraph (g)(2)(ii), however, does not apply to a debt instrument if the fair market value of the contingent payments is not reasonably ascertainable. Only in rare and extraordinary cases will the fair market value of the contingent payments be treated as not reasonably ascertainable.

(3) *Coordination with section 453.* If a debt instrument is issued in exchange for property, and the income from the exchange is not reported under the installment method of section 453, this paragraph (g) applies rather than § 15a.453–1(d)(2) to determine the taxpayer's amount realized attributable to the debt instrument.

(4) *Effective date.* This paragraph (g) applies to sales or exchanges that occur on or after August 13, 1996.

Par. 7. Section 1.1012–1 is amended by revising paragraph (g) to read as follows:

§ 1.1012–1 Basis of property.

* * * * *

(g) *Debt instruments issued in exchange for property*—(1) *In general.* For purposes of paragraph (a) of this section, if a debt instrument is issued in exchange for property, the cost of the property that is attributable to the debt instrument is the issue price of the debt instrument as determined under § 1.1273–2 or § 1.1274–2, whichever is applicable. If, however, the issue price of the debt instrument is determined under section 1273(b)(4), the cost of the property attributable to the debt instrument is its stated principal amount reduced by any unstated interest (as determined under section 483).

(2) *Certain tax-exempt obligations.* This paragraph (g)(2) applies to a tax-exempt obligation (as defined in section 1275(a)(3)) that is issued in exchange for property and that has an issue price determined under § 1.1274–2(j) (concerning tax-exempt contingent payment obligations and certain tax-exempt variable rate debt instruments subject to section 1274). Notwithstanding paragraph (g)(1) of this section, if this paragraph (g)(2) applies to a tax-exempt obligation, for purposes of paragraph (a) of this section, the cost of the property that is attributable to the obligation is the sum of the present values of the noncontingent payments (as determined under § 1.1274–2(c)).

(3) *Effective date.* This paragraph (g) applies to sales or exchanges that occur on or after August 13, 1996.

Par. 8. Section 1.1271–0(b) is amended by:

1. Revising the entries for paragraphs (c)(2), (c)(3), (c)(4), and (d) of § 1.1272–1.

2. Adding an entry for paragraph (c)(7) of § 1.1272–1.

3. Revising the entry for paragraph (g) and adding entries for paragraphs (i) and (j) of § 1.1274–2.

4. Revising the entry for paragraph (g) and adding entries for paragraphs (g), (h), (i), and (j) of § 1.1275–2.

5. Removing the entries for § 1.1275–2T.

6. Adding entries for § 1.1275–4.

7. Adding entries for paragraphs (a)(5) and (a)(6) of § 1.1275–5.

8. Revising the entries for paragraphs (c)(1) and (c)(5) of § 1.1275–5.

9. Adding entries for § 1.1275–6.

The revisions and additions read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * *

§ 1.1272–1 Current Inclusion of OID in Income

* * * * *

(c) * * *

(2) Payment schedule that is significantly more likely than not to occur.

(3) Mandatory sinking fund provision.

(4) Consistency rule. [Reserved]

* * * * *

(7) Effective date.

(d) Certain debt instruments that provide for a fixed yield.

* * * * *

§ 1.1274–2 Issue Price of Debt Instruments to Which Section 1274 Applies

* * * * *

(g) Treatment of contingent payment debt instrument.

* * * * *

(i) [Reserved]

(j) Special rules for tax-exempt obligations.

(1) Certain variable rate debt instruments.

(2) Contingent payment debt instruments.

(3) Effective date.

* * * * *

§ 1.1275–2 Special Rules Relating to Debt Instruments

* * * * *

(g) Anti-abuse rule.

(1) In general.

(2) Unreasonable result.

(3) Examples.

(4) Effective date.

(h) Remote and incidental contingencies.

(1) In general.

(2) Remote contingencies.

(3) Incidental contingencies.

(4) Aggregation rule.

(5) Consistency rule.

(6) Subsequent adjustments.

(7) Effective date.

(i) [Reserved]

(j) Treatment of certain modifications.

* * * * *

§ 1.1275–4 Contingent Payment Debt Instruments

(a) Applicability.

(1) In general.

(2) Exceptions.

(3) Insolvency and default.

(4) Convertible debt instruments.

(5) Remote and incidental contingencies.

(b) Noncontingent bond method.

(1) Applicability.

(2) In general.

(3) Description of method.

(4) Comparable yield and projected payment schedule.

(5) Qualified stated interest.

(6) Adjustments.

(7) Adjusted issue price, adjusted basis, and retirement.

(8) Character on sale, exchange, or retirement.

(9) Operating rules.

(c) Method for debt instruments not subject to the noncontingent bond method.

(1) Applicability.

(2) Separation into components.

(3) Treatment of noncontingent payments.

(4) Treatment of contingent payments.

(5) Basis different from adjusted issue price.

(6) Treatment of a holder on sale, exchange, or retirement.

(7) Examples.

(d) Rules for tax-exempt obligations.

(1) In general.

(2) Certain tax-exempt obligations with interest-based or revenue-based payments

(3) All other tax-exempt obligations.

(4) Basis different from adjusted issue price.

(e) Amounts treated as interest under this section.

(f) Effective date.

§ 1.1275–5 Variable Rate Debt Instruments

(a) * * *

(5) No contingent principal payments.

(6) Special rule for debt instruments issued for nonpublicly traded property.

* * * * *

(c) * * *

(1) Definition.

* * * * *

(5) Tax-exempt obligations.

* * * * *

§ 1.1275–6 Integration of Qualifying Debt Instruments

(a) In general.

(b) Definitions.

(1) Qualifying debt instrument.

(2) Section 1.1275–6 hedge.

(3) Financial instrument.

(4) Synthetic debt instrument.

(c) Integrated transaction.

(1) Integration by taxpayer.

(2) Integration by Commissioner.

(d) Special rules for legging into and legging out of an integrated transaction.

(1) Legging into.

(2) Legging out.

(e) Identification requirements.

(f) Taxation of integrated transactions.

(1) General rule.

(2) Issue date.

(3) Term.

(4) Issue price.

(5) Adjusted issue price.

(6) Qualified stated interest.

(7) Stated redemption price at maturity.

(8) Source of interest income and allocation of expense.

(9) Effectively connected income.

(10) Not a short-term obligation.

(11) Special rules in the event of integration by the Commissioner.

(12) Retention of separate transaction rules for certain purposes.

(13) Coordination with consolidated return rules.

(g) Predecessors and successors.

(h) Examples.

(i) [Reserved]

(j) Effective date.

Par. 9. Section 1.1272–1 is amended by:

1. Revising paragraphs (b)(2)(ii), (c), and (d).

2. Adding a sentence at the end of paragraph (f)(2).

3. Removing the language ''determining yield and maturity'' from the first sentence of paragraph (j) *Example 5* (iii) and adding the language ''sections 1272 and 1273'' in its place.

4. Removing the language ''determining yield and maturity'' from the second sentence of paragraph (j) *Example 7* (v) and adding the language ''sections 1272 and 1273'' in its place.

The revisions and addition read as follows:

§ 1.1272–1 Current inclusion of OID in income.

* * * * *

(b) * * *

(2) * * *

(ii) A debt instrument that provides for contingent payments, other than a debt instrument described in paragraph (c) or (d) of this section or except as provided in § 1.1275–4; or

* * * * *

(c) *Yield and maturity of certain debt instruments subject to contingencies*—(1) *Applicability.* This paragraph (c) provides rules to determine the yield and maturity of certain debt instruments that provide for an alternative payment schedule (or schedules) applicable upon the occurrence of a contingency (or contingencies). This paragraph (c) applies, however, only if the timing and amounts of the payments that comprise each payment schedule are known as of the issue date and the debt instrument is subject to paragraph (c) (2), (3), or (5) of this section. A debt instrument does not provide for an alternative payment schedule merely because there is a possibility of impairment of a payment (or payments) by insolvency, default, or similar circumstances. See § 1.1275–4 for the treatment of a debt instrument that provides for a contingency that is not described in this paragraph (c). See § 1.1273–1(c) to determine whether stated interest on a debt instrument subject to this paragraph (c) is qualified stated interest.

(2) *Payment schedule that is significantly more likely than not to occur.* If, based on all the facts and circumstances as of the issue date, a single payment schedule for a debt instrument, including the stated payment schedule, is significantly more likely than not to occur, the yield and maturity of the debt instrument are computed based on this payment schedule.

(3) *Mandatory sinking fund provision.* Notwithstanding paragraph (c)(2) of this section, if a debt instrument is subject to a mandatory sinking fund provision, the provision is ignored for purposes of computing the yield and maturity of the debt instrument if the use and terms of the provision meet reasonable commercial standards. For purposes of the preceding sentence, a mandatory sinking fund provision is a provision that meets the following requirements:

(i) The provision requires the issuer to redeem a certain amount of debt instruments in an issue prior to maturity.

(ii) The debt instruments actually redeemed are chosen by lot or purchased by the issuer either in the open market or pursuant to an offer made to all holders (with any proration determined by lot).

(iii) On the issue date, the specific debt instruments that will be redeemed on any date prior to maturity cannot be identified.

(4) *Consistency rule.* [Reserved]

(5) *Treatment of certain options.* Notwithstanding paragraphs (c) (2) and (3) of this section, the rules of this paragraph (c)(5) determine the yield and maturity of a debt instrument that provides the holder or issuer with an unconditional option or options, exercisable on one or more dates during the term of the debt instrument, that, if exercised, require payments to be made on the debt instrument under an alternative payment schedule or schedules (e.g., an option to extend or an option to call a debt instrument at a fixed premium). Under this paragraph (c)(5), an issuer is deemed to exercise or not exercise an option or combination of options in a manner that minimizes the yield on the debt instrument, and a holder is deemed to exercise or not exercise an option or combination of options in a manner that maximizes the yield on the debt instrument. If both the issuer and the holder have options, the rules of this paragraph (c)(5) are applied to the options in the order that they may be exercised. See paragraph (j) *Example 5* through *Example 8* of this section.

(6) *Subsequent adjustments.* If a contingency described in this paragraph (c) (including the exercise of an option described in paragraph (c)(5) of this section) actually occurs or does not occur, contrary to the assumption made pursuant to this paragraph (c) (a change in circumstances), then, solely for purposes of sections 1272 and 1273, the debt instrument is treated as retired and then reissued on the date of the change in circumstances for an amount equal to its adjusted issue price on that date. See paragraph (j) *Example 5* and *Example 7* of this section. If, however, the change in circumstances results in a substantially contemporaneous pro-rata prepayment as defined in § 1.1275–2(f)(2), the pro-rata prepayment is treated as a payment in retirement of a portion of the debt instrument, which may result in gain or loss to the holder. See paragraph (j) *Example 6* and *Example 8* of this section.

(7) *Effective date.* This paragraph (c) applies to debt instruments issued on or after August 13, 1996.

(d) *Certain debt instruments that provide for a fixed yield.* If a debt instrument provides for one or more contingent payments but all possible payment schedules under the terms of the instrument result in the same fixed yield, the yield of the debt instrument is the fixed yield. For example, the yield of a debt instrument with principal payments that are fixed in total amount but that are uncertain as to time (such as a demand loan) is the stated interest rate if the issue price of the instrument is equal to the stated principal amount and interest is paid or compounded at a fixed rate over the entire term of the instrument. This paragraph (d) applies to debt instruments issued on or after August 13, 1996.

* * * * *

(f) * * *

(2) * * * For purposes of the preceding sentence, the last possible date that the debt instrument could be outstanding is determined without regard to § 1.1275–2(h) (relating to payments subject to remote or incidental contingencies).

* * * * *

Par. 10. Section 1.1273–1 is amended by:

1. Removing the language ''principal payments uncertain as to time'' in the fourth sentence of paragraph (a) and adding the language ''a fixed yield'' in its place.

2. Revising paragraph (c)(1)(ii).

3. Revising paragraph (f) *Example 4.*

The revisions read as follows:

§ 1.1273–1 Definition of OID.

* * * * *

(c) * * * (1) * * *

(ii) *Unconditionally payable.* Interest is unconditionally payable only if reasonable legal remedies exist to compel timely payment or the debt instrument otherwise provides terms and conditions that make the likelihood of late payment (other than a late payment that occurs within a reasonable grace period) or nonpayment a remote contingency (within the meaning of § 1.1275–2(h)). For purposes of the preceding sentence, remedies or other terms and conditions are not taken into account if the lending transaction does not reflect arm's length dealing and the holder does not intend to enforce the remedies or other terms and conditions. For purposes of determining whether interest is unconditionally payable, the possibility of nonpayment due to default, insolvency, or similar circumstances, or due to the exercise of a conversion option described in § 1.1272–1(e) is ignored. This paragraph (c)(1)(ii) applies to debt instruments issued on or after August 13, 1996.

* * * * *

(f) * * *

Example 4. Qualified stated interest on a debt instrument that is subject to an option—(i) *Facts.* On January 1, 1997, A issues, for $100,000, a 10-year debt instrument that provides for a $100,000 principal payment at maturity and for annual interest payments of $10,000. Under the terms of the debt instrument, A has the option, exercisable on January 1, 2002, to lower the annual interest payments to $8,000. In addition, the debt instrument gives the holder an unconditional right to put the debt instrument back to A, exercisable on January 1, 2002, in return for $100,000.

(ii) *Amount of qualified stated interest.* Under paragraph (c)(2) of this section, the debt instrument provides for qualified stated interest to the extent of the lowest fixed rate at which qualified stated interest would be payable under any payment schedule. If the payment schedule determined by assuming that the issuer's option will be exercised and the put option will not be exercised were treated as the debt instrument's sole payment schedule, only $8,000 of each annual interest payment would be qualified stated interest. Under any other payment schedule, the debt instrument would provide for annual qualified stated interest payments of $10,000. Accordingly, only $8,000 of each annual interest payment is qualified stated interest. Any excess of each annual interest payment over $8,000 is included in the debt instrument's stated redemption price at maturity.

* * * * *

Par. 11. Section 1.1274–2 is amended by:

1. Removing the language ''§ 1.1272–1(c)(3)(ii)'' from paragraph (e) and adding the language ''§ 1.1272–1(c)(3)'' in its place.

2. Revising paragraph (g).

3. Adding and reserving paragraph (i) and adding paragraph (j).

The revisions and additions read as follows:

§ 1.1274–2 Issue price of debt instruments to which section 1274 applies.

* * * * *

(g) *Treatment of contingent payment debt instruments.* Notwithstanding paragraph (b) of this section, if a debt instrument subject to section 1274 provides for one or more contingent

payments, the issue price of the debt instrument is the lesser of the instrument's noncontingent principal payments and the sum of the present values of the noncontingent payments (as determined under paragraph (c) of this section). However, if the debt instrument is issued in a potentially abusive situation, the issue price of the debt instrument is the fair market value of the noncontingent payments. For additional rules relating to a debt instrument that provides for one or more contingent payments, see § 1.1275–4. This paragraph (g) applies to debt instruments issued on or after August 13, 1996.

* * * * *

(i) [Reserved]

(j) *Special rules for tax-exempt obligations*—(1) *Certain variable rate debt instruments.* Notwithstanding paragraph (b) of this section, if a tax-exempt obligation (as defined in section 1275(a)(3)) is a variable rate debt instrument (within the meaning of § 1.1275–5) that pays interest at an objective rate and is subject to section 1274, the issue price of the obligation is the greater of the obligation's fair market value and its stated principal amount.

(2) *Contingent payment debt instruments.* Notwithstanding paragraphs (b) and (g) of this section, if a tax-exempt obligation (as defined in section 1275(a)(3)) is subject to section 1274 and § 1.1275–4, the issue price of the obligation is the fair market value of the obligation. However, in the case of a tax-exempt obligation that is subject to § 1.1275–4(d)(2) (an obligation that provides for interest-based or revenue-based payments), the issue price of the obligation is the greater of the obligation's fair market value and its stated principal amount.

(3) *Effective date.* This paragraph (j) applies to debt instruments issued on or after August 13, 1996.

Par. 12. Section 1.1275–2 is amended by adding the text of paragraph (g), and adding paragraph (h), adding and reserving paragraph (i), and adding paragraph (j) to read as follows:

§ 1.1275–2 Special rules relating to debt instruments.

* * * * *

(g) *Anti-abuse rule*—(1) *In general.* If a principal purpose in structuring a debt instrument or engaging in a transaction is to achieve a result that is unreasonable in light of the purposes of section 163(e), sections 1271 through 1275, or any related section of the Code, the Commissioner can apply or depart from the regulations under the applicable sections as necessary or appropriate to achieve a reasonable result. For example, if this paragraph (g) applies to a debt instrument that provides for a contingent payment, the Commissioner can treat the contingency as if it were a separate position.

(2) *Unreasonable result.* Whether a result is unreasonable is determined based on all the facts and circumstances. In making this determination, a significant fact is whether the treatment of the debt instrument is expected to have a substantial effect on the issuer's or a holder's U.S. tax liability. In the case of a contingent payment debt instrument, another significant fact is whether the result is obtainable without the application of § 1.1275–4 and any related provisions (e.g., if the debt instrument and the contingency were entered into separately). A result will not be considered unreasonable, however, in the absence of an expected substantial effect on the present value of a taxpayer's tax liability.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (g):

Example 1. A issues a current-pay, increasing-rate note that provides for an early call option. Although the option is deemed exercised on the call date under § 1.1272–1(c)(5), the option is not expected to be exercised by A. In addition, a principal purpose of including the option in the terms of the note is to limit the amount of interest income includible by the holder in the period prior to the call date by virtue of the option rules in § 1.1272–1(c)(5). Moreover, the application of the option rules is expected to substantially reduce the present value of the holder's tax liability. Based on these facts, the application of § 1.1272–1(c)(5) produces an unreasonable result. Therefore, under this paragraph (g), the Commissioner can apply the regulations (in whole or in part) to the note without regard to § 1.1272–1(c)(5).

Example 2. C, a foreign corporation not subject to U.S. taxation, issues to a U.S. holder a debt instrument that provides for a contingent payment. The debt instrument is issued for cash and is subject to the noncontingent bond method in § 1.1275–4(b). Six months after issuance, C and the holder modify the debt instrument so that there is a deemed reissuance of the instrument under section 1001. The new debt instrument is subject to the rules of § 1.1275–4(c) rather than § 1.1275–4(b). The application of § 1.1275–4(c) is expected to substantially reduce the present value of the holder's tax liability as compared to the application of § 1.1275–4(b). In addition, a principal purpose of the modification is to substantially reduce the present value of the holder's tax liability through the application of § 1.1275–4(c). Based on these facts, the application of § 1.1275–4(c) produces an unreasonable result. Therefore, under this paragraph (g), the Commissioner can apply the noncontingent bond method to the modified debt instrument.

Example 3. D issues a convertible debt instrument rather than an economically equivalent investment unit consisting of a debt instrument and a warrant. The convertible debt instrument is issued at par and provides for annual payments of interest. D issues the convertible debt instrument rather than the investment unit so that the debt instrument would not have OID. See § 1.1273–2(j). In general, this is a reasonable result in light of the purposes of the applicable statutes. Therefore, the Commissioner generally will not use the authority under this paragraph (g) to depart from the application of § 1.1273–2(j) in this case.

(4) *Effective date.* This paragraph (g) applies to debt instruments issued on or after August 13, 1996.

(h) *Remote and incidental contingencies*—(1) *In general.* This paragraph (h) applies to a debt instrument if one or more payments on the instrument are subject to either a remote or incidental contingency. Whether a contingency is remote or incidental is determined as of the issue date of the debt instrument, including any date there is a deemed reissuance of the debt instrument under paragraph (h)(6) (ii) or (j) of this section or § 1.1272–1(c)(6). Except as otherwise provided, the treatment of the contingency under this paragraph (h) applies for all purposes of sections 163(e) (other than sections 163(e)(5)) and 1271 through 1275 and the regulations thereunder. For purposes of this paragraph (h), the possibility of impairment of a payment by insolvency, default, or similar circumstances is not a contingency.

(2) *Remote contingencies.* A contingency is remote if there is a remote likelihood either that the contingency will occur or that the contingency will not occur. If there is a remote likelihood that the contingency will occur, it is assumed that the contingency will not occur. If there is a remote likelihood that the contingency will not occur, it is assumed that the contingency will occur.

(3) *Incidental contingencies*—(i) *Contingency relating to amount.* A contingency relating to the amount of a payment is incidental if, under all reasonably expected market conditions, the potential amount of the payment is insignificant relative to the total expected amount of the remaining payments on the debt instrument. If a payment on a debt instrument is subject to an incidental contingency described in this paragraph (h)(3)(i), the payment is ignored until the payment is made. However, see paragraph (h)(6)(i)(B) of this section for the treatment of the debt instrument if a change in circumstances

occurs prior to the date the payment is made.

(ii) *Contingency relating to time.* A contingency relating to the timing of a payment is incidental if, under all reasonably expected market conditions, the potential difference in the timing of the payment (from the earliest date to the latest date) is insignificant. If a payment on a debt instrument is subject to an incidental contingency described in this paragraph (h)(3)(ii), the payment is treated as made on the earliest date that the payment could be made pursuant to the contingency. If the payment is not made on this date, a taxpayer makes appropriate adjustments to take into account the delay in payment. However, see paragraph (h)(6)(i)(C) of this section for the treatment of the debt instrument if the delay is not insignificant.

(4) *Aggregation rule.* For purposes of paragraph (h)(2) of this section, if a debt instrument provides for multiple contingencies each of which has a remote likelihood of occurring but, when all of the contingencies are considered together, there is a greater than remote likelihood that at least one of the contingencies will occur, none of the contingencies is treated as a remote contingency. For purposes of paragraph (h)(3)(i) of this section, if a debt instrument provides for multiple contingencies each of which is incidental but the potential total amount of all of the payments subject to the contingencies is not, under reasonably expected market conditions, insignificant relative to the total expected amount of the remaining payments on the debt instrument, none of the contingencies is treated as incidental.

(5) *Consistency rule.* For purposes of paragraphs (h)(2) and (3) of this section, the issuer's determination that a contingency is either remote or incidental is binding on all holders. However, the issuer's determination is not binding on a holder that explicitly discloses that its determination is different from the issuer's determination. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument. See § 1.1275–2(e) for rules relating to the issuer's obligation to disclose certain information to holders.

(6) *Subsequent adjustments*—(i) Applicability. This paragraph (h)(6) applies to a debt instrument when there is a change in circumstances. For purposes of the preceding sentence, there is a change in circumstances if—

(A) A remote contingency actually occurs or does not occur, contrary to the assumption made in paragraph (h)(2) of this section;

(B) A payment subject to an incidental contingency described in paragraph (h)(3)(i) of this section becomes fixed in an amount that is not insignificant relative to the total expected amount of the remaining payments on the debt instrument; or

(C) A payment subject to an incidental contingency described in paragraph (h)(3)(ii) of this section becomes fixed such that the difference between the assumed payment date and the due date of the payment is not insignificant.

(ii) *In general.* If a change in circumstances occurs, solely for purposes of sections 1272 and 1273, the debt instrument is treated as retired and then reissued on the date of the change in circumstances for an amount equal to the instrument's adjusted issue price on that date.

(iii) *Contingent payment debt instruments.* Notwithstanding paragraph (h)(6)(ii) of this section, in the case of a contingent payment debt instrument subject to § 1.1275–4, if a change in circumstances occurs, no retirement or reissuance is treated as occurring, but any payment that is fixed as a result of the change in circumstances is governed by the rules in § 1.1275–4 that apply when the amount of a contingent payment becomes fixed.

(7) *Effective date.* This paragraph (h) applies to debt instruments issued on or after August 13, 1996.

(i) [Reserved]

(j) *Treatment of certain modifications.* If the terms of a debt instrument are modified to defer one or more payments, and the modification does not cause an exchange under section 1001, then, solely for purposes of sections 1272 and 1273, the debt instrument is treated as retired and then reissued on the date of the modification for an amount equal to the instrument's adjusted issue price on that date. This paragraph (j) applies to debt instruments issued on or after August 13, 1996.

§ 1.1275–2T [Removed]

Par. 13. Section 1.1275–2T is removed effective August 13, 1996.

Par. 14. In § 1.1275–3, paragraph (b)(1)(i) is revised to read as follows:

§ 1.1275–3 OID information reporting requirements.

* * * * *

(b) * * * (1) * * *

(i) Set forth on the face of the debt instrument the issue price, the amount of OID, the issue date, the yield to maturity, and, in the case of a debt instrument subject to the rules of § 1.1275–4(b), the comparable yield and projected payment schedule; or

* * * * *

Par. 15. Section 1.1275–4 is added to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) *Applicability*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, this section applies to any debt instrument that provides for one or more contingent payments. In general, paragraph (b) of this section applies to a contingent payment debt instrument that is issued for money or publicly traded property and paragraph (c) of this section applies to a contingent payment debt instrument that is issued for nonpublicly traded property. Paragraph (d) of this section provides special rules for tax-exempt obligations. See § 1.1275–6 for a taxpayer's treatment of a contingent payment debt instrument and a hedge.

(2) *Exceptions.* This section does not apply to—

(i) A debt instrument that has an issue price determined under section 1273(b)(4) (e.g., a debt instrument subject to section 483);

(ii) A variable rate debt instrument (as defined in § 1.1275–5);

(iii) A debt instrument subject to § 1.1272–1(c) (a debt instrument that provides for certain contingencies) or § 1.1272–1(d) (a debt instrument that provides for a fixed yield);

(iv) A debt instrument subject to section 988 (except as provided in section 988 and the regulations thereunder);

(v) A debt instrument to which section 1272(a)(6) applies (certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration);

(vi) A debt instrument (other than a tax-exempt obligation) described in section 1272(a)(2) (e.g., U.S. savings bonds, certain loans between natural persons, and short-term taxable obligations); or

(vii) A debt instrument issued pursuant to a plan or arrangement if—

(A) The plan or arrangement is created by a state statute;

(B) A primary objective of the plan or arrangement is to enable the participants to pay for the costs of post-secondary education for themselves or their designated beneficiaries; and

(C) Contingent payments on the debt instrument are related to such objective.

(3) *Insolvency and default.* A payment is not contingent merely because of the possibility of impairment by insolvency, default, or similar circumstances.

(4) *Convertible debt instruments.* A debt instrument does not provide for contingent payments merely because it provides for an option to convert the debt instrument into the stock of the issuer, into the stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt.

(5) *Remote and incidental contingencies.* A payment is not a contingent payment merely because of a contingency that, as of the issue date, is either remote or incidental. See § 1.1275–2(h) for the treatment of remote and incidental contingencies.

(b) *Noncontingent bond method*—(1) *Applicability.* The noncontingent bond method described in this paragraph (b) applies to a contingent payment debt instrument that has an issue price determined under § 1.1273–2 (e.g., a contingent payment debt instrument that is issued for money or publicly traded property).

(2) *In general.* Under the noncontingent bond method, interest on a debt instrument must be taken into account whether or not the amount of any payment is fixed or determinable in the taxable year. The amount of interest that is taken into account for each accrual period is determined by constructing a projected payment schedule for the debt instrument and applying rules similar to those for accruing OID on a noncontingent debt instrument. If the actual amount of a contingent payment is not equal to the projected amount, appropriate adjustments are made to reflect the difference.

(3) *Description of method.* The following steps describe how to compute the amount of income, deductions, gain, and loss under the noncontingent bond method:

(i) *Step one: Determine the comparable yield.* Determine the comparable yield for the debt instrument under the rules of paragraph (b)(4) of this section. The comparable yield is determined as of the debt instrument's issue date.

(ii) *Step two: Determine the projected payment schedule.* Determine the projected payment schedule for the debt instrument under the rules of paragraph (b)(4) of this section. The projected payment schedule is determined as of the issue date and remains fixed throughout the term of the debt instrument (except under paragraph (b)(9)(ii) of this section, which applies to a payment that is fixed more than 6 months before it is due).

(iii) *Step three: Determine the daily portions of interest.* Determine the daily portions of interest on the debt instrument for a taxable year as follows. The amount of interest that accrues in each accrual period is the product of the comparable yield of the debt instrument (properly adjusted for the length of the accrual period) and the debt instrument's adjusted issue price at the beginning of the accrual period. See paragraph (b)(7)(ii) of this section to determine the adjusted issue price of the debt instrument. The daily portions of interest are determined by allocating to each day in the accrual period the ratable portion of the interest that accrues in the accrual period. Except as modified by paragraph (b)(3)(iv) of this section, the daily portions of interest are includible in income by a holder for each day in the holder's taxable year on which the holder held the debt instrument and are deductible by the issuer for each day during the issuer's taxable year on which the issuer was primarily liable on the debt instrument.

(iv) *Step four: Adjust the amount of income or deductions for differences between projected and actual contingent payments.* Make appropriate adjustments to the amount of income or deductions attributable to the debt instrument in a taxable year for any differences between projected and actual contingent payments. See paragraph (b)(6) of this section to determine the amount of an adjustment and the treatment of the adjustment.

(4) *Comparable yield and projected payment schedule.* This paragraph (b)(4) provides rules for determining the comparable yield and projected payment schedule for a debt instrument. The comparable yield and projected payment schedule must be supported by contemporaneous documentation showing that both are reasonable, are based on reliable, complete, and accurate data, and are made in good faith.

(i) *Comparable yield*—(A) *In general.* Except as provided in paragraph (b)(4)(i)(B) of this section, the comparable yield for a debt instrument is the yield at which the issuer would issue a fixed rate debt instrument with terms and conditions similar to those of the contingent payment debt instrument (the comparable fixed rate debt instrument), including the level of subordination, term, timing of payments, and general market conditions. For example, if a § 1.1275–6 hedge (or the substantial equivalent) is available, the comparable yield is the yield on the synthetic fixed rate debt instrument that would result if the issuer entered into the § 1.1275–6 hedge. If a § 1.1275–6 hedge (or the substantial equivalent) is not available, but similar fixed rate debt instruments of the issuer trade at a price that reflects a spread above a benchmark rate, the comparable yield is the sum of the value of the benchmark rate on the issue date and the spread. In determining the comparable yield, no adjustments are made for the riskiness of the contingencies or the liquidity of the debt instrument. The comparable yield must be a reasonable yield for the issuer and must not be less than the applicable Federal rate (based on the overall maturity of the debt instrument).

(B) *Presumption for certain debt instruments.* This paragraph (b)(4)(i)(B) applies to a debt instrument if the instrument provides for one or more contingent payments not based on market information and the instrument is part of an issue that is marketed or sold in substantial part to persons for whom the inclusion of interest under this paragraph (b) is not expected to have a substantial effect on their U.S. tax liability. If this paragraph (b)(4)(i)(B) applies to a debt instrument, the instrument's comparable yield is presumed to be the applicable Federal rate (based on the overall maturity of the debt instrument). A taxpayer may overcome this presumption only with clear and convincing evidence that the comparable yield for the debt instrument should be a specific yield (determined using the principles in paragraph (b)(4)(i)(A) of this section) that is higher than the applicable Federal rate. The presumption may not be overcome with appraisals or other valuations of nonpublicly traded property. Evidence used to overcome the presumption must be specific to the issuer and must not be based on comparable issuers or general market conditions.

(ii) *Projected payment schedule.* The projected payment schedule for a debt instrument includes each noncontingent payment and an amount for each contingent payment determined as follows:

(A) *Market-based payments.* If a contingent payment is based on market information (a market-based payment), the amount of the projected payment is the forward price of the contingent payment. The forward price of a contingent payment is the amount one party would agree, as of the issue date, to pay an unrelated party for the right to the contingent payment on the settlement date (e.g., the date the contingent payment is made). For example, if the right to a contingent

payment is substantially similar to an exchange-traded option, the forward price is the spot price of the option (the option premium) compounded at the applicable Federal rate from the issue date to the date the contingent payment is due.

(B) *Other payments.* If a contingent payment is not based on market information (a non-market-based payment), the amount of the projected payment is the expected value of the contingent payment as of the issue date.

(C) *Adjustments to the projected payment schedule.* The projected payment schedule must produce the comparable yield. If the projected payment schedule does not produce the comparable yield, the schedule must be adjusted consistent with the principles of this paragraph (b)(4) to produce the comparable yield. For example, the adjusted amounts of non-market-based payments must reasonably reflect the relative expected values of the payments and must not be set to accelerate or defer income or deductions. If the debt instrument contains both market-based and non-market-based payments, adjustments are generally made first to the non-market-based payments because more objective information is available for the market-based payments.

(iii) *Market information.* For purposes of this paragraph (b), market information is any information on which an objective rate can be based under § 1.1275–5(c)(1) or (2).

(iv) *Issuer/holder consistency.* The issuer's projected payment schedule is used to determine the holder's interest accruals and adjustments. The issuer must provide the projected payment schedule to the holder in a manner consistent with the issuer disclosure rules of § 1.1275–2(e). If the issuer does not create a projected payment schedule for a debt instrument or the issuer's projected payment schedule is unreasonable, the holder of the debt instrument must determine the comparable yield and projected payment schedule for the debt instrument under the rules of this paragraph (b)(4). A holder that determines its own projected payment schedule must explicitly disclose this fact and the reason why the holder set its own schedule (e.g., why the issuer's projected payment schedule is unreasonable). Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

(v) *Issuer's determination respected*—(A) *In general.* If the issuer maintains the contemporaneous documentation required by this paragraph (b)(4), the issuer's determination of the comparable yield and projected payment schedule will be respected unless either is unreasonable.

(B) *Unreasonable determination.* For purposes of paragraph (b)(4)(v)(A) of this section, a comparable yield or projected payment schedule generally will be considered unreasonable if it is set with a purpose to overstate, understate, accelerate, or defer interest accruals on the debt instrument. In a determination of whether a comparable yield or projected payment schedule is unreasonable, consideration will be given to whether the treatment of the debt instrument under this section is expected to have a substantial effect on the issuer's or holder's U.S. tax liability. For example, if a taxable issuer markets a debt instrument to a holder not subject to U.S. taxation, the comparable yield will be given close scrutiny and will not be respected unless contemporaneous documentation shows that the yield is not too high.

(C) *Exception.* Paragraph (b)(4)(v)(A) of this section does not apply to a debt instrument subject to paragraph (b)(4)(i)(B) of this section (concerning a yield presumption for certain debt instruments that provide for non-market-based payments).

(vi) *Examples.* The following examples illustrate the provisions of this paragraph (b)(4). In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes.

Example 1. Market-based payment—(i) *Facts.* On December 31, 1996, X corporation issues for $1,000,000 a debt instrument that matures on December 31, 2006. The debt instrument provides for annual payments of interest, beginning in 1997, at the rate of 6 percent and for a payment at maturity equal to $1,000,000 plus the excess, if any, of the price of 10,000 shares of publicly traded stock in an unrelated corporation on the maturity date over $350,000, or less the excess, if any, of $350,000 over the price of 10,000 shares of the stock on the maturity date. On the issue date, the forward price to purchase 10,000 shares of the stock on December 31, 2006, is $350,000.

(ii) *Comparable yield.* Under paragraph (b)(4)(i) of this section, the debt instrument's comparable yield is the yield on the synthetic debt instrument that would result if X corporation entered into a § 1.1275–6 hedge. A § 1.1275–6 hedge in this case is a forward contract to purchase 10,000 shares of the stock on December 31, 2006. If X corporation entered into this hedge, the resulting synthetic debt instrument would yield 6 percent, compounded annually. Thus, the comparable yield on the debt instrument is 6 percent, compounded annually.

(iii) *Projected payment schedule.* Under paragraph (b)(4)(ii) of this section, the projected payment schedule for the debt instrument consists of 10 annual payments of $60,000 and a projected amount for the contingent payment at maturity. Because the right to the contingent payment is based on market information, the projected amount of the contingent payment is the forward price of the payment. The right to the contingent payment is substantially similar to a right to a payment of $1,000,000 combined with a cash-settled forward contract for the purchase of 10,000 shares of the stock for $350,000 on December 31, 2006. Because the forward price to purchase 10,000 shares of the stock on December 31, 2006, is $350,000, the amount to be received or paid under the forward contract is projected to be zero. As a result, the projected amount of the contingent payment at maturity is $1,000,000, consisting of the $1,000,000 base amount and no additional amount to be received or paid under the forward contract.

(A) Assume, alternatively, that on the issue date the forward price to purchase 10,000 shares of the stock on December 31, 2006, is $370,000. If X corporation entered into a § 1.1275–6 hedge (a forward contract to purchase the shares for $370,000), the resulting synthetic debt instrument would yield 6.15 percent, compounded annually. Thus, the comparable yield on the debt instrument is 6.15 percent, compounded annually. The projected payment schedule for the debt instrument consists of 10 annual payments of $60,000 and a projected amount for the contingent payment at maturity. The projected amount of the contingent payment is $1,020,000, consisting of the $1,000,000 base amount plus the excess $20,000 of the forward price of the stock over the purchase price of the stock under the forward contract.

(B) Assume, alternatively, that on the issue date the forward price to purchase 10,000 shares of the stock on December 31, 2006, is $330,000. If X corporation entered into a § 1.1275–6 hedge, the resulting synthetic debt instrument would yield 5.85 percent, compounded annually. Thus, the comparable yield on the debt instrument is 5.85 percent, compounded annually. The projected payment schedule for the debt instrument consists of 10 annual payments of $60,000 and a projected amount for the contingent payment at maturity. The projected amount of the contingent payment is $980,000, consisting of the $1,000,000 base amount minus the excess $20,000 of the purchase price of the stock under the forward contract over the forward price of the stock.

Example 2. Non-market-based payments—(i) *Facts.* On December 31, 1996, Y issues to Z for $1,000,000 a debt instrument that matures on December 31, 2000. The debt instrument has a stated principal amount of $1,000,000, payable at maturity, and provides for payments on December 31 of each year, beginning in 1997, of $20,000 plus 1 percent of Y's gross receipts, if any, for the year. On the issue date, Y has outstanding fixed rate debt instruments with maturities of 2 to 10 years that trade at a price that reflects an average of 100 basis points over Treasury

bonds. These debt instruments have terms and conditions similar to those of the debt instrument. Assume that on December 31, 1996, 4-year Treasury bonds have a yield of 6.5 percent, compounded annually, and that no § 1.1275–6 hedge is available for the debt instrument. In addition, assume that the interest inclusions attributable to the debt instrument are expected to have a substantial effect on Z's U.S. tax liability.

(ii) *Comparable yield.* The comparable yield for the debt instrument is equal to the value of the benchmark rate (i.e., the yield on 4-year Treasury bonds) on the issue date plus the spread. Thus, the debt instrument's comparable yield is 7.5 percent, compounded annually.

(iii) *Projected payment schedule.* Y anticipates that it will have no gross receipts in 1997, but that it will have gross receipts in later years, and those gross receipts will grow each year for the next three years. Based on its business projections, Y believes that it is not unreasonable to expect that its gross receipts in 1999 and each year thereafter will grow by between 6 percent and 13 percent over the prior year. Thus, Y must take these expectations into account in establishing a projected payment schedule for the debt instrument that results in a yield of 7.5 percent, compounded annually. Accordingly, Y could reasonably set the following projected payment schedule for the debt instrument:

Date	Noncontingent payment	Contingent payment
12/31/1997	$20,000	0
12/31/1998	20,000	70,000
12/31/1999	20,000	75,600
12/31/2000	1,020,000	83,850

(5) *Qualified stated interest.* No amounts payable on a debt instrument to which this paragraph (b) applies are qualified stated interest within the meaning of § 1.1273–1(c).

(6) *Adjustments.* This paragraph (b)(6) provides rules for the treatment of positive and negative adjustments under the noncontingent bond method. A taxpayer takes into account only those adjustments that occur during a taxable year while the debt instrument is held by the taxpayer or while the taxpayer is primarily liable on the debt instrument.

(i) *Determination of positive and negative adjustments.* If the amount of a contingent payment is more than the projected amount of the contingent payment, the difference is a positive adjustment on the date of the payment. If the amount of a contingent payment is less than the projected amount of the contingent payment, the difference is a negative adjustment on the date of the payment (or on the scheduled date of the payment if the amount of the payment is zero).

(ii) *Treatment of net positive adjustments.* The amount, if any, by which total positive adjustments on a debt instrument in a taxable year exceed the total negative adjustments on the debt instrument in the taxable year is a net positive adjustment. A net positive adjustment is treated as additional interest for the taxable year.

(iii) Treatment of net negative adjustments. The amount, if any, by which total negative adjustments on a debt instrument in a taxable year exceed the total positive adjustments on the debt instrument in the taxable year is a net negative adjustment. A taxpayer's net negative adjustment on a debt instrument for a taxable year is treated as follows:

(A) *Reduction of interest accruals.* A net negative adjustment first reduces interest for the taxable year that the taxpayer would otherwise account for on the debt instrument under paragraph (b)(3)(iii) of this section.

(B) *Ordinary income or loss.* If the net negative adjustment exceeds the interest for the taxable year that the taxpayer would otherwise account for on the debt instrument under paragraph (b)(3)(iii) of this section, the excess is treated as ordinary loss by a holder and ordinary income by an issuer. However, the amount treated as ordinary loss by a holder is limited to the amount by which the holder's total interest inclusions on the debt instrument exceed the total amount of the holder's net negative adjustments treated as ordinary loss on the debt instrument in prior taxable years. The amount treated as ordinary income by an issuer is limited to the amount by which the issuer's total interest deductions on the debt instrument exceed the total amount of the issuer's net negative adjustments treated as ordinary income on the debt instrument in prior taxable years.

(C) *Carryforward.* If the net negative adjustment exceeds the sum of the amounts treated by the taxpayer as a reduction of interest and as ordinary income or loss (as the case may be) on the debt instrument for the taxable year, the excess is a negative adjustment carryforward for the taxable year. In general, a taxpayer treats a negative adjustment carryforward for a taxable year as a negative adjustment on the debt instrument on the first day of the succeeding taxable year. However, if a holder of a debt instrument has a negative adjustment carryforward on the debt instrument in a taxable year in which the debt instrument is sold, exchanged, or retired, the negative adjustment carryforward reduces the holder's amount realized on the sale, exchange, or retirement. If an issuer of a debt instrument has a negative adjustment carryforward on the debt instrument for a taxable year in which the debt instrument is retired, the issuer takes the negative adjustment carryforward into account as ordinary income.

(D) *Treatment under section 67.* A net negative adjustment is not subject to section 67 (the 2-percent floor on miscellaneous itemized deductions).

(iv) *Cross-references.* If a holder has a basis in a debt instrument that is different from the debt instrument's adjusted issue price, the holder may have additional positive or negative adjustments under paragraph (b)(9)(i) of this section. If the amount of a contingent payment is fixed more than 6 months before the date it is due, the amount and timing of the adjustment are determined under paragraph (b)(9)(ii) of this section.

(7) *Adjusted issue price, adjusted basis, and retirement*—(i) *In general.* If a debt instrument is subject to the noncontingent bond method, this paragraph (b)(7) provides rules to determine the adjusted issue price of the debt instrument, the holder's basis in the debt instrument, and the treatment of any scheduled or unscheduled retirements. In general, because any difference between the actual amount of a contingent payment and the projected amount of the payment is taken into account as an adjustment to income or deduction, the projected payments are treated as the actual payments for purposes of making adjustments to issue price and basis and determining the amount of any contingent payment made on a scheduled retirement.

(ii) *Definition of adjusted issue price.* The adjusted issue price of a debt instrument is equal to the debt instrument's issue price, increased by the interest previously accrued on the debt instrument under paragraph (b)(3)(iii) of this section (determined without regard to any adjustments taken into account under paragraph (b)(3)(iv) of this section), and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the debt instrument. See paragraph (b)(9)(ii) of this section for special rules that apply when a contingent payment is fixed more than 6 months before it is due.

(iii) *Adjustments to basis.* A holder's basis in a debt instrument is increased by the interest previously accrued by the holder on the debt instrument under paragraph (b)(3)(iii) of this section (determined without regard to any adjustments taken into account under paragraph (b)(3)(iv) of this section), and decreased by the amount of any noncontingent payment and the

projected amount of any contingent payment previously made on the debt instrument to the holder. See paragraph (b)(9)(i) of this section for special rules that apply when basis is different from adjusted issue price and paragraph (b)(9)(ii) of this section for special rules that apply when a contingent payment is fixed more than 6 months before it is due.

(iv) *Scheduled retirements.* For purposes of determining the amount realized by a holder and the repurchase price paid by the issuer on the scheduled retirement of a debt instrument, a holder is treated as receiving, and the issuer is treated as paying, the projected amount of any contingent payment due at maturity. If the amount paid or received is different from the projected amount, see paragraph (b)(6) of this section for the treatment of the difference by the taxpayer. Under paragraph (b)(6)(iii)(C) of this section, the amount realized by a holder on the retirement of a debt instrument is reduced by any negative adjustment carryforward determined in the taxable year of the retirement.

(v) *Unscheduled retirements.* An unscheduled retirement of a debt instrument (or the receipt of a pro-rata prepayment that is treated as a retirement of a portion of a debt instrument under § 1.1275–2(f)) is treated as a repurchase of the debt instrument (or a pro-rata portion of the debt instrument) by the issuer from the holder for the amount paid by the issuer to the holder.

(vi) *Examples.* The following examples illustrate the provisions of paragraphs (b) (6) and (7) of this section. In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes.

Example 1. Treatment of positive and negative adjustments—(i) *Facts.* On December 31, 1996, Z, a calendar year taxpayer, purchases a debt instrument subject to this paragraph (b) at original issue for $1,000. The debt instrument's comparable yield is 10 percent, compounded annually, and the projected payment schedule provides for payments of $500 on December 31, 1997 (consisting of a noncontingent payment of $375 and a projected amount of $125) and $660 on December 31, 1998 (consisting of a noncontingent payment of $600 and a projected amount of $60). The debt instrument is a capital asset in the hands of Z.

(ii) *Adjustment in 1997.* Based on the projected payment schedule, Z's total daily portions of interest on the debt instrument are $100 for 1997 (issue price of $1,000 x 10 percent). Assume that the payment actually made on December 31, 1997, is $375, rather than the projected $500. Under paragraph (b)(6)(i) of this section, Z has a negative adjustment of $125 on December 31, 1997, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Because Z has no positive adjustments for 1997, Z has a net negative adjustment of $125 on the debt instrument for 1997. This net negative adjustment reduces to zero the $100 total daily portions of interest Z would otherwise include in income in 1997. Accordingly, Z has no interest income on the debt instrument for 1997. Because Z had no interest inclusions on the debt instrument for prior taxable years, the remaining $25 of the net negative adjustment is a negative adjustment carryforward for 1997 that results in a negative adjustment of $25 on January 1, 1998.

(iii) *Adjustment to issue price and basis.* Z's total daily portions of interest on the debt instrument are $100 for 1997. The adjusted issue price of the debt instrument and Z's adjusted basis in the debt instrument are increased by this amount, despite the fact that Z does not include this amount in income because of the net negative adjustment for 1997. In addition, the adjusted issue price of the debt instrument and Z's adjusted basis in the debt instrument are decreased on December 31, 1997, by the projected amount of the payment on that date ($500). Thus, on January 1, 1998, Z's adjusted basis in the debt instrument and the adjusted issue price of the debt instrument are $600.

(iv) *Adjustments in 1998.* Based on the projected payment schedule, Z's total daily portions of interest are $60 for 1998 (adjusted issue price of $600 x 10 percent). Assume that the payment actually made on December 31, 1998, is $700, rather than the projected $660. Under paragraph (b)(6)(i) of this section, Z has a positive adjustment of $40 on December 31, 1998, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Because Z also has a negative adjustment of $25 on January 1, 1998, Z has a net positive adjustment of $15 on the debt instrument for 1998 (the excess of the $40 positive adjustment over the $25 negative adjustment). As a result, Z has $75 of interest income on the debt instrument for 1998 (the $15 net positive adjustment plus the $60 total daily portions of interest that are taken into account by Z in that year).

(v) *Retirement.* Based on the projected payment schedule, Z's adjusted basis in the debt instrument immediately before the payment at maturity is $660 ($600 plus $60 total daily portions of interest for 1998). Even though Z receives $700 at maturity, for purposes of determining the amount realized by Z on retirement of the debt instrument, Z is treated as receiving the projected amount of the contingent payment on December 31, 1998. Therefore, Z is treated as receiving $660 on December 31, 1998. Because Z's adjusted basis in the debt instrument immediately before its retirement is $660, Z recognizes no gain or loss on the retirement.

Example 2. Negative adjustment carryforward for year of sale—(i) *Facts.* Assume the same facts as in *Example 1* of this paragraph (b)(7)(vi), except that Z sells the debt instrument on January 1, 1998, for $630.

(ii) *Gain on sale.* On the date the debt instrument is sold, Z's adjusted basis in the debt instrument is $600. Because Z has a negative adjustment of $25 on the debt instrument on January 1, 1998, and has no positive adjustments on the debt instrument in 1998, Z has a net negative adjustment for 1998 of $25. Because Z has not included in income any interest on the debt instrument, the entire $25 net negative adjustment is a negative adjustment carryforward for the taxable year of the sale. Under paragraph (b)(6)(iii)(C) of this section, the $25 negative adjustment carryforward reduces the amount realized by Z on the sale of the debt instrument from $630 to $605. Thus, Z has a gain on the sale of $5 ($605 − $600). Under paragraph (b)(8)(i) of this section, the gain is treated as interest income.

Example 3. Negative adjustment carryforward for year of retirement—(i) *Facts.* Assume the same facts as in *Example 1* of this paragraph (b)(7)(vi), except that the payment actually made on December 31, 1998, is $615, rather than the projected $660.

(ii) *Adjustments in 1998.* Under paragraph (b)(6)(i) of this section, Z has a negative adjustment of $45 on December 31, 1998, attributable to the difference between the amount of the actual payment and the amount of the projected payment. In addition, Z has a negative adjustment of $25 on January 1, 1998. See *Example 1*(ii) of this paragraph (b)(7)(vi). Because Z has no positive adjustments in 1998, Z has a net negative adjustment of $70 for 1998. This net negative adjustment reduces to zero the $60 total daily portions of interest Z would otherwise include in income for 1998. Therefore, Z has no interest income on the debt instrument for 1998. Because Z had no interest inclusions on the debt instrument for 1997, the remaining $10 of the net negative adjustment is a negative adjustment carryforward for 1998 that reduces the amount realized by Z on retirement of the debt instrument.

(iii) *Loss on retirement.* Immediately before the payment at maturity, Z's adjusted basis in the debt instrument is $660. Under paragraph (b)(7)(iv) of this section, Z is treated as receiving the projected amount of the contingent payment, or $660, as the payment at maturity. Under paragraph (b)(6)(iii)(C) of this section, however, this amount is reduced by any negative adjustment carryforward determined for the taxable year of retirement to calculate the amount Z realizes on retirement of the debt instrument. Thus, Z has a loss of $10 on the retirement of the debt instrument, equal to the amount by which Z's adjusted basis in the debt instrument ($660) exceeds the amount Z realizes on the retirement of the debt instrument ($660 minus the $10 negative adjustment carryforward). Under paragraph (b)(8)(ii) of this section, the loss is a capital loss.

(8) *Character on sale, exchange, or retirement*—(i) *Gain.* Any gain recognized by a holder on the sale,

exchange, or retirement of a debt instrument subject to this paragraph (b) is interest income.

(ii) *Loss.* Any loss recognized by a holder on the sale, exchange, or retirement of a debt instrument subject to this paragraph (b) is ordinary loss to the extent that the holder's total interest inclusions on the debt instrument exceed the total net negative adjustments on the debt instrument the holder took into account as ordinary loss. Any additional loss is treated as loss from the sale, exchange, or retirement of the debt instrument. However, any loss that would otherwise be ordinary under this paragraph (b)(8)(ii) and that is attributable to the holder's basis that could not be amortized under section 171(b)(4) is loss from the sale, exchange, or retirement of the debt instrument.

(iii) *Special rule if there are no remaining contingent payments on the debt instrument*—(A) *In general.* Notwithstanding paragraphs (b)(8) (i) and (ii) of this section, if, at the time of the sale, exchange, or retirement of the debt instrument, there are no remaining contingent payments due on the debt instrument under the projected payment schedule, any gain or loss recognized by the holder is gain or loss from the sale, exchange, or retirement of the debt instrument. See paragraph (b)(9)(ii) of this section to determine whether there are no remaining contingent payments on a debt instrument that provides for fixed but deferred contingent payments.

(B) *Exception for certain positive adjustments.* Notwithstanding paragraph (b)(8)(iii)(A) of this section, if a positive adjustment on a debt instrument is spread under paragraph (b)(9)(ii) (F) or (G) of this section, any gain recognized by the holder on the sale, exchange, or retirement of the instrument is treated as interest income to the extent of the positive adjustment that has not yet been accrued and included in income by the holder.

(iv) *Examples.* The following examples illustrate the provisions of this paragraph (b)(8). In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes.

Example 1. Gain on sale—(i) *Facts.* On January 1, 1998, D, a calendar year taxpayer, sells a debt instrument that is subject to paragraph (b) of this section for $1,350. The projected payment schedule for the debt instrument provides for contingent payments after January 1, 1998. On January 1, 1998, D has an adjusted basis in the debt instrument of $1,200. In addition, D has a negative adjustment carryforward of $50 for 1997 that, under paragraph (b)(6)(iii)(C) of this section, results in a negative adjustment of $50 on January 1, 1998. D has no positive adjustments on the debt instrument on January 1, 1998.

(ii) *Character of gain.* Under paragraph (b)(6) of this section, the $50 negative adjustment on January 1, 1998, results in a negative adjustment carryforward for 1998, the taxable year of the sale of the debt instrument. Under paragraph (b)(6)(iii)(C) of this section, the negative adjustment carryforward reduces the amount realized by D on the sale of the debt instrument from $1,350 to $1,300. As a result, D realizes a $100 gain on the sale of the debt instrument, equal to the $1,300 amount realized minus D's $1,200 adjusted basis in the debt instrument. Under paragraph (b)(8)(i) of this section, the gain is interest income to D.

Example 2. Loss on sale—(i) *Facts.* On December 31, 1996, E, a calendar year taxpayer, purchases a debt instrument at original issue for $1,000. The debt instrument is a capital asset in the hands of E. The debt instrument provides for a single payment on December 31, 1998 (the maturity date of the instrument), of $1,000 plus an amount based on the increase, if any, in the price of a specified commodity over the term of the instrument. The comparable yield for the debt instrument is 9.54 percent, compounded annually, and the projected payment schedule provides for a payment of $1,200 on December 31, 1998. Based on the projected payment schedule, the total daily portions of interest are $95 for 1997 and $105 for 1998.

(ii) *Ordinary loss.* Assume that E sells the debt instrument for $1,050 on December 31, 1997. On that date, E has an adjusted basis in the debt instrument of $1,095 ($1,000 original basis, plus total daily portions of $95 for 1997). Therefore, E realizes a $45 loss on the sale of the debt instrument ($1,050–$1,095). The loss is ordinary to the extent E's total interest inclusions on the debt instrument ($95) exceed the total net negative adjustments on the instrument that E took into account as an ordinary loss. Because E has not had any net negative adjustments on the debt instrument, the $45 loss is an ordinary loss.

(iii) *Capital loss.* Alternatively, assume that E sells the debt instrument for $990 on December 31, 1997. E realizes a $105 loss on the sale of the debt instrument ($990 − $1,095). The loss is ordinary to the extent E's total interest inclusions on the debt instrument ($95) exceed the total net negative adjustments on the instrument that E took into account as an ordinary loss. Because E has not had any net negative adjustments on the debt instrument, $95 of the $105 loss is an ordinary loss. The remaining $10 of the $105 loss is a capital loss.

(9) *Operating rules.* The rules of this paragraph (b)(9) apply to a debt instrument subject to the noncontingent bond method notwithstanding any other rule of this paragraph (b).

(i) *Basis different from adjusted issue price.* This paragraph (b)(9)(i) provides rules for a holder whose basis in a debt instrument is different from the adjusted issue price of the debt instrument (e.g., a subsequent holder that purchases the debt instrument for more or less than the instrument's adjusted issue price).

(A) *General rule.* The holder accrues interest under paragraph (b)(3)(iii) of this section and makes adjustments under paragraph (b)(3)(iv) of this section based on the projected payment schedule determined as of the issue date of the debt instrument. However, upon acquiring the debt instrument, the holder must reasonably allocate any difference between the adjusted issue price and the basis to daily portions of interest or projected payments over the remaining term of the debt instrument. Allocations are taken into account under paragraphs (b)(9)(i) (B) and (C) of this section.

(B) *Basis greater than adjusted issue price.* If the holder's basis in the debt instrument exceeds the debt instrument's adjusted issue price, the amount of the difference allocated to a daily portion of interest or to a projected payment is treated as a negative adjustment on the date the daily portion accrues or the payment is made. On the date of the adjustment, the holder's adjusted basis in the debt instrument is reduced by the amount the holder treats as a negative adjustment under this paragraph (b)(9)(i)(B). See paragraph (b)(9)(ii)(E) of this section for a special rule that applies when a contingent payment is fixed more than 6 months before it is due.

(C) *Basis less than adjusted issue price.* If the holder's basis in the debt instrument is less than the debt instrument's adjusted issue price, the amount of the difference allocated to a daily portion of interest or to a projected payment is treated as a positive adjustment on the date the daily portion accrues or the payment is made. On the date of the adjustment, the holder's adjusted basis in the debt instrument is increased by the amount the holder treats as a positive adjustment under this paragraph (b)(9)(i)(C). See paragraph (b)(9)(ii)(E) of this section for a special rule that applies when a contingent payment is fixed more than 6 months before it is due.

(D) *Premium and discount rules do not apply.* The rules for accruing premium and discount in sections 171, 1272(a)(7), 1276, and 1281 do not apply. Other rules of those sections, such as section 171(b)(4), continue to apply to the extent relevant.

(E) *Safe harbor for exchange listed debt instruments.* If the debt instrument is exchange listed property (within the meaning of § 1.1273–2(f)(2)), it is reasonable for the holder to allocate any difference between the holder's basis

and the adjusted issue price of the debt instrument pro-rata to daily portions of interest (as determined under paragraph (b)(3)(iii) of this section) over the remaining term of the debt instrument. A pro-rata allocation is not reasonable, however, to the extent the holder's yield on the debt instrument, determined after taking into account the amounts allocated under this paragraph (b)(9)(i)(E), is less than the applicable Federal rate for the instrument. For purposes of the preceding sentence, the applicable Federal rate for the debt instrument is determined as if the purchase date were the issue date and the remaining term of the instrument were the term of the instrument.

(F) *Examples.* The following examples illustrate the provisions of this paragraph (b)(9)(i). In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes. In addition, assume that each instrument is not exchange listed property.

Example 1. Basis greater than adjusted issue price—(i) *Facts.* On July 1, 1998, Z purchases for $1,405 a debt instrument that matures on December 31, 1999, and promises to pay on the maturity date $1,000 plus the increase, if any, in the price of a specified amount of a commodity from the issue date to the maturity date. The debt instrument was originally issued on December 31, 1996, for an issue price of $1,000. The comparable yield for the debt instrument is 10.25 percent, compounded semiannually, and the projected payment schedule for the debt instrument (determined as of the issue date) provides for a single payment at maturity of $1,350. At the time of the purchase, the debt instrument has an adjusted issue price of $1,162, assuming semiannual accrual periods ending on December 31 and June 30 of each year. The increase in the value of the debt instrument over its adjusted issue price is due to an increase in the expected amount of the contingent payment and not to a decrease in market interest rates. The debt instrument is a capital asset in the hands of Z. Z is a calendar year taxpayer.

(ii) *Allocation of the difference between basis and adjusted issue price.* Z's basis in the debt instrument on July 1, 1998, is $1,405. Under paragraph (b)(9)(i)(A) of this section, Z allocates the $243 difference between basis ($1,405) and adjusted issue price ($1,162) to the contingent payment at maturity. Z's allocation of the difference between basis and adjusted issue price is reasonable because the increase in the value of the debt instrument over its adjusted issue price is due to an increase in the expected amount of the contingent payment.

(iii) *Treatment of debt instrument for 1998.* Based on the projected payment schedule, $60 of interest accrues on the debt instrument from July 1, 1998 to December 31, 1998 (the product of the debt instrument's adjusted issue price on July 1, 1998 ($1,162) and the comparable yield properly adjusted for the length of the accrual period (10.25 percent/2)). Z has no net negative or positive adjustments for 1998. Thus, Z includes in income $60 of total daily portions of interest for 1998. On December 31, 1998, Z's adjusted basis in the debt instrument is $1,465 ($1,405 original basis, plus total daily portions of $60 for 1998).

(iv) *Effect of allocation to contingent payment at maturity.* Assume that the payment actually made on December 31, 1999, is $1,400, rather than the projected $1,350. Thus, under paragraph (b)(6)(i) of this section, Z has a positive adjustment of $50 on December 31, 1999. In addition, under paragraph (b)(9)(i)(B) of this section, Z has a negative adjustment of $243 on December 31, 1999, which is attributable to the difference between Z's basis in the debt instrument on July 1, 1998, and the instrument's adjusted issue price on that date. As a result, Z has a net negative adjustment of $193 for 1999. This net negative adjustment reduces to zero the $128 total daily portions of interest Z would otherwise include in income in 1999. Accordingly, Z has no interest income on the debt instrument for 1999. Because Z had $60 of interest inclusions for 1998, $60 of the remaining $65 net negative adjustment is treated by Z as an ordinary loss for 1999. The remaining $5 of the net negative adjustment is a negative adjustment carryforward for 1999 that reduces the amount realized by Z on the retirement of the debt instrument from $1,350 to $1,345.

(v) *Loss at maturity.* On December 31, 1999, Z's basis in the debt instrument is $1,350 ($1,405 original basis, plus total daily portions of $60 for 1998 and $128 for 1999, minus the negative adjustment of $243). As a result, Z realizes a loss of $5 on the retirement of the debt instrument (the difference between the amount realized on the retirement ($1,345) and Z's adjusted basis in the debt instrument ($1,350)). Under paragraph (b)(8)(ii) of this section, the $5 loss is treated as loss from the retirement of the debt instrument. Consequently, Z realizes a total loss of $65 on the debt instrument for 1999 (a $60 ordinary loss and a $5 capital loss).

Example 2. Basis less than adjusted issue price—(i) *Facts.* On January 1, 1999, Y purchases for $910 a debt instrument that pays 7 percent interest semiannually on June 30 and December 31 of each year, and that promises to pay on December 31, 2001, $1,000 plus or minus $10 times the positive or negative difference, if any, between a specified amount and the value of an index on December 31, 2001. However, the payment on December 31, 2001, may not be less than $650. The debt instrument was originally issued on December 31, 1996, for an issue price of $1,000. The comparable yield for the debt instrument is 9.80 percent, compounded semiannually, and the projected payment schedule for the debt instrument (determined as of the issue date) provides for semiannual payments of $35 and a contingent payment at maturity of $1,175. On January 1, 1999, the debt instrument has an adjusted issue price of $1,060, assuming semiannual accrual periods ending on December 31 and June 30 of each year. Y is a calendar year taxpayer.

(ii) *Allocation of the difference between basis and adjusted issue price.* Y's basis in the debt instrument on January 1, 1999, is $910. Under paragraph (b)(9)(i)(A) of this section, Y must allocate the $150 difference between basis ($910) and adjusted issue price ($1,060) to daily portions of interest or to projected payments. These amounts will be positive adjustments taken into account at the time the daily portions accrue or the payments are made.

(A) Assume that, because of a decrease in the relevant index, the expected value of the payment at maturity has declined by about 9 percent. Based on forward prices on January 1, 1999, Y determines that approximately $105 of the difference between basis and adjusted issue price is allocable to the contingent payment. Y allocates the remaining $45 to daily portions of interest on a pro-rata basis (i.e., the amount allocated to an accrual period equals the product of $45 and a fraction, the numerator of which is the total daily portions for the accrual period and the denominator of which is the total daily portions remaining on the debt instrument on January 1, 1999). This allocation is reasonable.

(B) Assume alternatively that, based on yields of comparable debt instruments and its purchase price for the debt instrument, Y determines that an appropriate yield for the debt instrument is 13 percent, compounded semiannually. Based on this determination, Y allocates $55.75 of the difference between basis and adjusted issue price to daily portions of interest as follows: $15.19 to the daily portions of interest for the taxable year ending December 31, 1999; $18.40 to the daily portions of interest for the taxable year ending December 31, 2000; and $22.16 to the daily portions of interest for the taxable year ending December 31, 2001. Y allocates the remaining $94.25 to the contingent payment at maturity. This allocation is reasonable.

(ii) *Fixed but deferred contingent payments.* This paragraph (b)(9)(ii) provides rules that apply when the amount of a contingent payment becomes fixed before the payment is due. For purposes of paragraph (b) of this section, if a contingent payment becomes fixed within the 6-month period ending on the due date of the payment, the payment is treated as a contingent payment even after the payment is fixed. If a contingent payment becomes fixed more than 6 months before the payment is due, the following rules apply to the debt instrument.

(A) *Determining adjustments.* The amount of the adjustment attributable to the contingent payment is equal to the difference between the present value of the amount that is fixed and the present value of the projected amount of the contingent payment. The present value of each amount is determined by discounting the amount from the date the payment is due to the date the

payment becomes fixed, using a discount rate equal to the comparable yield on the debt instrument. The adjustment is treated as a positive or negative adjustment, as appropriate, on the date the contingent payment becomes fixed. See paragraph (b)(9)(ii)(G) of this section to determine the timing of the adjustment if all remaining contingent payments on the debt instrument become fixed substantially contemporaneously.

(B) *Payment schedule.* The contingent payment is no longer treated as a contingent payment after the date the amount of the payment becomes fixed. On the date the contingent payment becomes fixed, the projected payment schedule for the debt instrument is modified prospectively to reflect the fixed amount of the payment. Therefore, no adjustment is made under paragraph (b)(3)(iv) of this section when the contingent payment is actually made.

(C) *Accrual period.* Notwithstanding the determination under § 1.1272–1(b)(1)(ii) of accrual periods for the debt instrument, an accrual period ends on the day the contingent payment becomes fixed, and a new accrual period begins on the day after the day the contingent payment becomes fixed.

(D) *Adjustments to basis and adjusted issue price.* The amount of any positive adjustment on a debt instrument determined under paragraph (b)(9)(ii)(A) of this section increases the adjusted issue price of the instrument and the holder's adjusted basis in the instrument. Similarly, the amount of any negative adjustment on a debt instrument determined under paragraph (b)(9)(ii)(A) of this section decreases the adjusted issue price of the instrument and the holder's adjusted basis in the instrument.

(E) *Basis different from adjusted issue price.* If a holder's basis in a debt instrument exceeds the debt instrument's adjusted issue price, the amount allocated to a projected payment under paragraph (b)(9)(i) of this section is treated as a negative adjustment on the date the payment becomes fixed. If a holder's basis in a debt instrument is less than the debt instrument's adjusted issue price, the amount allocated to a projected payment under paragraph (b)(9)(i) of this section is treated as a positive adjustment on the date the payment becomes fixed.

(F) *Special rule for certain contingent interest payments.* Notwithstanding paragraph (b)(9)(ii)(A) of this section, this paragraph (b)(9)(ii)(F) applies to contingent stated interest payments that are adjusted to compensate for contingencies regarding the reasonableness of the debt instrument's stated rate of interest. For example, this paragraph (b)(9)(ii)(F) applies to a debt instrument that provides for an increase in the stated rate of interest if the credit quality of the issuer or liquidity of the debt instrument deteriorates. Contingent stated interest payments of this type are recognized over the period to which they relate in a reasonable manner.

(G) *Special rule when all contingent payments become fixed.* Notwithstanding paragraph (b)(9)(ii)(A) of this section, if all the remaining contingent payments on a debt instrument become fixed substantially contemporaneously, any positive or negative adjustments on the instrument are taken into account in a reasonable manner over the period to which they relate. For purposes of the preceding sentence, a payment is treated as a fixed payment if all remaining contingencies with respect to the payment are remote or incidental (within the meaning of § 1.1275–2(h)).

(H) *Example.* The following example illustrates the provisions of this paragraph (b)(9)(ii). In this example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes.

Example. Fixed but deferred payments—(i) *Facts.* On December 31, 1996, B, a calendar year taxpayer, purchases a debt instrument at original issue for $1,000. The debt instrument matures on December 31, 2002, and provides for a payment of $1,000 at maturity. In addition, on December 31, 1999, and December 31, 2002, the debt instrument provides for payments equal to the excess of the average daily value of an index for the 6-month period ending on September 30 of the preceding year over a specified amount. The debt instrument's comparable yield is 10 percent, compounded annually, and the instrument's projected payment schedule consists of a payment of $250 on December 31, 1999, and a payment of $1,439 on December 31, 2002. B uses annual accrual periods.

(ii) *Interest accrual for 1997.* Based on the projected payment schedule, B includes a total of $100 of daily portions of interest in income in 1997. B's adjusted basis in the debt instrument and the debt instrument's adjusted issue price on December 31, 1997, is $1,100.

(iii) *Interest accrual for 1998*—(A) *Adjustment.* Based on the projected payment schedule, B would include $110 of total daily portions of interest in income in 1998. However, assume that on September 30, 1998, the payment due on December 31, 1999, fixes at $300, rather than the projected $250. Thus, on September 30, 1998, B has an adjustment equal to the difference between the present value of the $300 fixed amount and the present value of the $250 projected amount of the contingent payment. The present values of the two payments are determined by discounting each payment from the date the payment is due (December 31, 1999) to the date the payment becomes fixed (September 30, 1998), using a discount rate equal to 10 percent, compounded annually. The present value of the fixed payment is $266.30 and the present value of the projected amount of the contingent payment is $221.91. Thus, on September 30, 1998, B has a positive adjustment of $44.39 ($266.30–$221.91).

(B) *Effect of adjustment.* Under paragraph (b)(9)(ii)(C) of this section, B's accrual period ends on September 30, 1998. The daily portions of interest on the debt instrument for the period from January 1, 1998 to September 30, 1998 total $81.51. The adjusted issue price of the debt instrument and B's adjusted basis in the debt instrument are thus increased over this period by $125.90 (the sum of the daily portions of interest of $81.51 and the positive adjustment of $44.39 made at the end of the period) to $1,225.90. For purposes of all future accrual periods, including the new accrual period from October 1, 1998, to December 31, 1998, the debt instrument's projected payment schedule is modified to reflect a fixed payment of $300 on December 31, 1999. Based on the new adjusted issue price of the debt instrument and the new projected payment schedule, the yield on the debt instrument does not change.

(C) *Interest accrual for 1998.* Based on the modified projected payment schedule, $29.56 of interest accrues during the accrual period that ends on December 31, 1998. Because B has no other adjustments during 1998, the $44.39 positive adjustment on September 30, 1998, results in a net positive adjustment for 1998, which is additional interest for that year. Thus, B includes $155.46 ($81.51+$29.56+$44.39) of interest in income in 1998. B's adjusted basis in the debt instrument and the debt instrument's adjusted issue price on December 31, 1998, is $1,255.46 ($1,225.90 from the end of the prior accrual period plus $29.56 total daily portions for the current accrual period).

(iii) *Timing contingencies.* This paragraph (b)(9)(iii) provides rules for debt instruments that have payments that are contingent as to time.

(A) *Treatment of certain options.* If a taxpayer has an unconditional option to put or call the debt instrument, to exchange the debt instrument for other property, or to extend the maturity date of the debt instrument, the projected payment schedule is determined by using the principles of § 1.1272–1(c)(5).

(B) *Other timing contingencies.* [Reserved]

(iv) *Cross-border transactions*—(A) *Allocation of deductions.* For purposes of § 1.861–8, the holder of a debt instrument shall treat any deduction or loss treated as an ordinary loss under paragraph (b)(6)(iii)(B) or (b)(8)(ii) of this section as a deduction that is definitely related to the class of gross

income to which income from such debt instrument belongs. Accordingly, if a U.S. person holds a debt instrument issued by a related controlled foreign corporation and, pursuant to section 904(d)(3) and the regulations thereunder, any interest accrued by such U.S. person with respect to such debt instrument would be treated as foreign source general limitation income, any deductions relating to a net negative adjustment will reduce the U.S. person's foreign source general limitation income. The holder shall apply the general rules relating to allocation and apportionment of deductions to any other deduction or loss realized by the holder with respect to the debt instrument.

(B) *Investments in United States real property*. Notwithstanding paragraph (b)(8)(i) of this section, gain on the sale, exchange, or retirement of a debt instrument that is a United States real property interest is treated as gain for purposes of sections 897, 1445, and 6039C.

(v) *Coordination with subchapter M and related provisions*. For purposes of sections 852(c)(2) and 4982 and § 1.852–11, any positive adjustment, negative adjustment, income, or loss on a debt instrument that occurs after October 31 of a taxable year is treated in the same manner as foreign currency gain or loss that is attributable to a section 988 transaction.

(vi) *Coordination with section 1092*. A holder treats a negative adjustment and an issuer treats a positive adjustment as a loss with respect to a position in a straddle if the debt instrument is a position in a straddle and the contingency (or any portion of the contingency) to which the adjustment relates would be part of the straddle if entered into as a separate position.

(c) *Method for debt instruments not subject to the noncontingent bond method*—(1) *Applicability*. This paragraph (c) applies to a contingent payment debt instrument (other than a tax-exempt obligation) that has an issue price determined under § 1.1274–2. For example, this paragraph (c) generally applies to a contingent payment debt instrument that is issued for nonpublicly traded property.

(2) *Separation into components*. If paragraph (c) of this section applies to a debt instrument (the overall debt instrument), the noncontingent payments are subject to the rules in paragraph (c)(3) of this section, and the contingent payments are accounted for separately under the rules in paragraph (c)(4) of this section.

(3) *Treatment of noncontingent payments*. The noncontingent payments are treated as a separate debt instrument. The issue price of the separate debt instrument is the issue price of the overall debt instrument, determined under § 1.1274–2(g). No interest payments on the separate debt instrument are qualified stated interest payments (within the meaning of § 1.1273–1(c)) and the de minimis rules of section 1273(a)(3) and § 1.1273–1(d) do not apply to the separate debt instrument.

(4) *Treatment of contingent payments*—(i) *In general*. Except as provided in paragraph (c)(4)(iii) of this section, the portion of a contingent payment treated as interest under paragraph (c)(4)(ii) of this section is includible in gross income by the holder and deductible from gross income by the issuer in their respective taxable years in which the payment is made.

(ii) *Characterization of contingent payments as principal and interest*—(A) *General rule*. A contingent payment is treated as a payment of principal in an amount equal to the present value of the payment, determined by discounting the payment at the test rate from the date the payment is made to the issue date. The amount of the payment in excess of the amount treated as principal under the preceding sentence is treated as a payment of interest.

(B) *Test rate*. The test rate used for purposes of paragraph (c)(4)(ii)(A) of this section is the rate that would be the test rate for the overall debt instrument under § 1.1274–4 if the term of the overall debt instrument began on the issue date of the overall debt instrument and ended on the date the contingent payment is made. However, in the case of a contingent payment that consists of a payment of stated principal accompanied by a payment of stated interest at a rate that exceeds the test rate determined under the preceding sentence, the test rate is the stated interest rate.

(iii) *Certain delayed contingent payments*—(A) *General rule*. Notwithstanding paragraph (c)(4)(ii) of this section, if a contingent payment becomes fixed more than 6 months before the payment is due, the issuer and holder are treated as if the issuer had issued a separate debt instrument on the date the payment becomes fixed, maturing on the date the payment is due. This separate debt instrument is treated as a debt instrument to which section 1274 applies. The stated principal amount of this separate debt instrument is the amount of the payment that becomes fixed. An amount equal to the issue price of this debt instrument is characterized as interest or principal under the rules of paragraph (c)(4)(ii) of this section and accounted for as if this amount had been paid by the issuer to the holder on the date that the amount of the payment becomes fixed. To determine the issue price of the separate debt instrument, the payment is discounted at the test rate from the maturity date of the separate debt instrument to the date that the amount of the payment becomes fixed.

(B) *Test rate*. The test rate used for purposes of paragraph (c)(4)(iii)(A) of this section is determined in the same manner as the test rate under paragraph (c)(4)(ii)(B) of this section is determined except that the date the contingent payment is due is used rather than the date the contingent payment is made.

(5) *Basis different from adjusted issue price*. This paragraph (c)(5) provides rules for a holder whose basis in a debt instrument is different from the instrument's adjusted issue price (e.g., a subsequent holder). This paragraph (c)(5), however, does not apply if the holder is reporting income under the installment method of section 453.

(i) *Allocation of basis*. The holder must allocate basis to the noncontingent component (i.e., the right to the noncontingent payments) and to any separate debt instruments described in paragraph (c)(4)(iii) of this section in an amount up to the total of the adjusted issue price of the noncontingent component and the adjusted issue prices of the separate debt instruments. The holder must allocate the remaining basis, if any, to the contingent component (i.e., the right to the contingent payments).

(ii) *Noncontingent component*. Any difference between the holder's basis in the noncontingent component and the adjusted issue price of the noncontingent component, and any difference between the holder's basis in a separate debt instrument and the adjusted issue price of the separate debt instrument, is taken into account under the rules for market discount, premium, and acquisition premium that apply to a noncontingent debt instrument.

(iii) *Contingent component*. Amounts received by the holder that are treated as principal payments under paragraph (c)(4)(ii) of this section reduce the holder's basis in the contingent component. If the holder's basis in the contingent component is reduced to zero, any additional principal payments on the contingent component are treated as gain from the sale or exchange of the debt instrument. Any basis remaining on the contingent component on the date the final contingent payment is made increases the holder's adjusted basis in the noncontingent component

(or, if there are no remaining noncontingent payments, is treated as loss from the sale or exchange of the debt instrument).

(6) *Treatment of a holder on sale, exchange, or retirement.* This paragraph (c)(6) provides rules for the treatment of a holder on the sale, exchange, or retirement of a debt instrument subject to this paragraph (c). Under this paragraph (c)(6), the holder must allocate the amount received from the sale, exchange, or retirement of a debt instrument first to the noncontingent component and to any separate debt instruments described in paragraph (c)(4)(iii) of this section in an amount up to the total of the adjusted issue price of the noncontingent component and the adjusted issue prices of the separate debt instruments. The holder must allocate the remaining amount received, if any, to the contingent component.

(i) *Amount allocated to the noncontingent component.* The amount allocated to the noncontingent component and any separate debt instruments is treated as an amount realized from the sale, exchange, or retirement of the noncontingent component or separate debt instrument.

(ii) *Amount allocated to the contingent component.* The amount allocated to the contingent component is treated as a contingent payment that is made on the date of the sale, exchange, or retirement and is characterized as interest and principal under the rules of paragraph (c)(4)(ii) of this section.

(7) *Examples.* The following examples illustrate the provisions of this paragraph (c). In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes.

Example 1. Contingent interest payments—(i) *Facts.* A owns Blackacre, unencumbered depreciable real estate. On January 1, 1997, A sells Blackacre to B. As consideration for the sale, B makes a downpayment of $1,000,000 and issues to A a debt instrument that matures on December 31, 2001. The debt instrument provides for a payment of principal at maturity of $5,000,000 and a contingent payment of interest on December 31 of each year equal to a fixed percentage of the gross rents B receives from Blackacre in that year. Assume that the debt instrument is not issued in a potentially abusive situation. Assume also that on January 1, 1997, the short-term applicable Federal rate is 5 percent, compounded annually, and the mid-term applicable Federal rate is 6 percent, compounded annually.

(ii) *Determination of issue price.* Under § 1.1274–2(g), the issue price of the debt instrument is $3,736,291, which is the present value, as of the issue date, of the $5,000,000 noncontingent payment due at maturity, calculated using a discount rate equal to the mid-term applicable Federal rate. Under § 1.1012–1(g)(1), B's basis in Blackacre on January 1, 1997, is $4,736,291 ($1,000,000 down payment plus the $3,736,291 issue price of the debt instrument).

(iii) *Noncontingent payment treated as separate debt instrument.* Under paragraph (c)(3) of this section, the right to the noncontingent payment of principal at maturity is treated as a separate debt instrument. The issue price of this separate debt instrument is $3,736,291 (the issue price of the overall debt instrument). The separate debt instrument has a stated redemption price at maturity of $5,000,000 and, therefore, OID of $1,263,709.

(iv) *Treatment of contingent payments.* Assume that the amount of contingent interest that is fixed and paid on December 31, 1997, is $200,000. Under paragraph (c)(4)(ii) of this section, this payment is treated as consisting of a payment of principal of $190,476, which is the present value of the payment, determined by discounting the payment at the test rate of 5 percent, compounded annually, from the date the payment is made to the issue date. The remainder of the $200,000 payment ($9,524) is treated as interest. The additional amount treated as principal gives B additional basis in Blackacre on December 31, 1997. The portion of the payment treated as interest is includible in gross income by A and deductible by B in their respective taxable years in which December 31, 1997 occurs. The remaining contingent payments on the debt instrument are accounted for similarly, using a test rate of 5 percent, compounded annually, for the contingent payments due on December 31, 1998, and December 31, 1999, and a test rate of 6 percent, compounded annually, for the contingent payments due on December 31, 2000, and December 31, 2001.

Example 2. Fixed but deferred payment—(i) *Facts.* The facts are the same as in paragraph (c)(7) *Example 1* of this section, except that the contingent payment of interest that is fixed on December 31, 1997, is not payable until December 31, 2001, the maturity date.

(ii) *Treatment of deferred contingent payment.* Assume that the amount of the payment that becomes fixed on December 31, 1997, is $200,000. Because this amount is not payable until December 31, 2001, under paragraph (c)(4)(iii) of this section, a separate debt instrument to which section 1274 applies is treated as issued by B on December 31, 1997 (the date the payment is fixed). The maturity date of this separate debt instrument is December 31, 2001 (the date on which the payment is due). The stated principal amount of this separate debt instrument is $200,000, the amount of the payment that becomes fixed. The imputed principal amount of the separate debt instrument is $158,419, which is the present value, as of December 31, 1997, of the $200,000 payment, computed using a discount rate equal to the test rate of the overall debt instrument (6 percent, compounded annually). An amount equal to the issue price of the separate debt instrument is treated as an amount paid on December 31, 1997, and characterized as interest and principal under the rules of paragraph (c)(4)(ii) of this section. The amount of the deemed payment characterized as principal is equal to $150,875, which is the present value, as of January 1, 1997 (the issue date of the overall debt instrument), of the deemed payment, computed using a discount rate of 5 percent, compounded annually. The amount of the deemed payment characterized as interest is $7,544 ($158,419 − $150,875), which is includible in gross income by A and deductible by B in their respective taxable years in which December 31, 1997 occurs.

(d) *Rules for tax-exempt obligations*—(1) *In general.* Except as modified by this paragraph (d), the noncontingent bond method described in paragraph (b) of this section applies to a tax-exempt obligation (as defined in section 1275(a)(3)) to which this section applies. Paragraph (d)(2) of this section applies to certain tax-exempt obligations that provide for interest-based payments or revenue-based payments and paragraph (d)(3) of this section applies to all other obligations. Paragraph (d)(4) of this section provides rules for a holder whose basis in a tax-exempt obligation is different from the adjusted issue price of the obligation.

(2) *Certain tax-exempt obligations with interest-based or revenue-based payments*—(i) *Applicability.* This paragraph (d)(2) applies to a tax-exempt obligation that provides for interest-based payments or revenue-based payments.

(ii) *Interest-based payments.* A tax-exempt obligation provides for interest-based payments if the obligation would otherwise qualify as a variable rate debt instrument under § 1.1275–5 except that—

(A) The obligation provides for more than one fixed rate;

(B) The obligation provides for one or more caps, floors, or governors (or similar restrictions) that are fixed as of the issue date;

(C) The interest on the obligation is not compounded or paid at least annually; or

(D) The obligation provides for interest at one or more rates equal to the product of a qualified floating rate and a fixed multiple greater than zero and less than .65, or at one or more rates equal to the product of a qualified floating rate and a fixed multiple greater than zero and less than .65, increased or decreased by a fixed rate.

(iii) *Revenue-based payments.* A tax-exempt obligation provides for revenue-based payments if the obligation—

(A) Is issued to refinance (including a series of refinancings) an obligation (in a series of refinancings, the original

obligation), the proceeds of which were used to finance a project or enterprise; and

(B) Would otherwise qualify as a variable rate debt instrument under § 1.1275–5 except that it provides for stated interest payments at least annually based on a single fixed percentage of the revenue, value, change in value, or other similar measure of the performance of the refinanced project or enterprise.

(iv) *Modifications to the noncontingent bond method.* If a tax-exempt obligation is subject to this paragraph (d)(2), the following modifications to the noncontingent bond method described in paragraph (b) of this section apply to the obligation.

(A) *Daily portions and net positive adjustments.* The daily portions of interest determined under paragraph (b)(3)(iii) of this section and any net positive adjustment on the obligation are interest for purposes of section 103.

(B) *Net negative adjustments.* A net negative adjustment for a taxable year reduces the amount of tax-exempt interest the holder would otherwise account for on the obligation for the taxable year under paragraph (b)(3)(iii) of this section. If the net negative adjustment exceeds this amount, the excess is a nondeductible, noncapitalizable loss. If a regulated investment company (RIC) within the meaning of section 851 has a net negative adjustment in a taxable year that would be a nondeductible, noncapitalizable loss under the prior sentence, the RIC must use this loss to reduce its tax-exempt interest income on other tax-exempt obligations held during the taxable year.

(C) *Gains.* Any gain recognized on the sale, exchange, or retirement of the obligation is gain from the sale or exchange of the obligation.

(D) *Losses.* Any loss recognized on the sale, exchange, or retirement of the obligation is treated the same as a net negative adjustment under paragraph (d)(2)(iv)(B) of this section.

(E) *Special rule for losses and net negative adjustments.* Notwithstanding paragraphs (d)(2)(iv) (B) and (D) of this section, on the sale, exchange, or retirement of the obligation, the holder may claim a loss from the sale or exchange of the obligation to the extent the holder has not received in cash or property the sum of its original investment in the obligation and any amounts included in income under paragraph (d)(4)(ii) of this section.

(3) *All other tax-exempt obligations*—(i) *Applicability.* This paragraph (d)(3) applies to a tax-exempt obligation that is not subject to paragraph (d)(2) of this section.

(ii) *Modifications to the noncontingent bond method.* If a tax-exempt obligation is subject to this paragraph (d)(3), the following modifications to the noncontingent bond method described in paragraph (b) of this section apply to the obligation.

(A) *Modification to projected payment schedule.* The comparable yield for the obligation is the greater of the obligation's yield, determined without regard to the contingent payments, and the tax-exempt applicable Federal rate that applies to the obligation. The Internal Revenue Service publishes the tax-exempt applicable Federal rate for each month in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(B) *Daily portions.* The daily portions of interest determined under paragraph (b)(3)(iii) of this section are interest for purposes of section 103.

(C) *Adjustments.* A net positive adjustment on the obligation is treated as gain to the holder from the sale or exchange of the obligation in the taxable year of the adjustment. A net negative adjustment on the obligation is treated as a loss to the holder from the sale or exchange of the obligation in the taxable year of the adjustment.

(D) *Gains and losses.* Any gain or loss recognized on the sale, exchange, or retirement of the obligation is gain or loss from the sale or exchange of the obligation.

(4) *Basis different from adjusted issue price.* This paragraph (d)(4) provides rules for a holder whose basis in a tax-exempt obligation is different from the adjusted issue price of the obligation. The rules of paragraph (b)(9)(i) of this section do not apply to tax-exempt obligations.

(i) *Basis greater than adjusted issue price.* If the holder's basis in the obligation exceeds the obligation's adjusted issue price, the holder, upon acquiring the obligation, must allocate this difference to daily portions of interest on a yield to maturity basis over the remaining term of the obligation. The amount allocated to a daily portion of interest is not deductible by the holder. However, the holder's basis in the obligation is reduced by the amount allocated to a daily portion of interest on the date the daily portion accrues.

(ii) *Basis less than adjusted issue price.* If the holder's basis in the obligation is less than the obligation's adjusted issue price, the holder, upon acquiring the obligation, must allocate this difference to daily portions of interest on a yield to maturity basis over the remaining term of the obligation. The amount allocated to a daily portion of interest is includible in income by the holder as ordinary income on the date the daily portion accrues. The holder's adjusted basis in the obligation is increased by the amount includible in income by the holder under this paragraph (d)(4)(ii) on the date the daily portion accrues.

(iii) *Premium and discount rules do not apply.* The rules for accruing premium and discount in sections 171, 1276, and 1288 do not apply. Other rules of those sections continue to apply to the extent relevant.

(e) *Amounts treated as interest under this section.* Amounts treated as interest under this section are treated as OID for all purposes of the Internal Revenue Code.

(f) *Effective date.* This section applies to debt instruments issued on or after August 13, 1996.

Par. 16. Section 1.1275–5 is amended by:

1. Revising paragraph (a)(1).

2. Removing the language ''The debt instrument must provide for stated interest'' from the introductory language of paragraph (a)(3)(i) and adding the language ''The debt instrument must not provide for any stated interest other than stated interest'' in its place.

3. Removing the language ''less than 1 year'' from the first sentence of paragraph (a)(3)(ii) and adding the language ''1 year or less'' in its place.

4. Adding paragraphs (a)(5) and (a)(6).

5. Revising paragraph (b)(2).

6. Revising paragraphs (c)(1) and (c)(5).

7. Removing the language ''cost of newly borrowed funds'' from paragraph (c)(3)(ii) and adding the language ''qualified floating rate'' in its place.

8. Revising paragraph (d) introductory text; revising *Examples 4* through *9*; and adding *Example 10.*

9. Revising paragraph (e)(2).

10. Revising paragraph (e)(3)(v) introductory text; revising *Example 3* (ii); and removing *Example 3* (iii).

The revisions and additions read as follows:

§ 1.1275–5 Variable rate debt instruments.

(a) *Applicability*—(1) *In general.* This section provides rules for variable rate debt instruments. Except as provided in paragraph (a)(6) of this section, a variable rate debt instrument is a debt instrument that meets the conditions described in paragraphs (a)(2), (3), (4), and (5) of this section. If a debt instrument that provides for a variable rate of interest does not qualify as a variable rate debt instrument, the debt instrument is a contingent payment debt instrument. See § 1.1275–4 for the

treatment of a contingent payment debt instrument. See § 1.1275–6 for a taxpayer's treatment of a variable rate debt instrument and a hedge.

* * * * *

(5) *No contingent principal payments.* Except as provided in paragraph (a)(2) of this section, the debt instrument must not provide for any principal payments that are contingent (within the meaning of § 1.1275–4(a)).

(6) *Special rule for debt instruments issued for nonpublicly traded property.* A debt instrument (other than a tax-exempt obligation) that would otherwise qualify as a variable rate debt instrument under this section is not a variable rate debt instrument if section 1274 applies to the instrument and any stated interest payments on the instrument are treated as contingent payments under § 1.1274–2. This paragraph (a)(6) applies to debt instruments issued on or after August 13, 1996.

(b) * * *

(2) *Certain rates based on a qualified floating rate.* For a debt instrument issued on or after August 13, 1996, a variable rate is a qualified floating rate if it is equal to either—

(i) The product of a qualified floating rate described in paragraph (b)(1) of this section and a fixed multiple that is greater than .65 but not more than 1.35; or

(ii) The product of a qualified floating rate described in paragraph (b)(1) of this section and a fixed multiple that is greater than .65 but not more than 1.35, increased or decreased by a fixed rate.

* * * * *

(c) *Objective rate*—(1) *Definition*—(i) *In general.* For debt instruments issued on or after August 13, 1996, an objective rate is a rate (other than a qualified floating rate) that is determined using a single fixed formula and that is based on objective financial or economic information. For example, an objective rate generally includes a rate that is based on one or more qualified floating rates or on the yield of actively traded personal property (within the meaning of section 1092(d)(1)).

(ii) *Exception.* For purposes of paragraph (c)(1)(i) of this section, an objective rate does not include a rate based on information that is within the control of the issuer (or a related party within the meaning of section 267(b) or 707(b)(1)) or that is unique to the circumstances of the issuer (or a related party within the meaning of section 267(b) or 707(b)(1)), such as dividends, profits, or the value of the issuer's stock. However, a rate does not fail to be an objective rate merely because it is based on the credit quality of the issuer.

* * * * *

(5) *Tax-exempt obligations.* Notwithstanding paragraph (c)(1) of this section, in the case of a tax-exempt obligation (within the meaning of section 1275(a)(3)), a variable rate is an objective rate only if it is a qualified inverse floating rate or a qualified inflation rate. A rate is a qualified inflation rate if the rate measures contemporaneous changes in inflation based on a general inflation index.

(d) *Examples.* The following examples illustrate the rules of paragraphs (b) and (c) of this section. For purposes of these examples, assume that the debt instrument is not a tax-exempt obligation. In addition, unless otherwise provided, assume that the rate is not reasonably expected to result in a significant front-loading or back-loading of interest and that the rate is not based on objective financial or economic information that is within the control of the issuer (or a related party) or that is unique to the circumstances of the issuer (or a related party).

* * * * *

Example 4. Rate based on changes in the value of a commodity index. On January 1, 1997, X issues a debt instrument that provides for annual interest payments at the end of each year at a rate equal to the percentage increase, if any, in the value of an index for the year immediately preceding the payment. The index is based on the prices of several actively traded commodities. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is not a qualified floating rate. However, because the rate is based on objective financial information using a single fixed formula, the rate is an objective rate.

Example 5. Rate based on a percentage of S&P 500 Index. On January 1, 1997, X issues a debt instrument that provides for annual interest payments at the end of each year based on a fixed percentage of the value of the S&P 500 Index. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds and, therefore, the rate is not a qualified floating rate. Although the rate is described in paragraph (c)(1)(i) of this section, the rate is not an objective rate because, based on historical data, it is reasonably expected that the average value of the rate during the first half of the instrument's term will be significantly less than the average value of the rate during the final half of the instrument's term.

Example 6. Rate based on issuer's profits. On January 1, 1997, Z issues a debt instrument that provides for annual interest payments equal to 1 percent of Z's gross profits earned during the year immediately preceding the payment. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is not a qualified floating rate. In addition, because the rate is based on information that is unique to the issuer's circumstances, the rate is not an objective rate.

Example 7. Rate based on a multiple of an interest index. On January 1, 1997, Z issues a debt instrument with annual interest payments at a rate equal to two times the value of 1-year LIBOR as of the payment date. Because the rate is a multiple greater than 1.35 times a qualified floating rate, the rate is not a qualified floating rate. However, because the rate is based on objective financial information using a single fixed formula, the rate is an objective rate.

Example 8. Variable rate based on the cost of borrowed funds in a foreign currency. On January 1, 1997, Y issues a 5-year dollar denominated debt instrument that provides for annual interest payments at a rate equal to the value of 1-year French franc LIBOR as of the payment date. Variations in the value of French franc LIBOR do not measure contemporaneous changes in the cost of newly borrowed funds in dollars. As a result, the rate is not a qualified floating rate for an instrument denominated in dollars. However, because the rate is based on objective financial information using a single fixed formula, the rate is an objective rate.

Example 9. Qualified inverse floating rate. On January 1, 1997, X issues a debt instrument that provides for annual interest payments at the end of each year at a rate equal to 12 percent minus the value of 1-year LIBOR as of the payment date. On the issue date, the value of 1-year LIBOR is 6 percent. Because the rate can reasonably be expected to inversely reflect contemporaneous variations in 1-year LIBOR, it is a qualified inverse floating rate. However, if the value of 1-year LIBOR on the issue date were 11 percent rather than 6 percent, the rate would not be a qualified inverse floating rate because the rate could not reasonably be expected to inversely reflect contemporaneous variations in 1-year LIBOR.

Example 10. Rate based on an inflation index. On January 1, 1997, X issues a debt instrument that provides for annual interest payments at the end of each year at a rate equal to 400 basis points (4 percent) plus the annual percentage change in a general inflation index (e.g., the Consumer Price Index, U.S. City Average, All Items, for all Urban Consumers, seasonally unadjusted). The rate, however, may not be less than zero. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is not a qualified floating rate. However, because the rate is based on objective economic information using a single fixed formula, the rate is an objective rate.

(e) * * *

(2) *Variable rate debt instrument that provides for annual payments of interest at a single variable rate.* If a variable rate debt instrument provides for stated interest at a single qualified floating rate

or objective rate and the interest is unconditionally payable in cash or in property (other than debt instruments of the issuer), or will be constructively received under section 451, at least annually, the following rules apply to the instrument:

(i) All stated interest with respect to the debt instrument is qualified stated interest.

(ii) The amount of qualified stated interest and the amount of OID, if any, that accrues during an accrual period is determined under the rules applicable to fixed rate debt instruments by assuming that the variable rate is a fixed rate equal to—

(A) In the case of a qualified floating rate or qualified inverse floating rate, the value, as of the issue date, of the qualified floating rate or qualified inverse floating rate; or

(B) In the case of an objective rate (other than a qualified inverse floating rate), a fixed rate that reflects the yield that is reasonably expected for the debt instrument.

(iii) The qualified stated interest allocable to an accrual period is increased (or decreased) if the interest actually paid during an accrual period exceeds (or is less than) the interest assumed to be paid during the accrual period under paragraph (e)(2)(ii) of this section.

(3) * * *

(v) *Examples.* The following examples illustrate the rules in paragraphs (e) (2) and (3) of this section:

* * * * *

Example 3. * * *

(ii) *Accrual of OID and qualified stated interest.* Under paragraph (e)(2) of this section, the variable rate debt instrument is treated as a 2-year debt instrument that has an issue price of $90,000, a stated principal amount of $100,000, and interest payments of $5,000 at the end of each year. The debt instrument has $10,000 of OID and the annual interest payments of $5,000 are qualified stated interest payments. Under § 1.1272–1, the debt instrument has a yield of 10.82 percent, compounded annually. The amount of OID allocable to the first annual accrual period (assuming Z uses annual accrual periods) is $4,743.25 (($90,000×.1082) − $5,000), and the amount of OID allocable to the second annual accrual period is $5,256.75 ($100,000 − $94,743.25). Under paragraph (e)(2)(iii) of this section, the $2,000 difference between the $7,000 interest payment actually made at maturity and the $5,000 interest payment assumed to be made at maturity under the equivalent fixed rate debt instrument is treated as additional qualified stated interest for the period.

* * * * *

Par. 17. Section 1.1275–6 is added to read as follows:

§ 1.1275–6 Integration of qualifying debt instruments.

(a) *In general.* This section generally provides for the integration of a qualifying debt instrument with a hedge or combination of hedges if the combined cash flows of the components are substantially equivalent to the cash flows on a fixed or variable rate debt instrument. The integrated transaction is generally subject to the rules of this section rather than the rules to which each component of the transaction would be subject on a separate basis. The purpose of this section is to permit a more appropriate determination of the character and timing of income, deductions, gains, or losses than would be permitted by separate treatment of the components. The rules of this section affect only the taxpayer who holds (or issues) the qualifying debt instrument and enters into the hedge.

(b) *Definitions*—(1) *Qualifying debt instrument.* A qualifying debt instrument is any debt instrument (including an integrated transaction as defined in paragraph (c) of this section) other than—

(i) A tax-exempt obligation as defined in section 1275(a)(3);

(ii) A debt instrument to which section 1272(a)(6) applies (certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration); or

(iii) A debt instrument that is subject to § 1.483–4 or § 1.1275–4(c) (certain contingent payment debt instruments issued for nonpublicly traded property).

(2) *Section 1.1275–6 hedge*—(i) *In general.* A § 1.1275–6 hedge is any financial instrument (as defined in paragraph (b)(3) of this section) if the combined cash flows of the financial instrument and the qualifying debt instrument permit the calculation of a yield to maturity (under the principles of section 1272), or the right to the combined cash flows would qualify under § 1.1275–5 as a variable rate debt instrument that pays interest at a qualified floating rate or rates (except for the requirement that the interest payments be stated as interest). A financial instrument is not a § 1.1275–6 hedge, however, if the resulting synthetic debt instrument does not have the same term as the remaining term of the qualifying debt instrument. A financial instrument that hedges currency risk is not a § 1.1275–6 hedge.

(ii) *Limitations*—(A) A debt instrument issued by a taxpayer and a debt instrument held by the taxpayer cannot be part of the same integrated transaction.

(B) A debt instrument can be a § 1.1275–6 hedge only if it is issued substantially contemporaneously with, and has the same maturity (including rights to accelerate or delay payments) as, the qualifying debt instrument.

(3) *Financial instrument.* For purposes of this section, a financial instrument is a spot, forward, or futures contract, an option, a notional principal contract, a debt instrument, or a similar instrument, or combination or series of financial instruments. Stock is not a financial instrument for purposes of this section.

(4) *Synthetic debt instrument.* The synthetic debt instrument is the hypothetical debt instrument with the same cash flows as the combined cash flows of the qualifying debt instrument and the § 1.1275–6 hedge.

(c) *Integrated transaction*—(1) *Integration by taxpayer.* Except as otherwise provided in this section, a qualifying debt instrument and a § 1.1275–6 hedge are an integrated transaction if all of the following requirements are satisfied:

(i) The taxpayer satisfies the identification requirements of paragraph (e) of this section on or before the date the taxpayer enters into the § 1.1275–6 hedge.

(ii) None of the parties to the § 1.1275–6 hedge are related within the meaning of section 267(b) or 707(b)(1), or, if the parties are related, the party providing the hedge uses, for federal income tax purposes, a mark-to-market method of accounting for the hedge and all similar or related transactions.

(iii) Both the qualifying debt instrument and the § 1.1275–6 hedge are entered into by the same individual, partnership, trust, estate, or corporation (regardless of whether the corporation is a member of an affiliated group of corporations that files a consolidated return).

(iv) If the taxpayer is a foreign person engaged in a U.S. trade or business and the taxpayer issues or acquires a qualifying debt instrument, or enters into a § 1.1275–6 hedge, through the trade or business, all items of income and expense associated with the qualifying debt instrument and the § 1.1275–6 hedge (other than interest expense that is subject to § 1.882–5) would have been effectively connected with the U.S. trade or business throughout the term of the qualifying debt instrument had this section not applied.

(v) Neither the qualifying debt instrument, nor any other debt instrument that is part of the same issue as the qualifying debt instrument, nor the § 1.1275–6 hedge was, with respect

to the taxpayer, part of an integrated transaction that was terminated or otherwise legged out of within the 30 days immediately preceding the date that would be the issue date of the synthetic debt instrument.

(vi) The qualifying debt instrument is issued or acquired by the taxpayer on or before the date of the first payment on the § 1.1275–6 hedge, whether made or received by the taxpayer (including a payment made to purchase the hedge). If the qualifying debt instrument is issued or acquired by the taxpayer after, but substantially contemporaneously with, the date of the first payment on the § 1.1275–6 hedge, the qualifying debt instrument is treated, solely for purposes of this paragraph (c)(1)(vi), as meeting the requirements of the preceding sentence.

(vii) Neither the § 1.1275–6 hedge nor the qualifying debt instrument was, with respect to the taxpayer, part of a straddle (as defined in section 1092(c)) prior to the issue date of the synthetic debt instrument.

(2) *Integration by Commissioner.* The Commissioner may treat a qualifying debt instrument and a financial instrument (whether entered into by the taxpayer or by a related party) as an integrated transaction if the combined cash flows on the qualifying debt instrument and financial instrument are substantially the same as the combined cash flows required for the financial instrument to be a § 1.1275–6 hedge. The Commissioner, however, may not integrate a transaction unless the qualifying debt instrument either is subject to § 1.1275–4 or is subject to § 1.1275–5 and pays interest at an objective rate. The circumstances under which the Commissioner may require integration include, but are not limited to, the following:

(i) A taxpayer fails to identify a qualifying debt instrument and the § 1.1275–6 hedge under paragraph (e) of this section.

(ii) A taxpayer issues or acquires a qualifying debt instrument and a related party (within the meaning of section 267(b) or 707(b)(1)) enters into the § 1.1275–6 hedge.

(iii) A taxpayer issues or acquires a qualifying debt instrument and enters into the § 1.1275–6 hedge with a related party (within the meaning of section 267(b) or 707(b)(1)).

(iv) The taxpayer legs out of an integrated transaction and within 30 days enters into a new § 1.1275–6 hedge with respect to the same qualifying debt instrument or another debt instrument that is part of the same issue.

(d) *Special rules for legging into and legging out of an integrated transaction*—(1) *Legging into*—(i) *Definition.* Legging into an integrated transaction under this section means that a § 1.1275–6 hedge is entered into after the date the qualifying debt instrument is issued or acquired by the taxpayer, and the requirements of paragraph (c)(1) of this section are satisfied on the date the § 1.1275–6 hedge is entered into (the leg-in date).

(ii) *Treatment.* If a taxpayer legs into an integrated transaction, the taxpayer treats the qualifying debt instrument under the applicable rules for taking interest and OID into account up to the leg-in date, except that the day before the leg-in date is treated as the end of an accrual period. As of the leg-in date, the qualifying debt instrument is subject to the rules of paragraph (f) of this section.

(iii) *Anti-abuse rule.* If a taxpayer legs into an integrated transaction with a principal purpose of deferring or accelerating income or deductions on the qualifying debt instrument, the Commissioner may—

(A) Treat the qualifying debt instrument as sold for its fair market value on the leg-in date; or

(B) Refuse to allow the taxpayer to integrate the qualifying debt instrument and the § 1.1275–6 hedge.

(2) *Legging out*—(i) *Definition*—(A) *Legging out if the taxpayer has integrated.* If a taxpayer has integrated a qualifying debt instrument and a § 1.1275–6 hedge under paragraph (c)(1) of this section, legging out means that, prior to the maturity of the synthetic debt instrument, the § 1.1275–6 hedge ceases to meet the requirements for a § 1.1275–6 hedge, the taxpayer fails to meet any requirement of paragraph (c)(1) of this section, or the taxpayer disposes of or otherwise terminates all or a part of the qualifying debt instrument or § 1.1275–6 hedge. If the taxpayer fails to meet the requirements of paragraph (c)(1) of this section but meets the requirements of paragraph (c)(2) of this section, the Commissioner may treat the taxpayer as not legging out.

(B) *Legging out if the Commissioner has integrated.* If the Commissioner has integrated a qualifying debt instrument and a financial instrument under paragraph (c)(2) of this section, legging out means that, prior to the maturity of the synthetic debt instrument, the requirements for Commissioner integration under paragraph (c)(2) of this section are not met or the taxpayer fails to meet the requirements for taxpayer integration under paragraph (c)(1) of this section and the Commissioner agrees to allow the taxpayer to be treated as legging out.

(C) *Exception for certain nonrecognition transactions.* If, in a single nonrecognition transaction, a taxpayer disposes of, or ceases to be primarily liable on, the qualifying debt instrument and the § 1.1275–6 hedge, the taxpayer is not treated as legging out. Instead, the integrated transaction is treated under the rules governing the nonrecognition transaction. For example, if a holder of an integrated transaction is acquired in a reorganization under section 368(a)(1)(A), the holder is treated as disposing of the synthetic debt instrument in the reorganization rather than legging out. If the successor holder is not eligible for integrated treatment, the successor is treated as legging out.

(ii) *Operating rules.* If a taxpayer legs out (or is treated as legging out) of an integrated transaction, the following rules apply:

(A) The transaction is treated as an integrated transaction during the time the requirements of paragraph (c)(1) or (2) of this section, as appropriate, are satisfied.

(B) Immediately before the taxpayer legs out, the taxpayer is treated as selling or otherwise terminating the synthetic debt instrument for its fair market value and, except as provided in paragraph (d)(2)(ii)(D) of this section, any income, deduction, gain, or loss is realized and recognized at that time.

(C) If, immediately after the taxpayer legs out, the taxpayer holds or remains primarily liable on the qualifying debt instrument, adjustments are made to reflect any difference between the fair market value of the qualifying debt instrument and the adjusted issue price of the qualifying debt instrument. If, immediately after the taxpayer legs out, the taxpayer is a party to a § 1.1275–6 hedge, the § 1.1275–6 hedge is treated as entered into at its fair market value.

(D) If a taxpayer legs out of an integrated transaction by disposing of or otherwise terminating a § 1.1275–6 hedge within 30 days of legging into the integrated transaction, then any loss or deduction determined under paragraph (d)(2)(ii)(B) of this section is not allowed. Appropriate adjustments are made to the qualifying debt instrument for any disallowed loss. The adjustments are taken into account on a yield to maturity basis over the remaining term of the qualifying debt instrument.

(E) If a holder of a debt instrument subject to § 1.1275–4 legs into an integrated transaction with respect to the instrument and subsequently legs out of the integrated transaction, any gain recognized under paragraph (d)(2)(ii)(B) or (C) of this section is

treated as interest income to the extent determined under the principles of § 1.1275–4(b)(8)(iii)(B) (rules for determining the character of gain on the sale of a debt instrument all of the payments on which have been fixed). If the synthetic debt instrument would qualify as a variable rate debt instrument, the equivalent fixed rate debt instrument determined under § 1.1275–5(e) is used for this purpose.

(e) *Identification requirements.* For each integrated transaction, a taxpayer must enter and retain as part of its books and records the following information—

(1) The date the qualifying debt instrument was issued or acquired (or is expected to be issued or acquired) by the taxpayer and the date the § 1.1275–6 hedge was entered into by the taxpayer;

(2) A description of the qualifying debt instrument and the § 1.1275–6 hedge; and

(3) A summary of the cash flows and accruals resulting from treating the qualifying debt instrument and the § 1.1275–6 hedge as an integrated transaction (i.e., the cash flows and accruals on the synthetic debt instrument).

(f) *Taxation of integrated transactions*—(1) *General rule.* An integrated transaction is generally treated as a single transaction by the taxpayer during the period that the transaction qualifies as an integrated transaction. Except as provided in paragraph (f)(12) of this section, while a qualifying debt instrument and a § 1.1275–6 hedge are part of an integrated transaction, neither the qualifying debt instrument nor the § 1.1275–6 hedge is subject to the rules that would apply on a separate basis to the debt instrument and the § 1.1275–6 hedge, including section 1092 or § 1.446–4. The rules that would govern the treatment of the synthetic debt instrument generally govern the treatment of the integrated transaction. For example, the integrated transaction may be subject to section 263(g) or, if the synthetic debt instrument would be part of a straddle, section 1092. Generally, the synthetic debt instrument is subject to sections 163(e) and 1271 through 1275, with terms as set forth in paragraphs (f)(2) through (13) of this section.

(2) *Issue date.* The issue date of the synthetic debt instrument is the first date on which the taxpayer entered into all of the components of the synthetic debt instrument.

(3) *Term.* The term of the synthetic debt instrument is the period beginning on the issue date of the synthetic debt instrument and ending on the maturity date of the qualifying debt instrument.

(4) *Issue price.* The issue price of the synthetic debt instrument is the adjusted issue price of the qualifying debt instrument on the issue date of the synthetic debt instrument. If, as a result of entering into the § 1.1275–6 hedge, the taxpayer pays or receives one or more payments that are substantially contemporaneous with the issue date of the synthetic debt instrument, the payments reduce or increase the issue price as appropriate.

(5) *Adjusted issue price.* In general, the adjusted issue price of the synthetic debt instrument is determined under the principles of § 1.1275–1(b).

(6) *Qualified stated interest.* No amounts payable on the synthetic debt instrument are qualified stated interest within the meaning of § 1.1273–1(c).

(7) *Stated redemption price at maturity*—(i) *Synthetic debt instruments that are borrowings.* In general, if the synthetic debt instrument is a borrowing, the instrument's stated redemption price at maturity is the sum of all amounts paid or to be paid on the qualifying debt instrument and the § 1.1275–6 hedge, reduced by any amounts received or to be received on the § 1.1275–6 hedge.

(ii) *Synthetic debt instruments that are held by the taxpayer.* In general, if the synthetic debt instrument is held by the taxpayer, the instrument's stated redemption price at maturity is the sum of all amounts received or to be received by the taxpayer on the qualifying debt instrument and the § 1.1275–6 hedge, reduced by any amounts paid or to be paid by the taxpayer on the § 1.1275–6 hedge.

(iii) *Certain amounts ignored.* For purposes of this paragraph (f)(7), if an amount paid or received on the § 1.1275–6 hedge is taken into account under paragraph (f)(4) of this section to determine the issue price of the synthetic debt instrument, the amount is not taken into account to determine the synthetic debt instrument's stated redemption price at maturity.

(8) *Source of interest income and allocation of expense.* The source of interest income from the synthetic debt instrument is determined by reference to the source of income of the qualifying debt instrument under sections 861(a)(1) and 862(a)(1). For purposes of section 904, the character of interest from the synthetic debt instrument is determined by reference to the character of the interest income from the qualifying debt instrument. Interest expense is allocated and apportioned under regulations under section 861 or under § 1.882–5.

(9) *Effectively connected income.* If the requirements of paragraph (c)(1)(iv) of this section are satisfied, any interest income resulting from the synthetic debt instrument entered into by the foreign person is treated as effectively connected with a U.S. trade or business, and any interest expense resulting from the synthetic debt instrument entered into by the foreign person is allocated and apportioned under § 1.882–5.

(10) *Not a short-term obligation.* For purposes of section 1272(a)(2)(C), a synthetic debt instrument is not treated as a short-term obligation.

(11) *Special rules in the event of integration by the Commissioner.* If the Commissioner requires integration, appropriate adjustments are made to the treatment of the synthetic debt instrument, and, if necessary, the qualifying debt instrument and financial instrument. For example, the Commissioner may treat a financial instrument that is not a § 1.1275–6 hedge as a § 1.1275–6 hedge when applying the rules of this section. The issue date of the synthetic debt instrument is the date determined appropriate by the Commissioner to require integration.

(12) *Retention of separate transaction rules for certain purposes.* This paragraph (f)(12) provides for the retention of separate transaction rules for certain purposes. In addition, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter), the Commissioner may require use of separate transaction rules for any aspect of an integrated transaction.

(i) *Foreign persons that enter into integrated transactions giving rise to U.S. source income not effectively connected with a U.S. trade or business.* If a foreign person enters into an integrated transaction that gives rise to U.S. source interest income (determined under the source rules for the synthetic debt instrument) not effectively connected with a U.S. trade or business of the foreign person, paragraph (f) of this section does not apply for purposes of sections 871(a), 881, 1441, 1442, and 6049. These sections of the Internal Revenue Code are applied to the qualifying debt instrument and the § 1.1275–6 hedge on a separate basis.

(ii) *Relationship between taxpayer and other persons.* Because the rules of this section affect only the taxpayer that enters into an integrated transaction (i.e., either the issuer or a particular holder of a qualifying debt instrument), any provisions of the Internal Revenue Code or regulations that govern the relationship between the taxpayer and any other person are applied on a separate basis. For example, taxpayers

must comply with any reporting or disclosure requirements on any qualifying debt instrument as if it were not part of an integrated transaction. Thus, if required under § 1.1275–4(b)(4), an issuer of a contingent payment debt instrument subject to integrated treatment must provide the projected payment schedule to holders. Similarly, if a U.S. corporation enters into an integrated transaction that includes a notional principal contract, the source of any payment received by the counterparty on the notional principal contract is determined under § 1.863–7 as if the contract were not part of an integrated transaction, and, if received by a foreign person who is not engaged in a U.S. trade or business, the payment is non-U.S. source income that is not subject to U.S. withholding tax.

(13) *Coordination with consolidated return rules.* If a taxpayer enters into a § 1.1275–6 hedge with a member of the same consolidated group (the counterparty) and the § 1.1275–6 hedge is part of an integrated transaction for the taxpayer, the § 1.1275–6 hedge is not treated as an intercompany transaction for purposes of § 1.1502–13. If the taxpayer legs out of integrated treatment, the taxpayer and the counterparty are each treated as disposing of its position in the § 1.1275–6 hedge under the principles of paragraph (d)(2) of this section. If the § 1.1275–6 hedge remains in existence after the leg-out date, the § 1.1275–6 hedge is treated under the rules that would otherwise apply to the transaction (including § 1.1502–13 if the transaction is between members).

(g) *Predecessors and successors.* For purposes of this section, any reference to a taxpayer, holder, issuer, or person includes, where appropriate, a reference to a predecessor or successor. For purposes of the preceding sentence, a predecessor is a transferor of an asset or liability (including an integrated transaction) to a transferee (the successor) in a nonrecognition transaction. Appropriate adjustments, if necessary, are made in the application of this section to predecessors and successors.

(h) *Examples.* The following examples illustrate the provisions of this section. In each example, assume that the qualifying debt instrument is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the debt instrument is a debt instrument for federal income tax purposes.

Example 1. Issuer hedge—(i) *Facts.* On January 1, 1997, V, a domestic corporation, issues a 5-year debt instrument for $1,000. The debt instrument provides for annual payments of interest at a rate equal to the value of 1-year LIBOR and a principal payment of $1,000 at maturity. On the same day, V enters into a 5-year interest rate swap agreement with an unrelated party. Under the swap, V pays 6 percent and receives 1-year LIBOR on a notional principal amount of $1,000. The payments on the swap are fixed and made on the same days as the payments on the debt instrument. On January 1, 1997, V identifies the debt instrument and the swap as an integrated transaction in accordance with the requirements of paragraph (e) of this section.

(ii) *Eligibility for integration.* The debt instrument is a qualifying debt instrument. The swap is a § 1.1275–6 hedge because it is a financial instrument and a yield to maturity on the combined cash flows of the swap and the debt instrument can be calculated. V has met the identification requirements, and the other requirements of paragraph (c)(1) of this section are satisfied. Therefore, the transaction is an integrated transaction under this section.

(iii) *Treatment of the synthetic debt instrument.* The synthetic debt instrument is a 5-year debt instrument that has an issue price of $1,000 and provides for annual interest payments of $60 and a principal payment of $1,000 at maturity. Under paragraph (f)(6) of this section, no amounts payable on the synthetic debt instrument are qualified stated interest. Thus, under paragraph (f)(7)(i) of this section, the synthetic debt instrument has a stated redemption price at maturity of $1,300 (the sum of all amounts to be paid on the qualifying debt instrument and the swap, reduced by amounts to be received on the swap). The synthetic debt instrument, therefore, has $300 of OID.

Example 2. Issuer hedge with an option—(i) *Facts.* On December 31, 1996, W, a domestic corporation, issues for $1,000 a debt instrument that matures on December 31, 1999. The debt instrument has a stated principal amount of $1,000 payable at maturity. The debt instrument also provides for a payment at maturity equal to $10 times the increase, if any, in the value of a nationally known composite index of stocks from December 31, 1996, to the maturity date. On December 31, 1996, W purchases from an unrelated party an option that pays $10 times the increase, if any, in the stock index from December 31, 1996, to December 31, 1999. W pays $250 for the option. On December 31, 1996, W identifies the debt instrument and option as an integrated transaction in accordance with the requirements of paragraph (e) of this section.

(ii) *Eligibility for integration.* The debt instrument is a qualifying debt instrument. The option is a § 1.1275–6 hedge because it is a financial instrument and a yield to maturity on the combined cash flows of the option and the debt instrument can be calculated. W has met the identification requirements, and the other requirements of paragraph (c)(1) of this section are satisfied. Therefore, the transaction is an integrated transaction under this section.

(iii) *Treatment of the synthetic debt instrument.* Under paragraph (f)(4) of this section, the issue price of the synthetic debt instrument is equal to the issue price of the debt instrument ($1,000) reduced by the payment for the option ($250). As a result, the synthetic debt instrument is a 3-year debt instrument with an issue price of $750. Under paragraph (f)(7) of this section, the synthetic debt instrument has a stated redemption price at maturity of $1,000 (the $250 payment for the option is not taken into account). The synthetic debt instrument, therefore, has $250 of OID.

Example 3. Hedge with prepaid swap—(i) *Facts.* On January 1, 1997, H purchases for £1,000 a 5-year debt instrument that provides for semiannual payments based on 6-month pound LIBOR and a payment of the £1,000 principal at maturity. On the same day, H enters into a swap with an unrelated third party under which H receives semiannual payments, in pounds, of 10 percent, compounded semiannually, and makes semiannual payments, in pounds, of 6-month pound LIBOR on a notional principal amount of £1,000. Payments on the swap are fixed and made on the same dates as the payments on the debt instrument. H also makes a £162 prepayment on the swap. On January 1, 1997, H identifies the swap and the debt instrument as an integrated transaction in accordance with the requirements of paragraph (e) of this section.

(ii) *Eligibility for integration.* The debt instrument is a qualifying debt instrument. The swap is a § 1.1275–6 hedge because it is a financial instrument and a yield to maturity on the combined cash flows of the swap and the debt instrument can be calculated. Although the debt instrument is denominated in pounds, the swap hedges only interest rate risk, not currency risk. Therefore, the transaction is an integrated transaction under this section. See § 1.988–5(a) for the treatment of a debt instrument and a swap if the swap hedges currency risk.

(iii) *Treatment of the synthetic debt instrument.* Under paragraph (f)(4) of this section, the issue price of the synthetic debt instrument is equal to the issue price of the debt instrument (£1,000) increased by the prepayment on the swap (£162). As a result, the synthetic debt instrument is a 5-year debt instrument that has an issue price of £1,162 and provides for semiannual interest payments of £50 and a principal payment of £1,000 at maturity. Under paragraph (f)(6) of this section, no amounts payable on the synthetic debt instrument are qualified stated interest. Thus, under paragraph (f)(7)(ii) of this section, the synthetic debt instrument's stated redemption price at maturity is £1,500 (the sum of all amounts to be received on the qualifying debt instrument and the § 1.1275–6 hedge, reduced by all amounts to be paid on the § 1.1275–6 hedge other than the £162 prepayment for the swap). The synthetic debt instrument, therefore, has £338 of OID.

Example 4. Legging into an integrated transaction by a holder—(i) *Facts.* On December 31, 1996, X corporation purchases for $1,000,000 a debt instrument that matures on December 31, 2006. The debt instrument provides for annual payments of interest at the rate of 6 percent and for a payment at maturity equal to $1,000,000, increased by the excess, if any, of the price of 1,000 units of a commodity on December 31, 2006, over

$350,000, and decreased by the excess, if any, of $350,000 over the price of 1,000 units of the commodity on that date. The projected amount of the payment at maturity determined under § 1.1275–4(b)(4) is $1,020,000. On December 31, 1999, X enters into a cash-settled forward contract with an unrelated party to sell 1,000 units of the commodity on December 31, 2006, for $450,000. On December 31, 1999, X also identifies the debt instrument and the forward contract as an integrated transaction in accordance with the requirements of paragraph (e) of this section.

(ii) *Eligibility for integration*. X meets the requirements for integration as of December 31, 1999. Therefore, X legged into an integrated transaction on that date. Prior to that date, X treats the debt instrument under the applicable rules of § 1.1275–4.

(iii) *Treatment of the synthetic debt instrument*. As of December 31, 1999, the debt instrument and the forward contract are treated as an integrated transaction. The issue price of the synthetic debt instrument is equal to the adjusted issue price of the qualifying debt instrument on the leg-in date, $1,004,804 (assuming one year accrual periods). The term of the synthetic debt instrument is from December 31, 1999, to December 31, 2006. The synthetic debt instrument provides for annual interest payments of $60,000 and a principal payment at maturity of $1,100,000 ($1,000,000 + $450,000 − $350,000). Under paragraph (f)(6) of this section, no amounts payable on the synthetic debt instrument are qualified stated interest. Thus, under paragraph (f)(7)(ii) of this section, the synthetic debt instrument's stated redemption price at maturity is $1,520,000 (the sum of all amounts to be received by X on the qualifying debt instrument and the § 1.1275–6 hedge, reduced by all amounts to be paid by X on the § 1.1275–6 hedge). The synthetic debt instrument, therefore, has $515,196 of OID.

Example 5. Abusive leg-in—(i) *Facts*. On January 1, 1997, Y corporation purchases for $1,000,000 a debt instrument that matures on December 31, 2001. The debt instrument provides for annual payments of interest at the rate of 6 percent, a payment on December 31, 1999, of the increase, if any, in the price of a commodity from January 1, 1997, to December 31, 1999, and a payment at maturity of $1,000,000 and the increase, if any, in the price of the commodity from December 31, 1999 to maturity. Because the debt instrument is a contingent payment debt instrument subject to § 1.1275–4, Y accrues interest based on the projected payment schedule.

(ii) *Leg-in*. By late 1999, the price of the commodity has substantially increased, and Y expects a positive adjustment on December 31, 1999. In late 1999, Y enters into an agreement to exchange the two commodity based payments on the debt instrument for two payments on the same dates of $100,000 each. Y identifies the transaction as an integrated transaction in accordance with the requirements of paragraph (e) of this section. Y disposes of the hedge in early 2000.

(iii) *Treatment*. The legging into an integrated transaction has the effect of deferring the positive adjustment from 1999 to 2000. Because Y legged into the integrated transaction with a principal purpose to defer the positive adjustment, the Commissioner may treat the debt instrument as sold for its fair market value on the leg-in date or refuse to allow integration.

Example 6. Integration of offsetting debt instruments—(i) *Facts*. On January 1, 1997, Z issues two 10-year debt instruments. The first, Issue 1, has an issue price of $1,000, pays interest annually at 6 percent, and, at maturity, pays $1,000, increased by $1 times the increase, if any, in the value of the S&P 100 Index over the term of the instrument and reduced by $1 times the decrease, if any, in the value of the S&P 100 Index over the term of the instrument. However, the amount paid at maturity may not be less than $500 or more than $1,500. The second, Issue 2, has an issue price of $1,000, pays interest annually at 8 percent, and, at maturity, pays $1,000, reduced by $1 times the increase, if any, in the value of the S&P 100 Index over the term of the instrument and increased by $1 times the decrease, if any, in the value of the S&P 100 Index over the term of the instrument. The amount paid at maturity may not be less than $500 or more than $1,500. On January 1, 1997, Z identifies Issue 1 as the qualifying debt instrument, Issue 2 as a § 1.1275–6 hedge, and otherwise meets the identification requirements of paragraph (e) of this section.

(ii) *Eligibility for integration*. Both Issue 1 and Issue 2 are qualifying debt instruments. Z has met the identification requirements by identifying Issue 1 as the qualifying debt instrument and Issue 2 as the § 1.1275–6 hedge. The other requirements of paragraph (c)(1) of this section are satisfied. Therefore, the transaction is an integrated transaction under this section.

(iii) *Treatment of the synthetic debt instrument*. The synthetic debt instrument has an issue price of $2,000, provides for a payment at maturity of $2,000, and, in addition, provides for annual payments of $140. Under paragraph (f)(6) of this section, no amounts payable on the synthetic debt instrument are qualified stated interest. Thus, under paragraph (f)(7)(i) of this section, the synthetic debt instrument's stated redemption price at maturity is $3,400 (the sum of all amounts to be paid on the qualifying debt instrument and the § 1.1275–6 hedge, reduced by amounts to be received on the § 1.1275–6 hedge other than the $1,000 payment received on the issue date). The synthetic debt instrument, therefore, has $1,400 of OID.

Example 7. Integrated transaction entered into by a foreign person—(i) *Facts*. X, a foreign person, enters into an integrated transaction by purchasing a qualifying debt instrument that pays U.S. source interest and entering into a notional principal contract with a U.S. corporation. Neither the income from the qualifying debt instrument nor the income from the notional principal contract is effectively connected with a U.S. trade or business. The notional principal contract is a § 1.1275–6 hedge.

(ii) *Treatment of integrated transaction*. Under paragraph (f)(8) of this section, X will receive U.S. source income from the integrated transaction. However, under paragraph (f)(12)(i) of this section, the qualifying debt instrument and the notional principal contract are treated as if they are not part of an integrated transaction for purposes of determining whether tax is due and must be withheld on income. Accordingly, because the § 1.1275–6 hedge would produce foreign source income under § 1.863–7 to X if it were not part of an integrated transaction, any income on the § 1.1275–6 hedge generally will not be subject to tax under sections 871(a) and 881, and the U.S. corporation that is the counterparty will not be required to withhold tax on payments under the § 1.1275–6 hedge under sections 1441 and 1442.

(i) [Reserved]

(j) *Effective date*. This section applies to a qualifying debt instrument issued on or after August 13, 1996. This section also applies to a qualifying debt instrument acquired by the taxpayer on or after August 13, 1996, if—

(1) The qualifying debt instrument is a fixed rate debt instrument or a variable rate debt instrument; or

(2) The qualifying debt instrument and the § 1.1275–6 hedge are acquired by the taxpayer substantially contemporaneously.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 18. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 19. Section 602.101, paragraph (c) 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.
* * * * *	
1.1272–1(c)(4)	1545–1353
* * * * *	
1.1275–3(b)	1545–1353
1.1275–3(c)	1545–0887
* * * * *	

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1275–2	1545–1450
1.1275–3	1545–0887
	1545–1353
	1545–1450
1.1275–4	1545–1450
1.1275–6	1545–1450
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 22, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–14918 Filed 6–11–96; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in July 1996, and to multiemployer plans with valuation dates in July 1996. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the July 1996 interest assumptions to be used under the Pension Benefit Guaranty Corporation's regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the ''single-employer regulation'') and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the ''multiemployer regulation'').

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended. Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and ''benefit liabilities,'' *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during July 1996 and multiemployer plans that have undergone mass withdrawal and have valuation dates during July 1996.

For annuity benefits, the interest rates will be 6.20% for the first 20 years following the valuation date and 4.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00% for the period during which benefits are in pay status, 4.25% during the seven-year period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. These annuity and lump sum interest assumptions are unchanged from those in effect for June 1996.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during July 1996, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during July 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 33 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
33	07–1–96	08–1–96	5.00	4.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*		*	*
July 1996	.0620	1–20	.0475	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 33 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
33	07–1–96	08–1–96	5.00	4.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of it are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*	*	
July 1996	.0620	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 11th day of June 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation

[FR Doc. 96–15153 Filed 6–13–96; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5520–1]

Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules

AGENCY: Environmental Protection Agency.

ACTION: Revision of direct final rule.

SUMMARY: On April 11, 1996, EPA published a direct final rule under the Clean Air Act deleting superfluous, obsolete or burdensome regulations from the Code of Federal Regulations (CFR). This action was published without prior proposal because EPA anticipated no adverse comment. Because EPA received adverse comments on a few discrete portions of this action, EPA is withdrawing those aspects the final rule. EPA will address all public comments received on those portions in a subsequent final rule based on the proposed rule also published on April 11, 1996.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review, (202) 260–7431.

SUPPLEMENTARY INFORMATION: On April 11, 1996, EPA published a final rule to delete numerous obsolete, superfluous or burdensome rules from the CFR (61 FR 16050). Among the rules to be deleted were 40 CFR 51.100(o), definition of reasonably available control technology (RACT); § 51.101, stipulations; § 51.110(g), attainment and maintenance of national standards; and § 51.213, transportation control measures. EPA promulgated this direct final rulemaking without prior proposal because the Agency viewed it as non-controversial and anticipated no adverse comments. The final rule was published in the Federal Register with a provision for a 30-day comment period. At the same time, EPA published a proposed rule which announced that in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the Federal Register (61 FR 16068), those portions of the final rule that were the subject of those comments would convert to a proposed rule through EPA's publishing a notice announcing withdrawal of those provisions.

EPA received adverse comment within the prescribed comment period on the following rules: 40 CFR 51.100(o), 51.101, 51.110(g) and 51.213. Therefore, EPA is withdrawing the April 11, 1996 final rulemaking action pertaining to those rules. EPA will not institute a second comment period on this document. The portions of the April 11, 1996 rule that were not the subject of adverse comments remain final and effective as published.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control.

Dated: June 6, 1996.

Carol M. Browner,

Administrator.

PART 51—[AMENDED]

40 CFR part 51 is amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.100 is amended by adding paragraph (o) to read as follows:

§ 51.100 Definitions.

* * * * *

(o) *Reasonably available control technology (RACT)* means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(1) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(2) The social, environmental, and economic impact of such controls; and

(3) Alternative means of providing for attainment and maintenance of such standard, (This provision defines RACT for the purposes of §§ 51.110(c)(2) and 51.341(b) only.)

* * * * *

3. Section 51.101 is added to read as follows:

§ 51.101 Stipulations.

Nothing in this part will be construed in any manner:

(a) To encourage a State to prepare, adopt, or submit a plan which does not provide for the protection and enhancement of air quality so as to promote the public health and welfare and productive capacity.

(b) To encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies.

(c) To preclude a State from employing techniques other than those specified in this part for purposes of estimating air quality or demonstrating the adequacy of a control strategy, provided that such other techniques are shown to be adequate and appropriate for such purposes.

(d) To encourage a State to prepare, adopt, or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan, including, but not limited to, impact on availability of fuels, energy, transportation, and employment.

(e) To preclude a State from preparing, adopting, or submitting a plan which provides for attainment and maintenance of a national standard through the application of a control strategy not specifically identified or described in this part.

(f) To preclude a State or political subdivision thereof from adopting or enforcing any emission limitations or other measures or combinations thereof to attain and maintain air quality better than that required by a national standard.

(g) To encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.

4. Section 51.110 is amended by adding and reserving paragraphs (c) through (f) and by adding paragraph (g) to read as follows:

§ 51.110 Attainment and maintenance of national standards.

* * * * *

(g) During developing of the plan, EPA encourages States to identify alternative control strategies, as well as the costs and benefits of each such alternative for attainment or maintenance of the national standard.

5. Section 51.213 is added to read as follows:

§ 51.213 Transportation control measures.

(a) The plan must contain procedures for obtaining and maintaining data on actual emissions reductions achieved as a result of implementing transportation control measures.

(b) In the case of measures based on traffic flow changes or reductions in vehicle use, the data must include observed changes in vehicle miles traveled and average speeds.

(c) The data must be maintained in such a way as to facilitate comparison of the planned and actual efficacy of the transportation control measures.

[FR Doc. 96–15187 Filed 6–13–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 152

[OPP–250117; FRL–5372–9]

Notification Procedures for Pesticide Registration Modifications; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation under section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule amends EPA's notification and non-notification procedures for certain registration modifications. This action is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, Telephone: 703–305-5448, e-mail: kempter.carlton@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the Federal Register. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the Federal Register, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the Federal Register anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Part 152

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

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 24, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–15039 Filed 6–13–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP–0E3821/R2242; FRL–5371–4]

RIN 2070–AB78

Sodium Salt of Acifluorfen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the herbicide sodium salt of acifluorfen and its metabolites in or on the raw agricultural commodity strawberry. The Interregional Research Project No. 4 (IR-4) requested the regulation to establish a maximum permissible level for residues of the herbicide pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective June 14, 1996

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3821/R2242], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees

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

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 0E3821/R2242]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington , DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 17, 1996 (61 FR 16740), EPA issued a proposed rule (FRL–5356–6) that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3821 to EPA on behalf of the Agricultural Experiment Stations of Alabama, Arkansas, California, Connecticut, Florida, Indiana, Maryland, Michigan, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, and Washington. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) amend 40 CFR 180.383 by establishing a tolerance for combined residues of the herbicide sodium salt of acifluorfen (sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoic acid) and its metabolites (the corresponding acid, methyl ester and amino analogues) in or on the raw agricultural commodity strawberry at 0.05 part per million (ppm). There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 0E3821/R2242] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

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

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

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified

by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as reqired by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 3, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.383, the table is amended by adding alphabetically the entry for strawberry, to read as follows:

§ 180.383 Sodium salt of acifluorfen; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Strawberry	0.05

[FR Doc. 96–15195 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 9F3714/R2214A; FRL–5372–4]

RIN 2070–AB78

Fenoxaprop-Ethyl; Extension of Study Due Date and Time-Limited Tolerances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, correction.

SUMMARY: In the Federal Register of May 10, 1996, EPA issued an extended time-limited tolerance for fenoxaprop-ethyl from April 12, l996 to November 1, l997. With this document, EPA is correcting the tolerance for residues of fenoxaprop ethyl on wheat, straw.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller (PM 23), Registration Division (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (Telephone No. (703–305–6224), e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 10, 1996, EPA issued a final rule which, among other things, extended the time-limit for residues of fenoxaprop-ethyl on certain raw agricultural commodities. EPA revised § 180.430 to change the expiration date for the time-limited tolerance from April 12, 1996 to November 1, 1997. The tolerance for wheat, straw was shown incorrectly in the table as 0.05 ppm. This document corrects that error as follows:

In FR Doc. 96-11338, published at 61 FR 21378, May 10, 1996, in § 180.430, the entry in the table for ''Wheat, straw ..... 0.05,'' should be corrected to read ''Wheat, straw..... 0.50.''

List of Subjects in 40 CFR Part 180

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

Dated: May 31, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–15190 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 4E4365 and 4E4376/R2244; FRL–5372–5]

RIN 2070–AB78

Diquat; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2′,1′-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the imported raw agricultural commodities bananas and coffee at 0.05 part per million (ppm). Zeneca, Inc., petitioned EPA to to establish a maximum permissible level for the residues of the plant growth regulator.

EFFECTIVE DATE: This regulation is effective June 14, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4E4365 and 4E4376/R2244], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4E4365 and 4E4376/R2244]. No Confidential Business Information (CBI) should be

submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM–23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 3056224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 27, 1996 (61 FR 13474), EPA issued a proposed rule (FRL–5348–1) that gave notice that Zeneca, Inc., P.O. Box 15458, Wilmington, DE 19850, has submitted pesticide petition (PP 4E4365 and 4E4376) to EPA. This petition requested that the Administrator, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for residues of the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2′,1′-c) pyrazinediium derived from application of the dibromide salt and calculated as the cation in or on the raw agricultural commodity bananas at 0.02 ppm and coffee at 0.05 ppm. The petition for bananas was subsequently amended to raise the tolerance level to 0.05 ppm. There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [PP 4E4365 and 4E4376/R2244] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

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

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

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 180

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

Dated: May 31, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.226, by adding new paragraph (c) to read as follows:

§ 180.226 Diquat; tolerances for residues.

* * * * *

(c)(1) Tolerances are established for the plant growth regulator diquat [6,7-dihydrodipyrido (1,2-a:2′,1′-c) pyrazinediium] derived from application of the dibromide salt and calculated as the cation in or on the following raw agricultural commodities:

Commodity	Parts per million
Bananas	0.05
Coffee	0.05

(2) There are no U.S. registrations as of December 6, 1995.

[FR Doc. 96–15193 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

RIN 2070–AB78

[PP 4F4278/R2239; FRL–5377–7]

Triflusulfuron Methyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document establishes time-limited tolerances for residues of the herbicide triflusulfuron methyl, methyl 2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluroroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate, in or on the raw agricultural commodities sugar beet tops and sugar beet roots. Because additional time is needed for the petitioner to submit additional product chemistry data for an updated manufacturing process, the Agency is granting the tolerances for sugar beet root and top with a 3–year expiration date. E.I. duPont de Nemours Company requested these tolerances in a petition submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: June 14, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP PP 4F4278/R2239], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to EPA Headquarters Accounting Office Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamil.gov. Copies of objections and hearing must submitted as an ACSII file avoiding the use of special characters and any firm of encryption. Copies of objections and hearing requests will also be accepted on disks in Word Perfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic hearing requests in electronic form must be identified by the docket number [PP 4F4278/R2239]. No confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 17, 1995 (60 FR 42884) (FRL–4963–7) which announced that E.I. DuPont de Nemours Co., Barley Mill Plaza, Walkers Mill Building 37, Post Office Box 80038, Wilmington, DE 19880-0038, had submitted a pesticide petition (PP 4F4278) which proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of the herbicide triflusulfuron methyl (methyl 2-[[[[[4-(dimethylamino)-6-(trifluoroethoxy)-1,3.5-(triazin-2-yl]amino]carbonyl]amino] sulfonyl]-3-methylbenzoate) in or on the raw agricultural commodities sugar beet root and sugar beet top at 0.05 ppm. No comments or request for referral to an advisory committee were received in response to this notice of filing.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances are listed below.

1. Several acute toxicology studies placing technical grade triflusulfuron methyl in toxicity Category III for acute dermal toxicity and primary eye irritation and toxicity Category IV for acute oral toxicity, acute inhalation toxicity and primary dermal irritation. Technical triflusulfuron methyl was not a skin sensitizer.

2. An acute neurotoxicity screening battery with rats fed dosages of 500, 1,000 or 2,000 milligrams/kilograms/day (mg/kg/day) with a no-observed-effect level (NOEL) of 2,000 mg/kg/day (limit dose).

3. A 21–day dermal toxicity study with rabbits fed dosages of 50, 300, or 1,000 mg/kg/day with a systemic toxicity NOEL equal to or greater than 1,000 mg/kg for males and females and a dermal toxicity NOEL equal to or greater than 1,000 mg/kg/day for males and females.

4. A subchronic neurotoxicity study with rats fed dosages of 0, 6.1, 46.1, 92.7, or 186.2 mg/kg/day (males) or 7.1, 51.6, 104.1 or 205.2 mg/kg/day (females) with a NOEL of 92.7 mg/kg/day (males) and 7.1 mg/kg/day (females) based on decreased body weight/body weight gain at the lowest observed effect level (LOEL) of 186.2 mg/kg/day (males) and 51.6 mg/kg/day (females).

5. A 1 year oral toxicity study with dogs fed dosages of 1.0, 26.9, 111.6 mg/kg/day (males) and 1.2, 27.7, and 95.5 mg/kg/day (females) with a NOEL of 26.9 mg/kg/day (males) based on increases in alkaline phosphatase; liver weight, and incidence of minimal centrilobular hepatocellular hypertrophy at the LOEL of 111.6 (males) and a NOEL of 27.7 mg/kg/day (females) based on increased liver weight and increased incidence of minimal centrilobular hepatocellular hypertrophy at the LOEL of 95.5 mg/kg/day (females).

6. In an 18–month carcinogenicity study mice were fed dosages of 1.37, 20.9, 349 and 1,024 mg/kg/day (males) and 1.86, 27.7, 488 and 1,360 mg/kg/day (females). Male mice had statistically significant positive trends for hepatocellular adenomas and for combined adenoma/carcinoma (driven entirely by adenomas) at 349 and 1,024

mg/kg/day. These increases were not significant in pair-wise comparisons with control groups and were determined not to be carcinogenic effects by the Carcinogenicity Peer Review Committee (CPRC).

7. In the combined chronic toxicity/carcinogenicity study rats were fed dosages of 0, 0.406, 4.06, 30.6 and 64.5 mg/kg/day (males) and 0, 0.546, 5.47, 41.5, and 87.7 mg/kg/day (females). Male rats had a significant increasing trend and significant differences in pair-wise comparisons of the 30.6 and 64.5 mg/kg/day dose groups with controls for interstitial cell ademonas. This effect was determined to be a carcinogenic effect by the CPRC. No carcinogenic effects were noted in females up to and including 87.7 mg/kg/day (highest dose tested (HDT)). The LOEL for chronic toxicity is 30.6 mg/kg/day (males) and 41.5 mg/kg/day (females) based on decreased body weight and body weight gain, alterations in the hematology parameters (males predominately) and an increased incidence of interstitial cell hyperplasia in males. The NOEL for chronic toxicity is 4,06 mg/kg/day (males) and 5.47 mg/kg/day (females). This value is adjusted to the lowest concentration level of the chemical at this dosage (60%) resulting in NOELs 2.44 mg/kg/day (males) and 3.28 mg/kg/day (females).

8. In a developmental study rats were fed dosages of 0, 30, 120, 350, and 1,000 mg/kg/day with a developmental NOEL equal to or greater than 1,000 mg/kg/day (HDT) and a maternal toxicity NOEL of 120 mg/kg/day with a LOEL of 350 mg/kg/day based on reduced body weight gain in the 350 and 1,000 mg/kg/day animals, reduced food consumption in the 1,000 mg/kg/day animals and lower food efficiency in the 350 and 1,000 mg/kg/day groups.

9. In a developmental study rabbits were fed dosages of 0, 15, 90, 270, and 800 mg/kg/day with a NOEL for developmental toxicity of 90 mg/kg/day with a LOEL of 270 mg/kg/day based on the increase in abortions and a decrease in mean fetal body weight. The NOEL for maternal toxicity is 90 mg/kg/day with a LOEL of 270 mg/kg/day based on maternal death and abortions, an increase in clinical signs noted in the mid-high and high dose groups, decreased food efficiency and increased post mortem finding describing gastrointestinal effects.

10. In a two-generation rat reproduction study rats were fed dosages of 0, 0.588, 5.81, 44.0 and 89.5 mg/kg/day (males) and 0, 0.764, 7.75, 58 and 115 mg/kg/day (females) with a reproductive toxicity NOEL equal to or greater than 89.5 and 115 mg/kg/day for males and females, respectively, based on the absence of reproductive effects in rats at the highest dose level. The NOEL for systemic toxicity was 5.81 and 7.75 for males and females, respectively, based on decreased body weight/body weight gain and food efficiency in males and females, and decreased weights of offspring from the Fo generation on days 14 and 21 post-partum at 44.0 and 58.0 mg/kg/day in males and females respectively.

11. Mutagenicity data submitted for the parent compound, triflusulfuron methyl included a reverse mutation assay (Ames Test) which was negative at concentrations up to 1,000 µg/plate, the highest level tested; a *Salmonella typhimurium* plate incorporation assay which was negative at concentration up to 3,000 µg/plate, the highest level tested; and a CHO/HPRT assay which was negative at concentrations up to 2,000 mg/kg/day, the highest level tested. A chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations greater than or equal to 1,500 µg/ml. A second chromosomal aberration/human lymphocyte assay was positive in the presence of metabolitic activation at concentrations of 2,000 µg/ml. Results in the absence of metabolic activation were inconclusive for both chromosomal aberration studies. The mouse bone marrow micronucleus test was negative at doses up to 5,000 mg/kg, the highest dose level tested. In three *Salmonella typhimurium* plate incorporation assays metabolites of triflusulfuron methyl were negative up to 5,000 µg/plate, the highest level tested.

12. A series of *in vivo* and *in vitro* studies were conducted in male rats to investigate the mechanism by which triflusulfuron methyl induces Leydig cell tumors in the testes. The studies demonstrated that triflusulfuron methyl produces a dose dependent decrease in the aromatase activity *in vitro*. However, the effects of the chemical on the enzyme *in vivo* are not conclusive since no inhibition of activity at extremely high dose levels after a 2-week exposure period were observed. Further, the hypothesis that this effect is mediated by a chronic depression in estradiol altering the negative feedback mechanism for LH upon the Leydig cells of the testes has been suggested but not clearly demonstrated. A trend but not pairwise statistical significance has been shown for either the 750 or 1,500 ppm serum levels of testosterone or estradiol after 1 year of exposure. In addition, no elevation in serum levels of LH were noted at either dose level.

The Carcinogenicity Peer Review Committee (CPRC) of Health Effects Division (HED) has evaluated the rat and mouse cancer studies on triflusulfuron methyl along with other short term toxicity studies, mutagenicity studies and structure activity relationships. The CPRC agreed that triflusulfuron methyl should be classified as a Group C-possible human carcinogen and that for the purpose of risk characterization the Reference Dose (RfD) approach should be used for quantification of human risk.

This decision was based on evidence of highly significant, dose-related increase in the incidence of interstitial cell adenomas in the rat at two doses. Evidence of a hormonal basis for these tumors was suggestive, but not conclusive. There was some evidence of clastogenic activity for triflusulfuron methyl which needs further study. A DNA damage/repair test in germ cells (e.g. alkaline elution assay) is being requested to clarify this. The evidence from structurally related analogs was mixed, of 12 chemicals in this class (sulfonylureas), primisulfuron methyl, prosulfuron, and tribenuron methyl have been associated with carcinogenic activity in rodents. The RfD approach for risk quantification was chosen because the tumors (testicular interstitial cell) were benign.

Based on an NOEL of 2.44 mg/kg bwt/day in the 2 year rat feeding study, and using a 100-fold safety factor, the reference dose RfD for triflusulfuron methyl is calculated to be 0.024 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for these tolerances is 0.000017 mg/kg/day which represents 0.069% of the RfD for the overall U. S. population. For U. S. subgroup population, children aged 1 to 6, the TMRC for these tolerances is 0.000041 which represents 0.17% of the RfD assuming residue levels are at established tolerances and that 100 percent of the crop is treated. No other tolerances are published for triflusulfuron methyl.

Data desirable but lacking for this chemical include additional product chemistry data on an updated manufacturing process and a DNA damage/repair test on germ cells. The Agency is granting the tolerances for sugar beet top and sugar beet root with a 3-year expiration date to allow the petitioner E.I. DuPont de Nemours Company to provide the additional product chemistry data.

There are currently no regulations against the registration of this chemical for use on sugar beets. Even though triflusulfuron methyl is classified as a C-carcinogen, EPA believes that the

establishment of these tolerances will not pose an unreasonable risk to humans as a result of dietary exposure. The establishment of these tolerances utilize less than 1% (0.069%) of the RfD.

The pesticide is useful for the purpose for which the tolerances are sought. The nature of the residue in plants and animals is adequately understood for the purposes of establishing these tolerances. Adequate analytical methodology (high pressure liquid chromatography (HPLC) using a C-8 or C-18 reverse phase analytical column) is available for enforcement purposes. Because of the long lead-time from establishing tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement. Request by mail from Calvin Furlow, Public Response Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202. No detectable secondary residues are expected in milk; eggs; meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, or poultry from this use.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, EPA is establishing the tolerances as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above, 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor‘s contentions on each such issue, and a summary of any evidence relied upon by the objector, 40 CFR 178,27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

A record has been established for this rulemaking under docket number [PP 4F4278/R2239] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p,m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the docket number [PP 4F4278/R2239], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, DC 20460. A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:opp-Docket@epamail.epa.gov.

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

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ‘‘significant’’ and therefore subject to review by the Office Of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ‘‘significant regulatory action’’ as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ‘‘economicallysignificant’’); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President‘s priorities, or the principles set forth in this Executive Order. Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ‘‘significant’’ and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ‘‘unfunded mandates’’ as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership; or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 180

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

Dated: June 3, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding § 180.492 to subpart C to read as follows;

§ 180.492 Triflusulfuron Methyl; Tolerances for Residues

Tolerances to expire as shown in the table below are established for residues of the herbicide, triflusulfuron methyl, methyl 2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluorothoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate, in or on the raw agricultural commodities:

Commodity	Parts per million	Expiration date
Sugar beet, root	0.05	June 14, 1999.
Sugar beet, top	0.05	June 14, 1999.

[FR Doc. 96–15194 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 0E3835/R2241; FRL–5370–8]

RIN 2070–AB78

Diflubenzuron; Pesticide Tolerance for use on Artichokes

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the insecticide diflubenzuron in or on the raw agricultural commodity artichokes. The Interregional Research Project No. 4 (IR-4) requested the regulation to establish a maximum permissible level for residues of the insecticide pursuant to the Federal Food, Drug and Cosmetici Act (FFDCA).

EFFECTIVE DATE: This regulations is effective June 14, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 0E3835/R2241], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 0E3835/R2241]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202; 703-308-8783; e-mail:jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 17, 1996 (61 FR 16745), EPA issued a proposed rule (FRL–5356–5) that gave notice that the Interregional Research Project No.4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3835 to EPA on behalf of the Agricultural Experiment Station of California. This petition requests that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e) amend 40 CFR 180.377 by establishing a tolerance for residues of the insectide diflubenzuron (*N*-[[4-chlorophenyl)amino]carbonyl]-2,6-diflubenzamide) in or on the raw agricultural commodity artichokes at 6.0 parts per million (ppm). There were no comments or request for referral to an advisory committee received in response to the proposed rule.

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

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP–300401A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the

use of special characters and any form of encryption.

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

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

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

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis of this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 3, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.377, the table to paragraph (a) is amended by adding alphabetically the entry for artichokes, to read as follows:

§ 180.377 Diflubenzuron; tolerance for residues.

(a) * * *

Commodity	Parts per million
Artichokes	6.0
* * * * *	

[FR Doc. 96–15191 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP3F4268, FAP5720/R2247; FRL–5375-6]

Quizalofop-P Ethyl Ester; Pesticide Tolerance and Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document increases the current tolerance for cotton seeds to 0.1 part per million (ppm) for the combined residues of the herbicide quizalofop-p-ethyl ester [ethyl (R)-2[4-((6-chloroquinoxalin-2-yl)oxy)phenoxyl]propanoate], and its acid metabolite quizalofop-p [R-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid], and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester; establishes time limited tolerances with an expiration date for quizalofop-p-ethyl ester in or on the raw agricultural commodities legume vegetables (succulent or dried) group at 0.25 ppm, foliage of legume vegetables (except soybeans) at 3.0 ppm, sugarbeet root at 0.1 ppm, sugarbeet top at 0.5 ppm; and establishes a time limited feed additive tolerance with an expiration date for quizalofop-p-ethyl ester for sugarbeet molasses at 0.2 ppm. Because there has been insufficient time since the imposition of the additional data requirements for specific geographical representation for sugarbeet and bean field trials to generate the necessary residue data and additional time is necessary to further refine a revised analytical method and complete the tolerance method validation (TMV), the Agency is granting the tolerances for legume vegetables (succulent and dried) group, foliage of legume vegetables (except soybeans), sugarbeet top and sugarbeet root with a 3–year expiration date]. E.I. du Pont de Nemours Co., requested these tolerances and feed additive regulations in petitions submitted to the EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: These regulations become effective June 14, 1996.

ADDRESSES: Written objection and hearing requests, identified by the document control number, [PP3F4268, FAP5H5720/R2247], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington DC 20460. Fees accompanying objections shall be labeled ''Tolerance Fees'' and forwarded to: EPA Headquarters Accounting Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing request filed with the Hearing Clerk may also be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C) , Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

copies of objections and hearing requests will also be acceptable on disks in Word Perfect 5.1 file format or ASCII file format. All copies of objections and hearing requests electronic form must be identified by the docket number [PP3F4268, FAP5H5720/R2247]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 703-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register August 17, 1995 (60 FR 42884) (FRL-4963-7), which announced that the E.I. du Pont de Nemours Co., Inc., Walkers Mill Bldg, Barley Mill Plaza, Wilmington, DE 19880, had submitted pesticide petition (PP) 3F4268 to EPA proposing that 40 CFR part 180 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester (ethyl R-2-(4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid) and the S enantiomers of the ester and acid, all expressed as quizolofop-p-ethyl ester, in or on the raw agricultural commodities legume vegetable (succulent or dried) group at 0.3 ppm, foilage of legume vegetables (except soybeans and bean hay) at 0.7 ppm; sugar beet root at 0.1 ppm; sugar beet top at 0.5 ppm and cottonseed at 0.1 ppm. Dupont also submitted feed additive petition (FAP) 5H5720 proposing to amend 40 CFR part 186 by establishing a regulation to permit residues of the herbicide quizalofop-p-ethyl ester [ethyl R-2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid, and the senantiomers of the ester and the acid all expressed as quizalofop-p-ethyl ester, in or on the animal feed sugar beet molasses at 0.2 ppm.

No comments or requests for referral to an advisory committee were received in response to these notices of filing.

Subsequently, the petitioner amended these petitions by submitting revised section Fs. Amended filing notices were published in the Federal Register of September 13, 1995 (60 FR 47577) (FRL-4975-3), proposing these changes.

PP 3F4268. DuPont amended this petition by proposing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester and its acid metabolite, quizalofop-p-[R-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of the ester and the acid all expressed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities (RACs): cotton seed at 0.1 ppm, legume vegetable (succulent or dried) group at 0.3 ppm; foliage of legume vegetable (except soybeans and bean hay) at 0.7 ppm; sugar beet root at 0.1 ppm; and sugar beet top at 0.5 ppm.

FAP 5H5720. DuPont amended this petition by proposing that 40 CFR part 186 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester and its acid metabolite quizalofop-p-(R-(2-(4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the feed commodity sugar beet molasses at 0.5 ppm.

The Agency received one comment opposing the tolerances stated in the amended filing notices published September 13, 1995. The commenter's opposition to the tolerances was based upon toxicological concerns including the concept of ''NOEL'' (no observed effect level); the use of animal testing to represent human reaction to potentially toxic substances (pesticides); the indications of a link between pesticide exposure and Parkinson's Disease (PD).

The Agency has reviewed the comment and decided to proceed with these tolerances. The Agency, made the decision that a wide variety of toxicological studies would serve as the basis for determining if a pesticide could be requested and used without an reasonable risk. It is true that animal models do not and cannot predict every human reaction to pesticides, but the general consensus is that they offer the best information as to what a pesticide might do to humans. Usually, the Agency requires and reviews long-term studies in rodents and non-rodents to determine a dose which causes no observed adverse effects. The NOEL is divided by an uncertainty factor-often at least 100-to arrive at doses or exposures that should not cause harmful effects on humans. This is a long established procedure and EPA believes is protective of public health.

The Agency understands that the testing of one pesticide does not predict all the possible adverse interactions with other pesticides—or for that matter other drugs or environmental pollutants. The Agency is exploring ways of testing the interactions of pesticides having a similar toxicity endpoint, but progress in that area is slow. The commenter presented no evidence showing quizalofop-p-ethyl ester would interact with other pesticides.

With reference to the indications of a link between pesticide exposure and Parkinson's disease, the Agency is aware that many researchers are investigating the potential reaction of pesticide exposures to chronic neurological diseases including Parkinson's Disease, and additional research is need to study this important area. Available studies in humans or animals have not yet established any relationship between pesticide exposures and Parkinson's Disease.

During the course of the review of these petitions, the Agency determined that the tolerances proposed for cottonseed, legume vegetables (succulent of dried), foliage of legume vegetables (except soybean and bean hay), and the proposed feed additive regulation for sugarbeet molasses need revisions. The petitioner subsequently submitted a revised section F proposing that tolerances be established for the combined residues of the herbicide quizalofop-p-ethyl ester [ethyl] (R)[2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [R-(2-4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the acid, all expressed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities: cottonseed at 0.1 ppm; legume vegetable (succulent or dried) group at 0.25 ppm; foliage of legume vegetables (except soybeans) at 3.0 ppm; sugar beet root at 0.1 ppm; and sugar beet top at 0.5 ppm. A revised section F was submitted for FAP 5H5720 proposing the establishment of a feed additive tolerance for the combined residues of the herbicide quizalofop-p-ethyl ester [ethyl] (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [R-(2-(4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantioners of the ester and the acid, all expressed as quizalofop-p-ethyl ester be established on sugarbeet molasses at 0.2 ppm. The 3.0 ppm tolerance for foliage of legume vegetables was previously proposed under PP 5F4545 on February 1, 1996 (61 FR 3696) (FRL-4994-3). The proposed tolerance for sugarbeet molasses was previously proposed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below considered in support of this tolerance.

1. Several acute toxicology studies placing technical grade quizalofop ethyl in toxicity Category III.

2. An 18-month carcinogenicity study with CD-1 mice fed dosages of 0, 0.3, 1.5, 12, and 48 mg/kg/day with no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day and a marginal increase in the incidence of hepatocellular tumors at 48 mg/kg/day HDT (highest dose tested) which exceeded the maximum tolerated dose (MTD). (Please see the discussion by the HED Carcinogenicity Peer Review Committee.)

3. A 2-year chronic toxicity/carcinogenicity study in rats fed dosages of 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, with no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT) and a systemic NOEL of 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobular enlargement of the liver at 3.7 mg/kg/day.

4. A 1-year feeding study in dogs fed dosages of 0. 0.625, 2.5, and 10 mg/kg/day with NOEL of 10 mg/kg/day (HDT).

5. A developmental toxicity study in rats fed dosage levels of 0, 30, 100, and 300 mg/kg/day (HDT), with a maternal toxicity NOEL of 30 mg/kg/day and a developmental toxicity NOEL of greater than 300 mg/kg/day (HDT).

6. A developmental toxicity study in rabbits fed dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT), and a maternal toxicity NOEL of 20 mg/kg/day based on decreases in food consumption and body weight gain at 60 mg/kg/day (HDT).

7. A two-generation reproduction study in rats fed dosages of 1, 1.25, 5, and 20 mg/kg/day with a reproductive (developmental) NOEL of 1.25 mg/kg/day based on an increase in liver weight and increase in the incidence of eosinophilic changes in the liver at 5.0 mg/kg/day and a parental NOEL of 5.0 mg/kg/day based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

8. Mutagenicity data included gene mutation assays with *E. coli* and *S. typhimurium* (negative); DNA damage assays with *B. subtillis* (negative) and a chromosomal aberration test in Chinese hamster cells (negative).

The Carcinogenicity Peer Review Committee (CPRC) of HED has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short-term toxicity studies, mutagenicity studies, and structure activity relationships. The CPRC concluded, after three meetings and an evaluation by the OPP Science Advisory Panel, that the classification should be a Category D (not classifiable as to human cancer potential). No new cancer studies were required.

The first CPRC review tentatively concluded that quizalofop should be classified as a Category B2 (probable human carcinogen). That classification was based on liver tumors in female rats, ovarian tumors in female mice, and liver tumors in male mice. This classification was downgraded to a Category C (possible human carcinogen) at a second CPRC review. The change in classification was due to a reexamination of the liver tumors in female rats and ovarian tumors in female mice. The first peer review had found a statistically significant positive trend for liver carcinomas in female rats. Subsequent to this conclusion the tumor data was reevaluated, and the reevaluation showed a reduced number of carcinomas. Although there remained a statistically significant positive trend for carcinomas in the study, the CPRC concluded that the carcinomas were not biologically significant given the few carcinomas identified (one at the mid-dose and two at the high dose). Noting that this level of carcinomas was within historical levels, the CPRC concluded that administration of quizalofop did not appear to be associated with the liver carcinomas.

As to the ovarian tumors in female mice, the CPRC had first attached importance to the fact that these tumors were statistically significant at the high dose as compared to historical control values although statistically significant when compared to concurrent controls. However, review of further historical control data showed that the level of ovarian tumors in the quizalofop study was similar to the background rate in several other studies. Given this information and that the quizalofop study showed no hyperplasia of the ovary, no signs of endocrine activity related to ovarian function, and no dose response relationship, the CPRC concluded that the ovarian tumors were probably not compound-related.

The findings of the second CPRC review were presented to EPA's Scientific Advisory Panel (SAP). The SAP concurred with the CPRC conclusion that the liver tumors in female rats and the ovary tumors in female mice showed no evidence of carcinogenicity. However, the SAP disagreed with CPRC's classification of quizalofop as a Category C based on the liver tumors in male mice. The SAP concluded that the mouse liver tumors did support such a classification because the tumors occurred at a dose above the maximum-tolerated dose (MTD) and because they were not statistically significant if a ''p'' value of less than .01 was used instead of a ''p'' value of less than .05. The SAP believed that such greater statistical rigor was appropriate for variable tumor endpoints such as male mouse liver tumors.

Following the SAP review, the CPRC changed the classification for quizalofop to Category D. The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls and the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control-groups.

EPA has found the evidence on the carcinogenicity of quizalofop-p-ethyl ester in animals to be equivocal and therefore concludes that quizalofop-p-ethyl ester does not induce cancer in animals within the meaning of the Delaney clause. Important to this conclusion was the following evidence: (1) The only statistically significant tumor response that appears compound-related was seen at a single dose in a single sex in a single species; (2) the response was only marginally statistically significant; (3) the response was only significant when benign and malignant tumors were combined; (4) the tumors were in the male mouse liver; (5) the tumors were within historical controls; and (6) the mutagenicity studies were negative. Although in some circumstances a finding of animal carcinogenicity could be made despite any one, or even several, of the six factors noted, the combination of all of these factors here cast sufficient doubt on the reproducibility of the response in the high dose male mouse that EPA concludes the evidence on carcinogenicity is equivocal.

Based on the NOEL of 0.9 mg/kg/bwt/day in the 2-year rat feeding study, and using a hundred-fold uncertainty factor, the reference dose (RFD) for quiazalofop ethyl is calculated to be 0.009 mg/kg/

bwt/day. The theoretical maximum residue contribution (TMRC) is 0.000218 mg/kg/bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by less than 0.000260 mg/kg/bwt/day. These tolerances and previously established tolerances utilize a total of 5.3 percent of the RFD for the overall U.S. populations, with all exposure coming from published uses. For U.S. subgroup populations, non-nursing infants and children aged 1 to 6 years, the current action and previously established tolerances utilize, respectively a total of 18.8 percent and 11.9 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is tested.

Data desirable but lacking for this chemical include additional sugarbeet and bean residue field trials and completion of a tolerance method validation (TMV) for a revised analytical method. The additional residue data are needed in response to a recent change in EPA guidelines. The Agency is granting the tolerances for legume vegetables (succulent or dried) group, foliage of legume vegetables (except soybeans), sugarbeet root and sugarbeet top with a 3-year expiration date to allow the petitioner, E.I. duPont de Nemours and Company to gather additional residue data and to further refine the analytical method and allow the Agency to complete the TMV.

The nature of the residue in plants and livestock is adequately understood. An adequate amount of geographically represenative crop field reidue data were presented which show that the proposed tolerances should not be exceeded when quizalofop-p ethyl ester is formulated into ASSURE II and used as directed. An adequate analytical method (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. Any secondary residues expected to occur in milk, eggs, and meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry will be covered by existing tolerances.

The pesticide is considered useful for the purpose for which the regulation is sought and is capable of achieving the intended physical or technical effect.

Based on the information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health, and the establishment of feed additive regulations by amending 40 CFR part 186 will be safe. Therefore, EPA is establishing the tolerances and feed additive regulation as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above, 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33 (i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor‘s contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

A record has been established for this rulemaking under docket number [PP3F4268, FAP5H5720/R2247] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP3F4268, FAP5H5720/R2247] may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-docket@epamail.epa.gov.

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

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ‘‘significant’’ and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under Section 3(f), the order defines a ‘‘significant regulatory action’’ as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, completion, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ‘‘economically significant’’); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ‘‘significant’’ and therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ‘‘unfunded mandates’’ as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled *Enhancing the Intergovernmental Partnership*; or special consideration as required by

Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 180

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

List of Subjects in 40 CFR Part 186

Environmental protection, Animals feeds, Pesticides and pests.

Dated: May 29, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. In 180.441, by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

* * * * *

(c) Tolerances are established for the combined residues of the herbicide quizalofop-p ethyl ester [ethyl (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [R-(2-(4-((6-quinoxalin-2-yl)oxy)phenoxy)propanoic acid], and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the following raw agricultural commodities;

Commodity	Parts per million
cottonseed	0.1
lentils	0.05

(d) Time limited tolerances to expire on June 14, 1999 are established for the combined residues of the herbicide quizalofop-p ethyl ester (ethyl (R)-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate) and it acid metabolite quizalofop-p [R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities:

Commodities	Parts per million
foliage of legume vegetables (except soybeans).	3.0
legume vegetables (succulent or dried) group.	0.25
sugarbeet, root	0.1
sugarbeet, top	0.5

PART 186—[AMENDED]

2. In part 186:

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

Authority: 21 U.S.C. 342, 348, and 701.

b. In 186.5250, by redesignating the existing paragraph and table as paragraph (a) and adding paragraph (b) to read as follows:

§ 186.5250 Quizalofop ethyl.

* * * * *

(b) A feed additive regulation to expire (insert date 3 years from date of publication in the Federal Register) is established to permit the combined residues of the herbicide quizalofop-p-ethyl ester [ethyl] (R)-2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on sugar beet molasses at 0.2 part per million (ppm)

[FR Doc. 96–15040 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 106

[Docket No. RSP–1, Amdt. No. 106–11]

RIN 2137–ACXX

Direct Final Rule Procedure; Petitions for Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: To further the goals of Executive Order 12866 on Regulatory Planning and Review, and in response to the recommendations of the National Performance Review (NPR) and the former Administrative Conference of the United States, RSPA is implementing a new and more efficient procedure for adopting noncontroversial rules. This ''direct final rule'' procedure involves issuing a final rule providing notice and an opportunity to comment and stating that the rule will become effective on a specified date without further publication of the text of the rule if RSPA does not receive an adverse comment or notice of intent to file an adverse comment. If no adverse comment or notice of intent to file an adverse comment were received, RSPA would issue a subsequent notice in the Federal Register to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment were received, RSPA would issue a subsequent notice in the Federal Register to confirm that fact and withdraw the direct final rule before it goes into effect.

RSPA is also amending its rulemaking procedures to specify in more detail the required contents of a petition for rulemaking and provide that petitions for rulemaking and petitions for reconsideration will be reviewed and acted upon by the appropriate Associate Administrator or the Chief Counsel and that decisions of the Associate Administrator may be appealed to the Administrator.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001; Telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993), the President set forth the Administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of limited government resources for carrying out its regulatory functions. Furthermore, ''Improving Regulatory Systems,'' an Accompanying Report of the National Performance Review, recognized the need to streamline the regulatory process and recommended the use of ''direct final'' rulemaking

procedures to reduce needless double review of noncontroversial rules.

The former Administrative Conference of the United States (ACUS) adopted Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking,'' which endorses direct final rulemaking as a procedure that can expedite rules in appropriate cases. (*See* 60 FR 43108; August 18, 1995.) (ACUS studied the efficiency, adequacy and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs, and made recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States.) ACUS found direct final rulemaking appropriate where a rule is expected to generate no significant adverse comment. ACUS defined a significant adverse comment as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Under ACUS Recommendation 95–4, an agency would issue a final rule with a statement that the rule becomes effective automatically at a specified time, if the agency received no significant adverse comments. This would eliminate a second round of intra- and inter-agency review. If a significant adverse comment were received, the agency would withdraw the rule before the effective date and issue a notice of proposed rulemaking. As noted in the report, ''this approach avoids the second round of clearances and review, which otherwise delays rules, wastes time, and should be superfluous * * *. Theoretically, the second review ought to be very quick, but clearing any document through numerous government offices takes time. The paper shuffling also wastes reviewers' time by requiring them to look at something twice when once would have sufficed.'' (''Improving Regulatory Systems,'' p. 42.)

The Secretary of Transportation has directed administrations within the Department of Transportation (DOT) to focus on improvements that can be made in the way in which they propose and adopt regulations. This is consistent with both the letter and the spirit of the Executive Order and the NPR Recommendations.

II. Proposed Rule

In its December 18, 1995 Notice of Proposed Rulemaking (NPRM), 60 FR 65210, RSPA proposed to adopt, in a new § 106.39, direct final rulemaking procedures for noncontroversial rules, such as minor, substantive changes to regulations; incorporation by reference of the latest editions of technical or industry standards; and extensions of compliance dates. RSPA solicited comment on the advisability of using direct final rules for these categories of rules, as well as suggestions for other types of rules that could be issued as direct final rules.

RSPA stated that if it believed a rulemaking in these categories would be unlikely to result in significant adverse comment, it would use its proposed direct final rulemaking procedures. Under those proposed procedures, a direct final rule would advise the public that no significant adverse comments are anticipated and, unless a significant adverse comment or intent to submit a significant adverse comment is received, in writing, within a certain period of time (generally 60 days), the rule would become effective on a specified date (generally 90 days after publication). If no significant adverse comment or notice of intent to file significant adverse comment were received, RSPA proposed to issue a subsequent document advising the public of that fact and that the rule would become, or did become, effective on the date previously specified in the direct final rule. RSPA stated in the NPRM that direct final rules would not be subject to petitions for reconsideration under 49 CFR 106.35.

In the NPRM, RSPA also stated that if it received a significant adverse comment or notice of intent to file a significant adverse comment, it would publish a document in the Federal Register withdrawing the direct final rule, in whole or in part. If RSPA believed it could incorporate the adverse comment in a subsequent direct final rulemaking, without generating further significant adverse comment, RSPA proposed to do so. If RSPA believed that the significant adverse comment raised an issue serious enough to warrant a substantive response in a notice-and-comment process, RSPA stated that it could publish a notice of proposed rulemaking, following the procedures provided in 49 CFR §§ 106.11–106.29, which would give an opportunity to comment to persons who may not have commented earlier because they wanted the rule to go into effect immediately. RSPA proposed that, where a significant adverse comment applied to part of a rule and that part could be severed from the remainder of the rule (for example where a rule deleted several unrelated regulations), RSPA would adopt as final those parts of the rule that were not the subject of a significant adverse comment.

Furthermore, RSPA proposed to adopt ACUS's definition of ''significant adverse comment.'' Specifically, a significant adverse comment would be one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. RSPA noted that frivolous or insubstantial comments would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the commenter stated why the rule would be ineffective without the additional change.

RSPA also proposed to amend § 106.3 to clarify that RSPA's Chief Counsel has the delegated authority to conduct rulemaking proceedings, § 106.17 to clarify the procedures for participation by interested parties in the rulemaking process, and § 106.31 to specify in more detail the required contents of a petition for rulemaking.

RSPA further proposed to amend 49 CFR §§ 106.31, 106.33, 106.35 and 106.37 to provide that petitions for rulemaking and petitions for reconsideration be filed with the appropriate Associate Administrator or the Chief Counsel, who will review and issue determinations granting or denying the petitions in whole or part. RSPA also proposed to add a new § 106.38 to provide that any interested party may appeal a decision of an Associate Administrator or the Chief Counsel to RSPA's Administrator.

III. Discussion of Comments

RSPA received 25 written comments on the NPRM. The comments were submitted by chemical manufacturers, trade associations, transporters and one State agency. Commenters uniformly supported RSPA's efforts to streamline and clarify rulemaking procedures, cut costs and reduce regulatory burdens. Twenty-two of the commenters supported RSPA's proposal, with 14 of them suggesting changes to the proposal or requesting clarification. Only three commenters opposed the proposal. Two objected based on their belief that the proposal abrogated notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. 553. The third commenter asserted that RSPA failed to adequately justify the reasons for the proposed changes to the agency's regulatory procedures.

A detailed discussion of the comments, and RSPA's response to

them, is provided in the following summary.

A. ''Noncontroversial'' Rules

In the NPRM, RSPA proposed to implement direct final rulemaking procedures for adopting ''noncontroversial rules, such as minor, substantive changes to regulations, incorporation by reference of the latest edition of technical or industry standards, extensions of compliance dates . . . .'' RSPA received numerous requests for clarification of what constitutes a ''noncontroversial'' rule, including requests that RSPA provide a list of the types of rules that it considers noncontroversial. RSPA also received several comments stating that the proposed rule gives RSPA too much discretion to determine what is or is not controversial.

First, it would be impossible for RSPA to provide an all-inclusive list of the types of rules that would be handled under direct final rulemaking procedures. RSPA cannot accurately envision every type of rule that the agency might issue in the future. Also, RSPA cannot accurately predict whether those types of rules might lend themselves to direct final rulemaking procedures in every instance. Furthermore, developing such a list could lead to the inadvertent exclusion of some types of rules that are ideally suited to the direct final rule process. RSPA will not attempt to develop an all-inclusive list of the types of rules subject to direct final rule procedures. RSPA will, as proposed, review each rule on its individual merits to determine whether the agency believes the rule will be noncontroversial.

Commenters are correct that, as proposed in the NPRM, the agency has sole discretion in determining whether a rule is or is not controversial. RSPA does not agree, however, that this discretion is overly broad or subject to abuse. The nature of the proposed direct final rule process ensures that RSPA will make a good faith effort to ascertain which rules are truly noncontroversial. As proposed in the NPRM, a mere notice of intent to file an adverse comment is sufficient to terminate the direct final rule process. This alone ensures that RSPA will not waste its limited resources knowingly trying to promulgate a controversial rule under direct final rulemaking procedures. To the extent that the agency miscalculates the contentiousness of a rule, it will have to withdraw that rule. If the agency again decides to move forward on the same issue, it either would be with another direct final rule which addresses the concern voiced in the adverse comment and is, itself, open to public comment, or with a notice of proposed rulemaking using traditional notice-and-comment procedures. Consequently, it is in RSPA's best interest to make every reasonable effort to accurately determine the contentiousness of a rule before deciding to use direct final rulemaking procedures.

Several commenters also remarked that the incorporation of technical standards and industry standards into the Hazardous Materials Regulations (HMR) may be a controversial agency action. RSPA agrees that incorporating technical and industry standards into the HMR may be controversial. On the other hand, there are instances where industry itself has petitioned the agency to incorporate changes into the HMR, and the agency has done so by issuing those changes as a final rule—which was not preceded by an NPRM—without receiving any adverse comments. *See, e.g.*, RSPA Docket HM–166Z, Transportation of Hazardous Materials; Miscellaneous Amendments (59 FR 28487; June 2, 1994) (incorporating by reference the most recent editions of the American National Standards Institute, Inc. Standard N14.1, American Pyrotechnics Association Standard 87–1, Association of American Railroads Specification M–1102, Compressed Gas Association Pamphlet C–7, and Institute of Makers of Explosives Standard 22). Consequently, RSPA will continue to incorporate technical and industry standards into the HMR, without prior opportunity to comment, when the agency reasonably believes that the rule will be noncontroversial. The direct final rule process is an additional tool that the agency may use to do so.

Finally, several commenters expressed concern over RSPA's statement that minor substantive changes to the HMR may be noncontroversial and, thus, subject to direct final rulemaking procedures. Commenters questioned how a change can be minor, substantive and, at the same time, noncontroversial. On numerous occasions, RSPA has made minor, substantive changes to the HMR, without generating adverse comment. For example, in RSPA Docket HM–166Z, discussed above, RSPA revised 49 CFR 173.34(e)(15)(v) to permit cylinders manufactured after December 31, 1945, to be stamped with a five-point star. This action was taken in order to maintain consistency with 49 CFR 173.34(e)(15)(i), which was revised in RSPA Docket HM–166X (58 FR 50496; Sept. 27, 1993). As noted above, no adverse comments were received. Although the change to § 173.34(e)(15)(v) was substantive, it was minor in that it followed logically from significant changes that were made to § 173.34(e)(15)(i), and was necessary to maintain consistency.

Also, in RSPA Docket 222B (61 FR 6478; Feb. 20, 1996) RSPA proposed to amend 49 CFR 172.402 to add an exception from the requirement for subsidiary hazard labeling for certain packages of Class 7 (radioactive) materials that also meet the definition of another hazard class, except Class 9. Only one comment was received to RSPA's proposal to amend § 172.402, and that comment was fully supportive of RSPA's proposal. These actions made or proposed to make substantive yet minor changes to the HMR, and drew no adverse comment. Consequently, as proposed, RSPA will issue these types of substantive, yet minor amendments to the HMR through use of direct final rulemaking procedures.

B. Significant Adverse Comments

RSPA stated in its proposal that if, after publishing a direct final rule, it received no ''significant adverse comments'' or notice of an intent to file a significant adverse comment, the rule would become effective on a specified date without further publication of the text of the rule. RSPA defined ''significant adverse comment'' as one where ''the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.'' No commenter objected to the proposed definition of the term ''significant adverse comment,'' but several commenters objected to the word ''significant,'' stating that the term placed the burden of proof on industry and that the agency would have too much discretion to determine what is ''significant.'' Because no commenter found the proposed definition objectionable, only the terminology, RSPA will adopt the definition of ''significant adverse comment'', as proposed, but will delete the word ''significant'' from the term ''significant adverse comment.''

In addition, several commenters asked RSPA to clarify whether comments alleging increased costs, comments that agree with a proposal but suggest improvements, or comments requesting clarification would be considered sufficiently adverse to require withdrawal of a direct final rule. A comment alleging increased costs would generally be considered adverse. RSPA will not use the direct final rule process where it can reasonably anticipate that

a rule will result in increased costs. However, where the allegation of increased costs is, for example, clearly erroneous, the comment would not be considered sufficient to warrant withdrawal of the direct final rule.

A comment that agrees with the proposal but suggests an improvement would not generally be considered adverse. RSPA stated in the NPRM that ''a comment recommending a rule change in addition to the rule should not be considered a significant adverse comment, unless the commenter states why the rule would be ineffective without the additional change.'' By that statement, RSPA intended to convey that a comment would be considered adverse if it states that the rule would be intrinsically inappropriate without the suggested improvement or if it states that RSPA would be acting inappropriately if it were to adopt the rule without the suggested improvement. On the other hand, a comment might not be considered adverse where RSPA reasonably believes that incorporating the suggested improvement would be noncontroversial, *e.g.,* where the commenter identifies a section of the HMR that should be revised in order to maintain consistency between the identified section and a section amended in a direct final rule, such as the changes made in RSPA Docket HM–166Z to 49 CFR 173.34(e)(15)(v), discussed above. In that instance, after the direct final rule at issue becomes effective, RSPA would make the technical correction in a subsequent miscellaneous correction rulemaking.

Comments requesting clarification would not, in all cases, be considered adverse. For example, a commenter might ask the agency to clarify a particular proposal and at the same time give its own view of what it believes the agency intended. If the commenter has correctly understood the agency's intention, the comment is not adverse and should not result in the withdrawal of a direct final rule. On the other hand, if there is a substantive difference between the commenter's understanding and the agency's intention, and the commenter urges the agency to adopt the commenter's interpretation, the comment would more than likely be considered adverse.

In the NPRM, RSPA stated that frivolous or insubstantial comments would not be considered adverse. Several commenters asked RSPA to clarify those terms. Webster's Ninth New Collegiate Dictionary (1991) defines ''frivolous'' as ''1: of little weight or importance 2 a: lacking in seriousness * * *.'' ''Insubstantial'' is defined as ''lacking in substance or material nature.'' RSPA will only consider comments to be adverse where the commenter demonstrates some minimum level of seriousness of purpose—if RSPA would have responded to a comment in the course of a notice-and-comment rulemaking proceeding, it will consider that comment adverse under the direct final rule procedures. *See, e.g., Center for Auto Safety* v. *Peck,* 751 F.2d 1336, 1355 n. 15 (D.C. Cir. 1985) (agency need not respond to remote or insignificant comments); *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 394 (D.C. Cir. 1973) (''lack of agency response or consideration becomes of concern'' when comment is ''significant enough to step over the threshold requirement of materiality.'')

One commenter suggested that adverse comments be published in the Federal Register. As proposed, RSPA will publish a document in the Federal Register advising the public that an adverse comment or notice of intent to file an adverse comment has been received and that the direct final rule is being withdrawn. RSPA will not publish the full text of an adverse comment in that document, but will identify the commenter and the substance of its adverse comment. The full text of all comments will be available to the public through RSPA's public docket room, Room 8419, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

Finally, several commenters expressed concern with regard to RSPA's statement in the NPRM that ''[i]f RSPA believed it could incorporate [an] adverse comment in a subsequent direct final rulemaking, without generating further significant adverse comment, it could do so.'' Two commenters stated that this would circumvent notice-and-comment procedures under the APA. Another stated that a ''proposed'' direct final rule should look the same as the ''final'' direct final rule. RSPA believes that the commenters misconstrued RSPA's statement to mean that it might incorporate an adverse comment into a direct final rule that would not be subject to further public comment. RSPA merely intended to indicate by that statement that if the agency received an adverse comment, it would terminate the direct final rule at issue but might later initiate another direct final rule proceeding which incorporated the adverse comment. This second direct final rule proceeding, like the first, would be open for public comment.

C. Notice of Intent To File a Significant Adverse Comment

In the notice, RSPA proposed that the filing of a notice of intent to submit an adverse comment would be sufficient to cause the agency to withdraw a direct final rule. One commenter cautioned against giving the public an open-ended opportunity to halt a direct final rule proceeding on the strength of a notice of intent to file an adverse comment. The commenter suggested that RSPA set a time-frame by which an entity filing a notice of intent to file an adverse comment must actually submit its adverse comment; failure to actually submit the adverse comment would allow the direct final rule proceeding to continue, in the absence of any other adverse comments. Another commenter stated that a notice of intent to file an adverse comment should not derail a direct final rule, and argued that a minimum 60-day comment period was sufficient for the filing of substantive comments. The same commenter also noted that comments following a notice of intent to file adverse comments might not actually be adverse. A third commenter suggested that, in lieu of allowing commenters to file a notice of intent to file an adverse comment, the agency allow commenters to request an extension of the comment period when necessary.

RSPA has considered the comments on this issue and will adopt its original proposal. Nevertheless, RSPA will revisit this issue in a future rulemaking if it finds that commenters are abusing the procedure by failing to file adverse comments after they have notified the agency that they intend to do so and after the agency has withdrawn a direct final rule.

D. Severability

RSPA stated in the NPRM that if an adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (for example where a rule deletes several unrelated regulations), RSPA would adopt as final those parts of the rule that were not the subject of the adverse comment. Three commenters expressed the opinion that RSPA should only sever provisions of a direct final rule when they are clearly unrelated to the portion of the rule that was the subject of the adverse comment. RSPA agrees with the commenters that unless a provision of a direct final rule is clearly unrelated to a provision that is the subject of an adverse comment, as where a rule deletes several unrelated regulations, it will withdraw the entire rule.

E. Publication of Direct Final Rule in Federal Register

Two commenters suggested that RSPA follow the U.S. Coast Guard's procedure for publishing a direct final rule in the Federal Register—specifically, they suggest that RSPA publish the text of a direct final rule in the ''Rules'' section of the Federal Register and a cross-reference in the ''Proposed Rules'' section to ensure adequate public notice. RSPA will not adopt the recommended procedure at this time. However, if RSPA finds that publication of direct final rules in the ''Rules'' section of the Federal Register is not providing adequate notice to the public, the agency will revisit this issue.

F. Effective Date of Direct Final Rule

Section 553(d) of the APA states,

> The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—
> (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
> (2) interpretative rules and statements of policy; or
> (3) as otherwise provided by the agency for good cause found and published with the rule.

5 U.S.C. 553(d). Two commenters questioned whether RSPA's proposal would satisfy the 30-day notice requirement of § 553(d). Specifically, if no adverse comment or notice of intent to file one were received, RSPA proposed to issue a subsequent document advising the public of that fact and that the rule will become or did become effective on the date previously specified in the direct final rule. RSPA agrees that its proposed procedure might result in less than 30 days' notice because the document advising that a direct final rule will or did become effective might be published less than 30 days before the effective date of the direct final rule. One of the commenters suggested that RSPA (1) Identify in each direct final rule a date after the close of the comment period by which RSPA will notify the public when or if the rule will become effective and (2) specify an effective date that is at least 30 days after the public notice date. RSPA believes that the commenter's suggestion is a good one and, therefore, will adopt it as part of its direct final rule procedures.

G. Petitions for Reconsideration

Several commenters objected to RSPA's proposal not to allow petitions for reconsideration of direct final rules. They argued that the expedited nature of the direct final rule procedure dictates that petition for reconsideration procedures be kept in place to protect the public interest. After reviewing the comments on this issue, RSPA agrees that a party who has filed what it believes to be adverse comments with the agency may petition the agency for reconsideration if a direct final rule becomes effective despite its comments. Because of the expedited nature of direct final rule procedures, however, petitions for reconsideration of a direct final rule will not be accepted from anyone who did not participate in the comment phase of the direct final rule proceeding. The public interest is adequately protected by commenters' ability to cause the withdrawal of a direct final rule by the filing of a notice of intent to file adverse comments.

H. Administrative Procedure Act

Two commenters argued that direct final rule procedures abrogate the protections afforded to the public under the APA. One commenter stated that ''procedural due process protections afforded in the [APA] should not be truncated by unilateral agency action. Prior notice-and-comment rulemaking is an essential element of regulatory justice and provides legitimacy for agency actions.'' The other commenter stated that RSPA's proposal would ''curtail the procedural protections of the [APA] and simultaneously restrict review of actions taken under the new procedure.''

In recommending that agencies adopt direct final rule procedures, ACUS recognized and discussed the issue of compliance with APA notice-and-comment requirements. In Recommendation 95–4, ACUS stated,

> Under current law, direct final rulemaking is supported by two rationales. First, it is justified by the Administrative Procedure Act's ''good cause'' exemption from notice-and-comment procedures where they are found to be ''unnecessary.'' The agency's solicitation of public comment does not undercut this argument, but rather is used to validate the agency's initial determination. Alternatively, direct final rulemaking also complies with the basic notice-and-comment requirements in section 553 of the APA. The agency provides notice and opportunity to comment on the rule through its Federal Register notice; the publication requirements are met, although the information has been published earlier in the process than normal; and the requisite advance notice of the effective date required by the APA is provided.

60 FR 43111

The direct final rule procedures that RSPA is adopting are justified by the APA's ''good cause'' exemption from notice-and-comment procedures. Nevertheless, the procedures adopted by RSPA also give the public the opportunity to submit comments—where no adverse comments are received, the agency's determination that the rule would be noncontroversial is validated. Consequently, the interests of the public in the rulemaking process are adequately protected under RSPA's direct final rule procedures.

I. Petitions for Rulemaking

In proposed § 106.31(c), RSPA stated that where the potential impact of an action proposed in a petition for rulemaking is substantial, and information and data related to that impact are available to the petitioner, the agency may request the petitioner to provide information and data to assist in rulemaking analyses required under Executive Orders 12866 and 12612, the Regulatory Flexibility Act, the Paperwork Reduction Act and the National Environmental Policy Act. RSPA stated that it may request a petitioner to provide specific information regarding costs and benefits, direct effects, regulatory burdens, recordkeeping and reporting requirements, and environmental impacts of its proposed action, where such information is ''available to the petitioner.'' By ''available,'' RSPA means that the information is in petitioner's possession or obtainable by the petitioner. RSPA's proposal is consistent with ACUS Recommendation 86–6, Petitions for Rulemaking, which suggests how agencies may improve the handling of petitions for the issuance of rules. *See* 51 FR 46985; Dec. 30, 1986. Several commenters supported RSPA's proposal while several others objected to RSPA's proposal as a shifting of governmental functions to industry.

The APA requires Federal agencies to give interested persons the right to petition for the issuance, amendment or repeal of a rule and requires that Federal agencies give prompt notice of a denial of a petition, including a brief statement of the grounds for the denial. 5 U.S.C. 555(e). RSPA encourages the filing of well-supported petitions for rulemaking with the agency, and will consider all petitions that meet the criteria set forth in proposed § 106.31. RSPA's proposed requirements are intended to provide the agency with information that is essential to the agency's review of petitions for rulemaking that have a substantial impact on the public.

The APA does not require agencies to accept all petitions for rulemaking. Consequently, the agency will not consider a petition for rulemaking that is frivolous, that is unsupported, or that fails to adequately set forth information that the agency deems critical to a thorough evaluation of the petition. In

filing a petition for rulemaking, the burden is on the petitioner to provide supporting information and arguments as to why the agency should commit itself to the rulemaking proceeding being advocated by the petitioner.

J. Appeal to Administrator

RSPA received only one comment with respect to its proposal to add a new § 106.38 to provide that any interested party may appeal a decision of an Associate Administrator under § 106.33 or § 106.37 (concerning petitions for rulemaking and petitions for reconsideration, respectively) to the Administrator. The commenter supported RSPA's proposal but noted a lack of detail as to the required contents of a written appeal document. This final rule adopts § 106.38 as proposed and adds the right to appeal a decision of the Chief Counsel to the Administrator. At the appeal stage, all relevant documents that were considered by an Associate Administrator or the Chief Counsel in reaching his decision will be provided by the Associate Administrator or Chief Counsel to the Administrator for review; the party appealing the decision need not provide that information to the agency again. An appeal to the Administrator should identify the decision that is being appealed, state with particularity the aspects of the decision being appealed, and include any new information or arguments that the Administrator is being asked to consider.

K. Miscellaneous

One commenter asked RSPA to distinguish between the interim final rule procedures the agency has used in the past and the agency's proposed direct final rule procedures. Essentially, when an agency uses interim final rulemaking, it adopts a rule without prior public input, makes it immediately effective, and then invites post-promulgation comments directed towards the issue of whether the rule should be changed sometime in the future. The receipt of comments adverse to the interim final rule will not necessarily cause the agency to withdraw the interim final rule, but may lead to future amendments if the agency is persuaded that amendments are necessary. On the other hand, when an agency proposes a rule using direct final rule procedures, a single adverse comment or notice of intent to file an adverse comment will cause the agency to withdraw the rule, whether or not the agency is persuaded that amendments to the rule are necessary.

IV. Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The changes adopted in this rule do not result in any additional costs but result in modest cost savings to the public and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism'') and does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Regulation Identifier Number

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

List of Subjects in 49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Oil, Pipeline safety.

In consideration of the foregoing, 49 CFR Part 106 is amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 40113, 60101–60125; 49 CFR 1.53.

2. In § 106.3, a new paragraph (d) is added to read as follows:

§ 106.3 Delegations.

* * * * *

(d) Chief Counsel.

3. In § 106.17, paragraph (a) is revised to read as follows:

§ 106.17 Participation by interested persons.

(a) Any interested person may participate in rulemaking proceedings by submitting comments in writing containing information, views or arguments in accordance with instructions for participation in the rulemaking document.

* * * * *

4. Section 106.31 is revised to read as follows:

§ 106.31 Petitions for rulemaking.

(a) Any interested person may petition the Associate Administrator to establish, amend, or repeal a substantive regulation, or may petition the Chief Counsel to establish, amend, or repeal a procedural regulation in parts 106 or 107.

(b) Each petition filed under this section must—

(1) Summarize the proposed action and explain its purpose;

(2) State the text of the proposed rule or amendment, or specify the rule proposed to be repealed;

(3) Explain the petitioner's interest in the proposed action and the interest of any party the petitioner represents; and

(4) Provide information and arguments that support the proposed action, including relevant technical, scientific or other data as available to the petitioner, and any specific known cases that illustrate the need for the proposed action.

(c) If the potential impact of the proposed action is substantial, and information and data related to that impact are available to the petitioner, the Associate Administrator or the Chief Counsel may request the petitioner to provide—

(1) The costs and benefits to society and identifiable groups within society, quantifiable and otherwise;

(2) The direct effects (including preemption effects) of the proposed action on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government;

(3) The regulatory burden on small businesses, small organizations and small governmental jurisdictions;

(4) The recordkeeping and reporting requirements and to whom they would apply; and

(5) Impacts on the quality of the natural and social environments.

(d) The Associate Administrator or Chief Counsel may return a petition that does not comply with the requirements of this section, accompanied by a written statement indicating the deficiencies in the petition.

§ 106.33 [Amended]

5. Section 106.33 is amended by replacing the word ''Administrator'' with the words ''Associate Administrator or the Chief Counsel'' wherever it appears.

6. Section 106.33, paragraph (d) is revised to read as follows:

§ 106.33 Processing of Petition.

* * * * *

(d) *Notification.* The Associate Administrator or the Chief Counsel will notify a petitioner, in writing, of his decision to grant or deny a petition for rulemaking.

7. In § 106.35, the first sentence of paragraph (a) is revised to read as follows:

§ 106.35 Petitions for reconsideration.

(a) Except as provided in § 106.39(d), any interested person may petition the Associate Administrator for reconsideration of any regulation issued under this part, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under this part and contained in this part or in Part 107 of this Chapter. * * *

* * * * *

§ 106.35 [Amended]

8. In addition, in § 106.35, paragraphs (b), (c), and (d), the word ''Administrator'' is amended to read ''Associate Administrator or the Chief Counsel'' wherever it appears.

§ 106.37 [Amended]

9. In § 106.37, the word ''Administrator'' is amended to read ''Associate Administrator or the Chief Counsel'' wherever it appears.

10. Part 106 is amended by adding a new § 106.38 to read as follows:

§ 106.38 Appeals.

(a) Any interested person may appeal a decision of the Associate Administrator or the Chief Counsel, issued under § 106.33 or § 106.37, to the Administrator.

(b) An appeal must be received within 20 days of service of written notice to petitioner of the Associate Administrator's or the Chief Counsel's decision, or within 20 days from the date of publication of the decision in the Federal Register, and should set forth the contested aspects of the decision as well as any new arguments or information.

(c) It is requested, but not required, that three copies of the appeal be submitted to the Administrator.

(d) Unless the Administrator otherwise provides, the filing of an appeal under this section does not stay the effectiveness of any rule.

11. Part 106 is amended by adding a new § 106.39 to read as follows:

§ 106.39 Direct final rulemaking.

(a) Where practicable, the Administrator will use direct final rulemaking to issue the following types of rules:

(1) Minor, substantive changes to regulations;

(2) Incorporation by reference of the latest edition of technical or industry standards;

(3) Extensions of compliance dates; and

(4) Other noncontroversial rules where the Administrator determines that use of direct final rulemaking is in the public interest, and that a regulation is unlikely to result in adverse comment.

(b) The direct final rule will state an effective date. The direct final rule will also state that unless an adverse comment or notice of intent to file an adverse comment is received within the specified comment period, generally 60 days after publication of the direct final rule in the Federal Register, the Administrator will issue a confirmation document, generally within 15 days after the close of the comment period, advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(c) For purposes of this section, an adverse comment is one which explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

(d) Only parties who filed comments to a direct final rule issued under this section may petition under § 106.35 for reconsideration of that direct final rule.

(e) If an adverse comment or notice of intent to file an adverse comment is received, a timely document will be published in the Federal Register advising the public and withdrawing the direct final rule in whole or in part. The Administrator may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking. A notice of proposed rulemaking will provide an opportunity for public comment, generally a minimum of 60 days, and will be processed in accordance with §§ 106.11–106.29.

Issued in Washington, D.C. on May 31, 1996, under the authority delegated in 49 CFR part 1.53 and RSPA Order 1100.2A (May 19, 1992).

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 96–14371 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board [1]

49 CFR Part 1312

[Ex Parte No. MC–220]

The Municipality of Anchorage, AK—Notices for Rate Increases for Alaska Intermodal Motor/Water Traffic; Petition for Rulemaking

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board is adopting a change in its regulations to require carriers filing new short-notice publications to send the filings to the subscriber not later than the time the copies for official filing are sent to the Board (unless the subscriber agrees in advance in writing that the publication may be sent to the subscriber within 5 working days after the time the copies are sent to the Board). This change will give subscribers earlier notice before the new rate goes into effect.

EFFECTIVE DATE: The final rule is effective July 14, 1996.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC or Commission) and transferred certain functions and proceedings to the Surface Transportation Board (Board). While section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA, the action at issue here, the adoption of new rules with application to future transportation and future tariff filings, necessitates analysis under the new law, and, therefore, this document applies the law in effect after enactment of the ICCTA. Citations are to the current sections of the statute, unless otherwise indicated. This document relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 13701–02 and 13521.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Commission instituted a rulemaking proceeding (60 FR 39143, August 1, 1995) in response to a petition filed May 25, 1994, by the Municipality of Anchorage, AK. Petitioner requested, *inter alia,* that short notice increase publications for intermodal motor/water service to and from Alaska be sent to subscribers the same day the filings are sent to the Commission [Board]. The full text of the new regulation is set forth below. The Board is requiring that short notice publications, including (1) short notice publications involving all noncontiguous domestic trade traffic, and not only the intermodal Alaska trade; and (2) rate decreases as well as increases, generally be sent to subscribers on the date the publications are sent to the Board for filing.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Regulatory Flexibility Analysis

We certify that the new regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because the rule affects only the mailing date for notification.

Environmental and Energy Considerations

The rule will not significantly affect either the quality of the human environment or the conservation of energy resources because the proposal merely changes time frames for notice. We conclude that an environmental assessment is not necessary under our regulations because the proposed action would not result in changes in carrier operations that exceed the thresholds established in our regulations. See 49 CFR 1105.6(c)(2).

List of Subjects in 49 CFR Part 1312

Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Pipelines.

Decided: May 29, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1312 is amended as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS OF MOTOR, PIPELINE AND WATER CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority citation for part 1312 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 721, 13701, 13702, and 13521.

2. Section 1312.6, paragraph (b)(2) is revised to read as follows:

§ 1312.6 Furnishing copies of tariff publications.

* * * * *

(b) * * *

(2) Newly-issued tariffs, supplements, or loose-leaf pages, including short-notice publications, shall be sent to each subscriber not later than the time the copies for official filing are sent to the Board, except that with the advance, written permission of the subscriber, any publication may be sent not later than 5 working days after the time the copies are sent to the Board.

* * * * *

[FR Doc. 96–15161 Filed 6–13–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 060596A]

Atlantic Tuna Fisheries; Bluefin Tuna Adjustments

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

ACTION: Bluefin tuna catch limit adjustment.

SUMMARY: NMFS takes this inseason action to reopen the Angling category fishery for large school and small medium Atlantic Bluefin Tuna (ABT) and to adjust daily catch limits for the Angling category fishery to one fish per angler, which may be from the school or large school size class, and, in addition, one fish per vessel from the small medium size class ABT. This action is being taken to lengthen the fishing season and ensure reasonable fishing opportunities in all geographic areas without risking overharvest of this category.

EFFECTIVE DATE: The daily catch limit adjustment is effective June 18, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for inseason adjustments to the daily catch limits in order to lengthen the fishing season and ensure reasonable fishing opportunities for all geographic areas. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per-angler catch limit for any size class bluefin tuna or may change the per-angler limit to a per-boat limit or a per-boat limit to a per-angler limit.

The 1996 quota of ABT allocated to the Angling category has been adjusted to 243 metric tons (mt) by a final rule effective June 18, 1996. The portion of this recreational catch that may be taken in large school and small medium ABT is 100 mt. As of June 5, 1996, preliminary estimates of recreational fishery landings of ABT between 47 inches (119 cm) and 73 inches (185 cm) total 60 mt. Due to earlier projections on ABT catch by this fishing category, the daily catch limit for ABT was set at one fish per vessel per day (61 FR 8223, March 4, 1996), and subsequently, the fishery for large school and small medium ABT was closed (61 FR 11336, March 20, 1996).

With the adjusted quota for the Angling category and the revised catch estimates, sufficient quota remains to exercise the regulatory authority for inseason adjustments to reopen the large school/small medium category. In addition, the daily catch limit for ABT is adjusted to one fish per angler, which may be from the school or large school size class, and one small medium size class ABT may be landed per vessel.

Fishing for, retention, possessing, or landing large medium or giant ABT by vessels in the Angling category or Charter/Headboat category was previously closed (61 FR 8223, March 4, 1996) to prevent overharvest of the quota established for that category. This

current action has no effect on that prior closure. Recreational anglers may continue to fish for large medium and giant ABT under the NMFS tag-and-release program (§ 285.27).

Subsequent adjustments to the daily catch limit, if any, shall be announced through publication in the Federal Register. In addition, anglers may call the Highly Migratory Species Information Line at 301–713–1279 for updates on quota monitoring and catch limit adjustments. Anglers aboard Charter/Headboat and General category vessels, when engaged in recreational fishing for school, large school, and small medium ABT, are subject to the same rules as anglers aboard Angling category vessels.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: June 10, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–15114 Filed 6–11–96; 9:47 am]

BILLING CODE 3510–22–P

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50 CFR Part 285

[Docket No. 960416112–6164–02; I.D. 030896D]

RIN 0648–AI29

Atlantic Tuna Fisheries; Annual Quotas and Effort Controls

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations governing the Atlantic tuna fisheries to: Set Atlantic bluefin tuna (ABT) fishing category quotas for the 1996 fishing year, revise allocations to monthly quota periods and establish the effort control schedule in the ABT General category, allow the partial transfer of quotas among Purse Seine category permit holders and amend landing requirements, and increase minimum sizes for Atlantic yellowfin and bigeye tunas. The regulatory amendments are necessary to implement the 1994 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding fishing quotas for bluefin tuna, as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives.

EFFECTIVE DATE: The rule is effective June 18, 1996.

ADDRESSES: Copies of supporting documents, including an Environmental Assessment Regulatory Impact Review (EA/RIR), are available from, William Hogarth, Acting Chief, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 issued under the authority of ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background information about the need for revisions to Atlantic tunas fishery regulations was provided in the proposed rule (61 FR 18366, April 25, 1996) and is not repeated here. These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the Atlantic tuna fisheries:

Fishing Category Quotas

The ABT fishing category quotas for the 1996 fishing year are as follows: General category—541 mt; Harpoon Boat category—53 mt; Purse Seine category—251 mt; Angling category—243 mt; Incidental category—110 mt; and Reserve—108 mt.

The Angling category quota is subdivided as follows: No more than 5 mt may be large medium or giant ABT; no more than 138 mt may be school ABT; and the quota for school ABT is further subdivided as 65 mt for the southern area and 73 mt for the northern area.

The Incidental category quota is subdivided as follows: 109 mt for longline vessels, no more than 86 mt in the southern area; and 1 mt for vessels taking ABT incidental to fishing with other authorized gear.

General Category Effort Controls

The General category quota is distributed as follows: 25 percent in June-July; 35 percent in August; 30 percent in September; and 10 percent in October-December. These percentages are applied only to the base quota of 531 mt, with the remaining 10 mt being reserved for the New York Bight fishery in October. Thus, of the 531 mt total, 133 mt is available in the period beginning June 1 and ending July 31; 186 mt is available in the period beginning August 1 and ending August 31; 159 mt is available in the period beginning September 1 and ending September 30; and 63 mt (53 mt based on 10 percent, plus 10 mt New York Bight fishery) is available in the period beginning October 1 and ending December 31.

Attainment of quota in any period will result in a closure until the subsequent period, whereupon any underharvest or overharvest would be carried over to the subsequent period to adjust the base quota for that period. Inseason closures will be filed at the Office of the Federal Register, stating the effective date of closure, and announced through local media and over NOAA weather radio.

In 1995, daily closures (Sunday, Monday, and Wednesday) were implemented to lengthen the fishing season. This rule removes Wednesday as a restricted fishing day and includes Tuesday as a restricted fishing day. Having three consecutive days closed will increase the likelihood of accomplishing the objective of temporarily extending the fishing season by facilitating enforcement of the daily closures.

Under this rule, the effective period of the effort controls is limited to mid-July through mid-September, corresponding to the historical period when catch rates are highest. Also, some adjustments to the effort control schedule are made to reflect increased fishing activity on holiday weekends and market closures in Japan. Thus, persons aboard vessels permitted in the General category or the Charterboat/Headboat category would not be allowed to fish for, catch, retain or land large medium or giant ABT on designated restricted fishing days: July 14, 15, 16, 21, 22, 23, 28, 29, and 30; August 4, 5, 6, 9, 10, 11, 12, 18, 19, 20, 25, 26, and 27; and September 3, 8, 9, 10, 15.

Purse Seine Requirements

This rule implements, for the Purse Seine category alone, a more flexible method of allocation of the domestic U.S. quota. Individual purse seine allocations of bluefin tuna quota are transferable, in whole or in part, to any other purse seine vessel permitted in the Atlantic tunas fisheries. Wholesale or partial transfers of allocation require written notice to NMFS 3 days in

advance of landing any bluefin tuna transferred from another purse seine vessel's annual allocation. In addition, purse seine vessel operators may land ABT in dressed, rather than round, form.

Minimum Size for Yellowfin and Bigeye Tuna

NMFS increases the yellowfin and bigeye tuna minimum size limits to 27 inches (69 cm) according to the curved measurement method. This measure will improve compliance with the ICCAT recommendation on ABT minimum size by facilitating enforcement and reducing problems associated with misidentification of juvenile tunas.

Comments and Responses

Quota Allocations

Comment: Many fishery participants stated the need, based on increased participation rates and the usefulness of scientific data obtained, to increase the allocation to the Angling and General categories.

Response: NMFS agrees that participation in the General and Angling categories has increased in recent years and has resulted in early closures for these categories. Because of the reliance on the large fish and small fish catch-per-unit-effort indices for stock assessment, the General and Angling category fisheries should be kept open as long as possible to achieve high survey sampling rates over the widest possible geographic area. Also, NMFS, in response to recommendations from the National Research Council, has increased scientific sampling, working with outside organizations, for genetic studies, microconstituent analysis, sexual maturity determination, tagging studies, and age and growth studies. For these reasons, NMFS has reallocated 42 mt from the Incidental category to the Reserve category. A total reserve of 108 mt will allow NMFS to transfer tonnage into other categories, as needed, to keep fisheries open for the longest period possible to maximize scientific data collection. The criteria for such inseason transfers are stipulated in the regulations and are not changed by this rule.

Comment: Many fishery participants expressed concern that the proposed transfer of 95 mt from the Reserve to the Angling category would increase the take of small fish, thus increasing fishing mortality in a manner inconsistent with the ICCAT rebuilding schedule for ABT.

Response: The Final Environmental Impact Statement (FEIS) published in July 1995 (copies available from NMFS, see **ADDRESSES**) as part of the 1995 final rulemaking process, included a wide variety of ''alternative'' quota allocations. These were analyzed in a bio-economic model based on the stock assessment parameters at that time (which may be modified with the 1996 stock assessment) as well as economic parameters. The model is based on a 17-year time horizon, and present value calculations for net economic benefits from the commercial and recreational fishery. Given the difficulty in updating the bio-economic model for examining a new alternative, the effect of the 95-mt transfer is considered given a similar case among the alternatives in the FEIS.

The ''Quota Allocation C'' considers the effect of a total closure of the Purse Seine category, with the quota being allocated proportionally to the remaining gear categories. This would result in approximately 89 mt being transferred to the Angling category, which is fairly close to the proposed 95-mt transfer.

Assuming a 2200-mt total quota (as adopted), stocks do recover under Allocation C, although slower than for other allocations, due to the relatively higher amount of quota for the small fish fishery (Figure 4.1–B, page 137). However, mid-year biomass is less than 5 percent lower by the end of the 17-year horizon under this reallocation than under the status quo allocation. Also, net economic benefits fall 4 percent in the commercial fishery and rise 14 percent in the recreational fishery under Allocation C. Since the FEIS analyzed a permanent transfer, NMFS believes that the effect of this one-time transfer is insignificant.

Comment: Some fishery participants expressed concern that transfers of ABT to the Angling category would increase the likelihood of exceeding the ICCAT quota, since landings by anglers are monitored by survey rather than dealer reports.

Response: As proposed, the Angling category quota does not exceed the ICCAT 8% limit for school ABT as applied on a biannual basis. The need for adjusting the 1996 Angling category quota above the 1992 base level has been generated in part because of the difficulty in monitoring recreational catch on a real-time basis; the unprecedented catches off North Carolina between January and March 1996; and the catch limits in effect in early 1996. NMFS intends to address each of those issues to improve the monitoring and management of this fishing category. In the short term, changes in the survey methodology are being implemented. In the long term, NMFS is working with industry to develop new approaches, including use of individual tags for retained ABT, mandatory self reporting techniques, and an examination of the benefits of mandatory catch and release fishing for ABT from January through June. In addition, simultaneous with this final rule, NMFS is adjusting the daily catch limits for ABT to 1 school/large school per angler per day and 1 small medium per vessel per day. This catch limit is lower than that authorized in 1995 and should ensure that the Angling category quota is not exceeded.

General Category Effort Controls

Comment: Most commenters supported the use of days off as a means to extend the fishing season for large medium and giant ABT. Many recommend the implementation of consecutive days off (Sunday, Monday, and Tuesday) to facilitate enforcement and to make travel plans easier for part-time fishermen. There were a few comments in support of maintaining the existing days off (Sunday, Monday, and Wednesday), because of the Japanese market schedule. Some General category participants suggested keeping August 12 and 13 as fishing days in order to be prepared for the re-opening of the Japanese market on August 17. Most commenters requested that days off continue beyond the last listed date in the proposed rule (Sept. 15).

Response: NMFS recognizes that one of the objectives of the General category effort control schedule is to improve marketing opportunities for the U.S. industry. However, restricted fishing days are easier to enforce when they are consecutive, thereby increasing the likelihood that the objectives of effort controls are realized. Recognizing the significance of the market re-opening, NMFS has adjusted the schedule to allow fishing on August 13, 1996. Also, given the increasing likelihood of bad weather days after mid-September, the need for scheduled effort controls is diminished. However, if necessary, NMFS could make inseason adjustments to the effort control schedule.

Comment: Regarding the line defining the New York Bight area, several people commented that a line originating at Montauk Point does not accurately define the traditional Mud Hole fishery and encourages New England fishermen to continue fishing after the General category fishery is closed and land in Long Island. The line should originate at Moriches Inlet as it did in past seasons. It was also noted, that the proposed boundary line at Montauk point would preclude vessels from landing ABT in Montauk Harbor, because it would be

necessary to leave the set-aside area in rounding Montauk Point.

Response: In 1995, NMFS addressed concerns about participation in the Mud Hole fishery by Montauk vessels by defining the set-aside area to originate at Shinnecock inlet, as opposed to Moriches inlet in prior years. Due to concerns about preserving traditional participation in the Mud Hole fishery and enforcement of the requirement to land ABT within the set-aside area, NMFS again sets the boundary at Shinnecock inlet.

Purse Seine Requirements

Comment: Many commenters oppose the transfer of individual quota allocations by purse seine vessels either to other purse seine vessels or vessels permitted in other categories.

Response: NMFS is allowing transfers only within the Purse Seine category. Such transfers, in part or in whole, will improve marketing conditions for purse seine vessel operators while reducing discard rates.

Permits and Reporting

Comment: Some commenters are concerned that the category classifications defined in 1995 have allowed too many vessels into the General category. Redefinition is necessary to keep anglers from keeping and selling too many large medium and giant ABT.

Response: In 1995, NMFS had proposed a strict separation of the General and Angling category fisheries. The majority of permit holders claimed that participation in fisheries for both large and small ABT was essential to their commercial and recreational fishing operations. It was further claimed that the proposed separation would result in decreased effort and needless adverse economic impacts. NMFS received similar comments during three limited access workshops held in recent months. NMFS continues to accept comments on the potential impacts of limited access on the Atlantic tuna fisheries.

Size Limits

Comment: Many anglers catch both yellowfin and bluefin. Most commenters agree that it is difficult to differentiate juvenile Atlantic tunas. Although 22 inches (56 cm) is the ICCAT minimum, NMFS should reduce confusion and possible violation of ICCAT minimum size by having a consistent yellowfin, bigeye, and bluefin tuna minimum size of 27 inches (69 cm).

Response: NMFS agrees, and this rule effects these changes.

Comment: Some people recommended that NMFS set an even higher size limit for yellowfin and bigeye to allow fish to spawn at least once.

Response: From a biological perspective, NMFS agrees that further increasing the minimum size could be beneficial, theoretically increasing yield per recruit and spawning per recruit ratios. However, more information is needed on the potential impact for both recreational and commercial sectors, especially the effect on discard rates and an analysis of release mortality before other minimum size limits are proposed.

Comment: Some fishermen and NMFS enforcement agents expressed concern that the instructions for taking a curved length measurement were unclear and could result in different determinations of size classes.

Response: The instructions for taking a curved length measurement are respecified in this rule.

Other Comments

Comment: Some North Carolina commenters requested that the opening date of the General category season be changed to January 1 to allow retention and sale of large medium and giant ABT. Many commenters oppose a January 1 opening date and the allocation of Angling and Incidental quota to North Carolina at this time. Some feel that, because the bluefin fishery is not traditional, commercial harvest should not be allowed. If the stock recovers and if quotas increase, a geographical quota could be considered. Some commented that because the economic benefits derived from recreational fishing far outweigh those of commercial fishing, the North Carolina fishery should remain as catch-and-release only.

Response: Given the restrictive quota under the ICCAT rebuilding schedule, NMFS first allocates available quota to traditional users. Should quotas increase, NMFS can consider new fisheries.

Comment: Many fishermen expressed concern about the use of spotter planes in the General category. Others suggested prohibiting the planes from assisting vessels of all categories.

Response: The spotter plane issue will not be addressed in this final rule. NMFS has concerns about the enforceability of spotter plane regulations. However, NMFS will continue to monitor this situation and will take appropriate action if necessary.

Comment: Many General category participants wrote that a 3-day notice would be adequate for waiver of restricted fishing days or adjustment of catch limits, especially in light of real-time reporting mechanisms such as the NMFS Information Line and NOAA Weather Radio.

Response: NMFS concurs and, therefore, reduces the required notification period to 3 days.

Comment: The Offshore Resource Management Corporation petitioned NMFS to make pair trawling an authorized gear type and to establish a swordfish bycatch limit for the pair trawl tuna fishery. Supporters of the petition stress that the gear type is highly selective in regard to species and size and results in low encounters with marine mammals and protected species. Many people opposed the authorization of pair trawling, because it would allow increased effort in an already fully- or over-exploited fishery.

Response: NMFS is currently analyzing data collected by at-sea observers on pair trawl vessels over the course of the 3-year experimental fishery. NMFS will make a determination regarding the petition for rulemaking once this analysis is complete. NMFS has also included pair trawl representatives on the Offshore Cetaceans Take Reduction Team as developed under the Marine Mammal Protection Act.

Comment: The Massachusetts Audubon Society (MAS) petitioned NMFS to prohibit retention of bluefin tuna under 73 inches (185 cm) by anyone in order to protect pre-spawning fish and therefore allow stock recovery. MAS also requests a tag and release program for juvenile bluefin. Many commenters wrote in support of the petition. Others recognized the need to limit the harvest of small fish, but disagreed with the MAS proposal. Those opposed argued the importance of the juvenile ABT fishery to scientific monitoring and to local economies.

Response: From a biological perspective, elimination of the small fish fishery would have the highest benefits in terms of stock rebuilding. However, the stock is expected to rebuild anyway for all scenarios in the ABT FEIS. From a socio-economic perspective, this proposal is not necessarily optimal or desirable. The result would be a shift in quota allocation and therefore an increase in commercial revenues. However, employment associated with the recreational fishery and expenditures in coastal communities would decline. It is not clear that the gains in one sector would be commensurate with the losses elsewhere.

Changes From the Proposed Rule

Based on consideration of comments received, and further analysis of available data, the following changes were made to the proposed rule: The line defining the boundary of the New York Bight set-aside area is established at Shinnecock inlet, advance notice of inseason adjustments is reduced to 3 days, and the method of taking a curved measure for Atlantic tunas is respecified.

Classification

This rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic tuna fisheries.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. In addition, an RIR was prepared with a finding of no significant impact. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. For most fishing categories, quotas are proposed at levels similar to prior years. Although the reduction in Incidental category quotas of 28 percent amounts to a significant impact on gross revenues for that sector, the number of vessel operators affected does not exceed 5 percent of the tuna fleet. Thus, a Regulatory Flexibility Analysis was not prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by section 553(d) of the Administrative Procedure Act. Since this fishery is underway, early implementation of the 1996 fishing category quotas and minimum sizes will ensure effective implementation of the ICCAT recommendations. Given NMFS ability to rapidly communicate these rule changes to fishing interests through the FAX network and NOAA weather radio, a seven day notice is deemed sufficient.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget Control Number.

Notifications of purse seine allocation transfers are not subject to the PRA, because only a maximum of five vessels could be subject to reporting under this requirement. Since it is impossible for 10 or more respondents to be involved, the notifications are exempt from the PRA clearance requirement.

List of Subjects in 50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 10, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, the definition of ''Curved fork length'' is revised to read as follows:

§ 285.2 Definitions.

* * * * *

Curved fork length means a measurement of the length of Atlantic tuna taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel.

* * * * *

3. In § 285.22, paragraphs (a)(1), (a)(3), (b), (c), (d), (e), and the first sentence of paragraph (f) introductory text are revised to read as follows:

§ 285.22 Quotas.

* * * * *

(a) *General.* (1) The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 541 mt, of which 133 mt are available in the period beginning June 1 and ending July 31; 186 mt are available in the period beginning August 1 and ending August 31; 159 mt are available in the period beginning September 1 and ending September 30; and 63 mt are available beginning October 1.

* * * * *

(3) When the October General category catch is projected to have reached a total of 10 mt less than the overall October quota, the Director will publish a notification in the Federal Register to set aside the remaining quota for an area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27′ W. long. (Shinnecock Inlet) and running SSE 150° true. The daily catch limit for the set-aside area will be one large medium or giant Atlantic bluefin tuna per vessel per day. Upon the effective date of the set-aside, fishing for, retaining, or landing large medium or giant Atlantic bluefin tuna must cease in all waters outside of the set-aside area.

(b) *Harpoon Boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse Seine.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 251 mt.

(d) *Angling.* The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by anglers is 243 mt. No more than 5 mt of this quota may be large medium or giant bluefin tuna quota. No more than 138 mt of this quota may be school Atlantic bluefin tuna. The quota for school Atlantic bluefin tuna is further subdivided as follows:

(1) 65 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed south of 38°47′ N. lat.

(2) 73 mt of school Atlantic bluefin tuna may be caught, retained, possessed, or landed north of 38°47′ N. lat.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 110 mt. This quota is further subdivided as follows:

(1) 109 mt for longline vessels. No more than 86 mt may be caught, retained, possessed, or landed in the area south of 34°00′ N. lat.

(2) For vessels fishing under § 285.23 (a) and (b), 1 mt may be caught, retained, possessed, or landed in the regulatory area.

(f) *Inseason adjustment amount.* The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 108 mt. * * *

* * * * *

4. In § 285.24, paragraphs (a)(1), (a)(2), and (d)(3) are revised to read as follows:

§ 285.24 Catch limits.

(a) *General category*. (1) From the start of each fishing year, except on designated restricted fishing days, only one large medium or giant Atlantic bluefin tuna may be possessed or landed per day from a vessel for which a General category permit has been issued under § 285.21. On designated restricted fishing days, persons aboard such vessels may not possess, retain or land any large medium or giant Atlantic bluefin tuna. For calendar year 1996, designated restricted fishing days are: July 14, 15, 16, 21, 22, 23, 28, 29, and 30; August 4, 5, 6, 9, 10, 11, 12, 18, 19, 20, 25, 26, and 27; and September 3, 8, 9, 10, 15.

(2) The Assistant Administrator may increase or reduce the catch limit over a range from zero (restricted fishing days) to a maximum of three large medium or giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a document in the Federal Register of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice of catch limit adjustment shall be filed at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

* * * * *

(d) * * *

(3) The Assistant Administrator may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator will publish a document in the Federal Register of any adjustment in the allowable daily catch limit made under this paragraph. Other than fishery closures pursuant to attainment of quotas in any period, such notice of catch limit adjustment shall be filed at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

* * * * *

5. In § 285.25, the last sentence of paragraph (c), and paragraph (d)(2) are revised to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) * * * Purse seine vessel owners must have each large medium and giant bluefin tuna in their catch weighed, measured, and the information recorded on the landing card required under § 285.28(a) at the time of offloading and prior to transporting said tuna from the area of offloading.

(d) * * *

(2) The Regional Director will review applications for allocations of Atlantic bluefin tuna on or about May 1, and will make equal allocations of the available size classes of Atlantic bluefin tuna among vessel owners so requesting. Such allocations are freely transferable, in whole or in part, among purse seine vessel permit holders. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to the Regional Director 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (mt) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 285.24(c) are not altered by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught.

* * * * *

6. In § 285.26, the paragraph preceding the table is revised to read as follows:

§ 285.26 Size classes.

Total curved fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel. For any Atlantic bluefin tuna found with the head removed, it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total curved fork length equals pectoral fin curved fork length multiplied by a factor of 1.35. The pectoral fin curved fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body from the ventral side of the pectoral fin to the fork of the tail, which abuts the ventral side of the caudal keel.

* * * * *

7. In § 285.31, paragraph (a)(4) is revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(4) Fish for, catch, possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 285.24, or to possess or retain large medium or giant ABT on designated restricted fishing days, except that fish may be caught and released under the provisions of § 285.27.

* * * * *

8. Section 285.52 is revised to read as follows:

§ 285.52 Size limits.

(a) Fishing for, catching, retaining, or possessing of Atlantic yellowfin and bigeye tunas in the regulatory area by persons aboard fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 27 inches (69 cm) or more in total curved fork length.

(b) Total curved fork length is the sole criterion for determining the size class of whole (head on) Atlantic yellowfin and bigeye tuna. For this purpose, all measurements must be taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel.

[FR Doc. 96–15115 Filed 6–11–96; 9:47 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 61, No. 116
Friday, June 14, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1732–95]

RIN 1115–AE17

Conditions on Nonimmigrant Status: Disclosure of Information

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (''the Service'') regulations by removing the current regulatory language conditioning an alien's nonimmigrant status on his or her providing full and truthful information requested by the Service, regardless of the requested information's materiality. This proposed regulation would clarify that a nonimmigrant's maintenance of status is conditioned on, among other things, the provision of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or that the alien is eligible to receive a benefit under the Immigration and Nationality Act (''the Act''). This rule addresses the concern expressed by the court in *Romero* v. *I.N.S.*, 39 F.3d 977 (9th Cir. 1994), that, under the current wording of the regulations, the Service may elicit information unrelated to that required to ensure the alien's continued eligibility for nonimmigrant status or benefits under the Act.

DATES: Written comment must be submitted on or before August 13, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS Number 1732–95 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Miriam Jawitz Hetfield, Senior Adjudications Officer, Nonimmigrant Branch, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: Section 214(a)(1) of the Act provides that the Attorney General may by regulation prescribe the length and the conditions of a nonimmigrant alien's stay, in order to ensure that the nonimmigrant will depart from the United States at the expiration of the period of admission or upon failure of the nonimmigrant to maintain nonimmigrant status. Under section 241(a)(1)(C)(i) of the Act, a nonimmigrant who fails to maintain nonimmigrant status, or to comply with the conditions of such status, is deportable.

Under current 8 CFR 214.1(f), a condition of an alien's nonimmigrant status is that he or she provide full and truthful information requested by the Service, ''regardless of whether or not the information requested was material.'' The Service promulgated this regulation to ensure that it is furnished with the information necessary to perform its statutory function of regulating the admission and control of nonimmigrants, to ensure compliance with the Act, and to locate and deport those nonimmigrant aliens who have violated their status. 44 FR 65726–65727. It was the opinion of the Service, in promulgating this regulation, that, to meet this responsibility, it is necessary to have information which ''possibly may not be considered material in the strict legal connotation of the term.'' *Id.* at 44 FR 65727. Despite such broad language, the current regulation was intended to require the provision of only information bearing a reasonable relationship to the Service's above-described responsibility in prescribing the conditions of a nonimmigrant's stay. *Id.*

On November 3, 1994, the court in *Romero* v. *I.N.S.*, 39 F.3d 977 (9th Cir. 1994), invalidated the parenthetical phrase in current 8 CFR 214.1(f), ''(regardless of whether or not the information requested was material).'' In *Romero,* the Service charged the plaintiff with violating section 241(a)(1)(C)(i) of the Act for failing to maintain nonimmigrant status, contending that she had not disclosed certain information requested by a Service officer. Specifically, in response to a question by a Service officer, the plaintiff stated that she had not informed another alien that someone could help that alien obtain an extension of nonimmigrant status for money. The Service officer sought this information in connection with an investigation of alleged corruption among customs officers. The immigration court found that, in making this statement, the plaintiff had provided a Service officer with false information in violation of 8 CFR 214.1(f), and therefore was deportable under section 241(a)(1)(C)(i) of the Act. In ordering that the case be remanded for withdrawal of the order of deportation, the *Romero* court found that the statement the plaintiff made to the Service officer was not material in any way to the alien's immigration status, but related only to a criminal investigation of other persons. The court held that, as currently worded, the disclosure requirement of 8 CFR 214.1(f) is inconsistent with the purpose of the enabling statute, section 214(a)(1) of the Act, which is to ensure that the alien is eligible for nonimmigrant status or immigration benefits.

This proposed regulatory change would clarify that a nonimmigrant's maintenance of status and/or continued receipt of immigration benefits is conditioned on the alien fully and truthfully disclosing all information he or she possesses, or reasonably should have knowledge of, which the Service deems material in order to ensure that the alien is eligible for nonimmigrant status and/or immigration benefits under the Act. This regulation does not give the Service the authority to require disclosure of information in the hope that it might uncover information to be used for another purpose, such as an investigation of another person or persons. For information to be deemed ''material'' for purposes of this regulation, there must exist a reasonable connection between the information sought and the determination of whether an alien is eligible under the Act for nonimmigrant status or immigration benefits. In this regard. ''material'' information includes that information which, if known to the Service, would be predictably capable of

affecting a decision regarding whether an alien has violated a condition of his or her nonimmigrant stay or eligibility for benefits. See *Kungys* v. *United States,* 485 U.S. 759, 771 (1988).

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule merely clarifies that a nonimmigrant's status in this country is conditioned on, among other things, his or her providing full and truthful disclosure of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or to ensure that the alien is eligible to receive any other benefit under the Act. Any impact this proposed regulation will have on small business entities, therefore, will be negligible.

Executive Order 12866

This proposed rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Paperwork Reduction Act

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 214

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

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. In § 214.1, paragraph (f) is revised to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(f) *Disclosure of information.* (1) A condition of a nonimmigrant's admission and maintenance of status in the United States is that he or she fully and truthfully disclose all information deemed by the Service to be material in determining whether the nonimmigrant:

(i) Is eligible for, and/or is maintaining the nonimmigrant status in which the alien was admitted or to which the alien has changed under section 248 of the Act, or

(ii) Is eligible to receive any benefit under the Act.

(2) Willful failure by a nonimmigrant to provide full and truthful disclosure of such material information when requested by a Service officer constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(C)(i) of the Act.

* * * * *

Dated: March 4, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–15169 Filed 6–13–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 95

[Docket No. 89–174–3]

Importation of Fetal Bovine Serum

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have allowed, under certain conditions, the importation of fetal bovine serum into the United States from countries in which foot-and-mouth disease or rinderpest exists. We are taking this action after considering the comments we received following the publication of the proposed rule.

DATES: This withdrawal is effective June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737, (301) 734–7837.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 95 govern importation into the United States of certain animal byproducts, including blood serum and other blood products. Blood serum is that part of blood that is left after the blood cells are removed.

Fetal bovine serum (FBS) is that part of the blood from bovine fetuses that is left after the blood cells are removed. It is used in tissue culture media to produce various pharmaceuticals and biological products, such as vaccines, and cannot be derived synthetically.

On February 25, 1994, we published in the Federal Register (59 FR 9142–9146, Docket No. 89–174–1) a proposed rule that would have allowed, under certain conditions, the importation of FBS into the United States from countries in which foot-and-mouth disease (FMD) or rinderpest exists. The proposed conditions included certification of the origin of the donor fetuses and treatment of the FBS with gamma radiation.

We solicited comments on the proposed rule for 60 days ending April 26, 1994. However, on April 15, 1994, we published in the Federal Register (59 FR 18003–18004, Docket No. 89–174–2) a notice extending the comment period on the proposed rule until June 27, 1994.

By the close of the comment period, we received a total of 22 comments. One commenter supported the proposed rule as written. Several commenters supported it with changes. The remainder of the commenters either opposed the proposed rule or expressed reservations concerning it.

The commenters in opposition to the proposal raised a number of issues, including that of the efficacy of the proposed required dosage of gamma radiation in destroying FMD virus. Several of the commenters stated that the size and configuration of the containers in which the FBS is irradiated could influence the effectiveness of the treatment. A number of commenters stated that the potential difficulties in adequately monitoring the source of donor fetuses could create an

unacceptable risk of the introduction of disease into the United States.

We have considered all of the comments we received on the proposal and have determined that the expressed concerns have merit. Therefore, we are withdrawing the proposed rule of February 25, 1994, referenced above.

Authority: 21 U.S.C. 111, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 7th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–15173 Filed 6–13–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, and 571

[No. 96–48]

RIN 1550–AA89

Conflicts of Interest, Corporate Opportunity and Hazard Insurance

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS or agency) is proposing to update and substantially streamline its regulations and policy statements concerning conflicts of interest, usurpation of corporate opportunity and hazard insurance. This notice of proposed rulemaking is based on a detailed staff review of each pertinent regulation and policy statement to determine whether they are necessary, impose the least possible burden consistent with safety and soundness and statutory requirements and are written in a clear, straightforward manner. Today's proposal is being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received on or before August 13, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 96–48. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Program Manager, (202) 906–5751; or Francis Raue, Policy Analyst, (202) 906–5750, Supervision Policy; or Dorene Rosenthal, Counsel (Banking and Finance), (202) 906–7268, Regulations and Legislation Division, Chief Counsel's Office.

SUPPLEMENTARY INFORMATION:

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I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive, systematic regulatory burden review. These areas—lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance—were selected because they have a significant impact on thrift operations, and have not been developed on an interagency basis or been comprehensively reviewed for many years. Today's proposal presents the results of an intensive review of OTS's regulations and policy statements on conflicts of interest, corporate opportunity and hazard insurance.

Since commencing its reinvention initiative in the spring of 1995, OTS has already repealed eight percent of its regulations. In addition, in January of 1996, OTS issued a comprehensive proposal on its lending and investment regulations.[1] Burden reduction proposals regarding corporate governance and subsidiaries and equity investments will be issued in the near future.

Today's proposal regarding conflicts of interest, corporate opportunity and hazard insurance will also result in significant regulatory burden reduction. The proposal affects the following regulatory sections:

Section 545.126—Referral of insurance business
Section 556.16—Insurance agencies—usurpation of corporate opportunity
Section 563.35—Restrictions involving loan services
Section 563.40—Restrictions on loan procurement fees, kickbacks and unearned fees
Section 563.44—Loans involving mortgage insurance
Section 571.4—Hazard insurance
Section 571.7—Conflicts of interest
Section 571.9—Corporate opportunity in savings associations

OTS is proposing to repeal five of these provisions in their entirety. The remaining three provisions—loan procurement fees, conflicts of interest, and corporate opportunity—will be retained in the form of regulations, but streamlined and clarified. The proposed changes will, if adopted in final form, reduce the amount of CFR text devoted to conflicts, corporate opportunity and hazard insurance from six pages to half a page.

In developing this proposal, we have consulted with those who use the regulations on a daily basis, including OTS regional staff and representatives of the thrift industry. A focus group of five thrift institutions and an industry trade association discussed staff's initial recommendations. We have also reviewed the other federal banking agencies' regulations and policy statements concerning conflicts, corporate opportunity and hazard insurance.

II. Objectives

The overarching goal of OTS's reinvention initiative is to reduce regulatory burden on savings associations to the greatest extent possible consistent with statutory requirements and safety and soundness. In the context of conflicts, corporate opportunity and hazard insurance, we believe maximum burden reduction can be achieved by pursuing three specific objectives.

First, we are attempting to eliminate duplication and overlap. The conflicts, corporate opportunity and hazard insurance regulations have existed essentially unchanged for over 20 years. During this time, there have been significant statutory and regulatory advances, including enactment of the Real Estate Settlement Procedures Act of 1974 (RESPA),[2] amendments to the Home Owners' Loan Act of 1933

[1] 61 FR 1162 (January 17, 1996).

[2] Pub. L. 93–533, 88 Stat. 1724, Dec. 22, 1974.

(HOLA)[3] and promulgation of the Interagency Real Estate Lending Guidelines.[4] As a result, much of OTS's conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements have become outdated or obsolete. For example, the policy statement regarding hazard insurance (§ 571.4) has been largely superseded by the Interagency Real Estate Lending Guidelines. Similarly, the regulatory provisions prohibiting a savings association from conditioning the extension of credit on the borrower obtaining certain other services from the institution (tying arrangements) (§ 563.35) have been superseded by tying prohibitions in HOLA section 5(q). Additionally, the regulatory provisions governing kick-backs and unearned fees for loans (§ 563.40) are largely duplicative of RESPA. Redundant regulatory coverage causes confusion and wastes both industry and government resources. Today's proposal eliminates duplication wherever possible.

Second, as part of its reinvention effort, OTS is seeking to move away from regulations that micromanage thrift operations. Our goal is to focus the regulations on issues that are truly vital to safe and sound operations, leaving other matters for handbook guidance. For example, the regulations currently include three detailed provisions, which occupy three pages of CFR text, governing when federal thrifts can refer customers to affiliates that sell insurance. Although insurance referrals were thought to be an important issue 20 years ago when thrift service corporations were first authorized to sell insurance, insurance referrals clearly do not lie at the heart of safety and soundness today. Nor do they present issues distinct from the general questions that arise whenever a thrift refers many other types of business to affiliates. Accordingly, OTS is proposing to repeal the insurance referral provisions in their entirety, leaving insurance referrals to be handled in the same way as other corporate opportunity issues. (*See* discussion of corporate opportunity below.)

Third, in its reinvention effort, OTS is seeking to enhance the conciseness and clarity of its regulations. Accordingly, the three provisions slated for retention in today's proposal are being revised to remove ambiguous and imprecise language. For example, the current 306-word policy statement on conflicts of interest (§ 571.7) is being converted to a 53-word regulation. The oblique reference to actions that may create the ''appearance of a conflict of interest'' is being removed. Instead, there will be a simple statement of a fiduciary's common law duty ''not [to] advance [his or her] personal interests, or those of others, at the expense of [his or her] institution.''

Similarly, the corporate opportunity policy statement (§ 571.9) is being converted to a regulation containing a simple statement of a fiduciary's common law duty not to ''take advantage of corporate opportunities belonging to [his or her] savings association.'' A second sentence describes when an opportunity will be deemed to ''belong'' to a savings association. The new regulation will be about one-third the length of the current policy statement.

Each of the provisions being retained have been redrafted using plain language techniques pioneered by the Department of Interior and promoted by the Vice President's Regulatory Reinvention Initiative. Plain language drafting emphasizes the use of informative headings, short sentences, paragraphs and sections, non-technical language (including the use of ''you''), and sentences in the active voice. The goal of plain language drafting is to enhance clarity, thereby decreasing industry frustration, inadvertent violations, the need to seek clarification in correspondence and phone calls, and the amount of time institutions must devote to understanding the regulations.

OTS is hopeful that the foregoing reforms will result in a significant decrease in regulatory burden in the areas of conflicts, corporate opportunity and hazard insurance.

III. Description of the Proposal

For each area covered by today's proposal—conflicts of interest, corporate opportunity and hazard insurance—this section provides historical background, an analysis of the disposition of the current rules and a description of the proposed rules.

A. Conflicts of Interest

1. Historical Background

The Federal Home Loan Bank Board (FHLBB), the predecessor to OTS, adopted the conflicts of interest policy statement (§ 571.7) in 1970. The FHLBB stated that the principles enunciated there are basic to the continued viability and public acceptance of the thrift industry in contemporary society.[5] The policy statement, which prohibits insiders from engaging in conflicts of interest that adversely affect savings associations, has remained unchanged for over 25 years.

In 1974, Congress enacted RESPA to effect certain changes in settlement procedures for residential real estate loans. It was designed, among other things, to eliminate kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services. Such kickbacks and fees also can create a conflict between an officer or director's personal interests and those of his or her association.

The following year, in response to abuses involving certain loan practices, the FHLBB issued another rulemaking intended ''to delineate, and prohibit or control, transactions which are, or are likely to be, conflicts of interest'' and ''to prohibit financial, lending or managerial policies or practices of insured institutions which are detrimental to, or inconsistent with, sound and economic home-financing.''[6] The FHLBB revised the regulations prohibiting the tying of loans and certain related services (§ 563.35) and promulgated a new regulation prohibiting loan procurement fees, kickbacks and unearned fees (§ 563.40). This regulation reiterated and expanded upon the RESPA prohibitions on kickbacks and fees. A separate regulation was promulgated to limit the potential for abuse and risk as a result of self-dealing business practices relating to mortgage insurance (§ 563.44). Basically, this regulation prohibits a savings association from insuring any loan with an affiliated mortgage insurance company.

The Garn-St Germain Depository Institutions Act of 1982[7] also addressed concerns about self-dealing practices related to lending. This Act added a new HOLA section 5(q) prohibiting certain tying arrangements.

Thus, the statutes, regulations and policy guidance concerning conflicts of interest have evolved in a manner that results in a significant amount of duplication and overlap.

2. Disposition of Current Rules

a. *Section 571.7 Conflicts of interest.* This policy statement says, in essence, that directors, officers and other affiliated persons[8] have a fundamental duty to avoid placing themselves in a position which creates, or which leads

[3] 12 U.S.C. 1461, *et seq.*

[4] 57 FR 62890 (December 31, 1992).

[5] FHLBB Memorandum to The Management of Each Insured Institution from Chairman Martin (November 19, 1970).

[6] 40 FR 43832, 43842 (September 23, 1975).

[7] Pub. L. 97–320, 96 Stat. 1469, Oct. 15, 1982.

[8] The terms ''director,'' ''officer'' and ''affiliated person'' are defined below under the description of the Conflicts of interest Proposed Rule.

to or could lead to, a conflict of interest or appearance of a conflict of interest between their personal financial interests and the interests of their association, where the interests of the association are adversely affected.

OTS proposes to codify this policy statement as a regulation, after making modifications to clarify and simplify the language. OTS believes this statement serves as an important reminder to thrift insiders of their fiduciary duties to avoid conflicts of interest. (*See* description of the Proposed Rule below.)

As noted above in the discussion of objectives, OTS believes that its regulations should focus on issues vital to safety and soundness. Fiduciary duties lie at the heart of safety and soundness. The thrift crisis of the 1980s provided numerous examples of how fiduciary breaches can undermine the stability of an institution. Thus, we believe it is appropriate for the regulations to contain a brief statement regarding the importance of avoiding conflicts of interest.[9] To eliminate any mention of conflicts of interest from the CFR would not accurately reflect current OTS policy.

b. *Section 563.35 Restrictions involving loan services.* Paragraph (a) enumerates specific services typically involved in real estate lending that cannot be ''tied'' to the granting of a loan: insurance services (except insurance or a guarantee provided by a government agency or private mortgage insurance); building materials or construction services; borrower legal services; real estate or brokerage services; and real estate property management services.

OTS proposes to delete this paragraph because it is redundant of HOLA section 5(q), which prohibits a savings association from conditioning the extension of credit on the borrower obtaining certain other services from the institution. To the extent the regulatory language provides useful illustrations of the type of conduct HOLA prohibits, OTS will include this guidance in the Thrift Activities Handbook.

Paragraphs (b) and (c) relate to hazard insurance. These paragraphs and their proposed disposition will be discussed below in Part III.C., ''Hazard insurance.''

Paragraph (d) provides that a savings association must give residential borrowers a written itemization of fees in excess of $100 to be paid by the borrower for the lender's attorney. This requirement was promulgated to protect the borrower from hidden subsidization of legal services provided to the lender that are unrelated to the borrower's particular loan.[10]

OTS proposes to delete this provision because borrowers' interests are adequately protected by RESPA, which prohibits kickbacks and unearned fees (12 U.S.C. 2607).[11]

c. *Section 563.40 Restrictions on loan procurement fees, kickbacks and unearned fees.* Paragraph (a) provides that no affiliated person of a savings association may receive, either directly or indirectly, from the association (or any other source) any fee in connection with the procurement of a loan from the association or a subsidiary of the association.

Under this provision, loan procurement fees (*i.e.*, fees for finding loan applicants) are prohibited, regardless of whether they are earned or unearned. The term ''loan procurement fee'' does not include payments for loan origination services (such as title examination, appraisals, credit reports, drawing up of papers, loan closings, and other services necessary and incident to loan origination).

OTS believes that loan procurement fees pose the risk that insiders may approve bad loans in order to obtain fees. Thus, we propose to retain this provision but to make clarifying amendments to more precisely tailor the scope of the regulation to the practices we wish to prohibit. (*See* description of Proposed Rule below.)

Paragraph (b) prohibits the payment of unearned fees for loan origination and settlement services, but this does not prohibit savings associations and third parties from paying fees for loan origination services actually rendered. This paragraph extends the RESPA prohibition on kickbacks and unearned fees in connection with ''federally related mortgage loans'' (*i.e.*, loans secured by a 1–4 family home) to *any* loan on real property. This rule was promulgated by the FHLBB to standardize the initial loan charges restrictions applicable to all types of real property loans.[12]

OTS proposes to delete this paragraph because the regulation extends the RESPA consumer protection provisions to commercial real estate loans. We do not believe this protection is necessary for commercial borrowers. None of the other banking agencies imposes a similar restriction on banks. Thus, removing this provision will establish parity with banks. To the extent paragraph (b) protects thrifts from insiders engaging in prohibited conflicts of interest, these conflicts would be covered by the new conflicts of interest regulation.

d. *Section 563.44 Mortgage insurance.* Paragraph (a) contains definitions used in this section. Paragraph (b) prohibits a savings association (or service corporation affiliate) from insuring any loan with a mortgage insurance company if certain affiliations are present. The affiliations deemed to give rise to harmful conflicts of interest are: the mortgage insurance company maintains a deposit account at the association;[13] there is an interrelationship of insiders or employees; the association, affiliate or insiders have an ownership interest in the mortgage company above specified limits; or the mortgage insurance company pays a fee or commission to the association, an affiliate or insiders.

Paragraph (c) provides an exception to grandfather investments made by savings associations in the Pennsylvania Mortgage Insurance Company prior to promulgation of § 563.44. *See* 43 FR 60571, 60572 (December 28, 1978).

OTS proposes to repeal § 563.44 since prohibited tying of products is now covered by the statutory anti-tying provisions in HOLA section 5(q). In addition, RESPA requires a lender to make disclosure to a borrower when it has an interest in a mortgage insurance company and to inform the borrower that services need not be obtained from

[9] We are aware that none of the other federal banking agencies has specific regulations regarding fiduciary duties, except the Office of the Comptroller of the Currency (OCC), which has a regulation on conflicts of interest. 12 CFR 2.5. Recently, the OCC proposed repeal of this provision, 60 FR 47498, 47500 (September 13, 1995), on grounds that it merely restates common law and a provision in the National Bank Act requiring national bank directors to take an oath to perform their duties diligently, honestly, and lawfully (12 U.S.C. 73). Savings associations do not operate under a statutory provision equivalent to 12 U.S.C. 73. For the reasons stated above, OTS believes that a brief regulation on conflicts is important.

[10] *See* FHLBB Letter of Tumler, Congressional Affairs (Sept. 18, 1978).

[11] In addition, RESPA also protects an institution's interest in selecting its own settlement attorney. The law provides that an arrangement requiring a borrower to pay the services of an attorney chosen by the lender to represent the lender's interest in a real estate transaction is not a violation of the general prohibition against requiring the use of any particular provider of settlement services (12 U.S.C. 2607(c)).

[12] Before RESPA was enacted, the FHLBB had proposed a regulation that would have imposed restrictions with respect to initial loan charges on all real estate loans. 39 FR 42382 (December 5, 1974). These restrictions were different than RESPA's restrictions with respect to federally related mortgage loans. The FHLBB decided not to adopt its proposed restrictions and instead applied RESPA's restrictions to all loans. 40 FR 43832, 43839 (September 23, 1975).

[13] The rationale for this provision was to ensure that a mortgage company was not forced to maintain an account at the association as a condition for the placement or renewal of mortgage insurance with the company. 41 FR 7497, 7498 (February 19, 1976).

that particular company. Common law fiduciary duties, the statutory rules governing transactions with affiliates, and OTS's new conflicts of interest regulation will cover conflicts of interest related to mortgage insurance companies. Thus, § 563.44 adds an unnecessary additional layer of regulation.

3. Proposed Rules

a. *Conflicts of interest.* As indicated above, OTS proposes to convert its general policy statement on conflicts of interest (§ 571.7) to a regulation (proposed § 563.200). Proposed § 563.200 prohibits directors,[14] officers,[15] employees, persons having the power to control the management or policies of savings associations, and other persons who owe fiduciary duties to savings associations from advancing their own personal or business interests, or those of others, at the expense of the institutions they serve.[16]

The proposed rule differs from the current OTS policy statement on conflicts of interest (§ 571.7) in several respects. First, today's proposal removes an ''appearance of a conflict of interest'' from the scope of the rule. The OTS continues to urge fiduciaries to avoid even the appearance of a conflict of interest as a matter of good business practice. However, OTS intends to focus its supervisory efforts on actual conflicts.

Second, the proposal simplifies the language used to describe prohibited conflicts. This should make it easier for persons covered by the rule to understand what conduct is prohibited. The language of the proposed rule tracks the language of OTS's 1992 ''Statement Concerning Responsibilities of Officers and Directors,'' which clarified OTS policy and reiterated general common law standards on the duty of loyalty and the duty of care that directors and officers owe their institutions.[17] This statement is much shorter and clearer than the current policy statement and is the same standard employed by the Federal Deposit Insurance Corporation (FDIC).[18]

Third, the current policy statement covers ''affiliated persons.'' [19] The term affiliated person does not precisely match the scope of persons who at common law owe fiduciary duties to institutions. For example, immediate family members are included within the definition of affiliated person but they generally do not owe fiduciary duties under the common law.

The proposed regulation refers specifically to directors, officers, employees, persons having the power to control the management or policies of savings associations and other persons who owe fiduciary duties to savings associations. No reference is made to affiliated persons.

As indicated above, ''directors'' and ''officers'' are defined in OTS regulations. ''Employee'' is not defined, but this term is intended to have its common meaning. OTS believes that coverage of employees is important because there have been instances where employees' conflicts of interest have harmed savings associations.

Persons having the power to control the management or policies of savings associations would include both natural persons and companies. Generally, a shareholder of a savings association controls the management or policies of a savings association if the shareholder owns twenty-five percent or more of the voting stock of the institution.[20] Any other shareholder or other person who makes significant policy decisions for the institution would also be covered by the proposed regulation.

OTS does not attempt to define in this regulation who else (besides directors, officers, employees and persons who control management) owes fiduciary duties to savings associations. If a person owes a fiduciary duty under common law to a savings association, then that person must not advance his or her own interests at the expense of the institutions he or she serves.

b. *Prohibition on loan procurement fees.* OTS is moving the prohibition on loan procurement fees (§ 563.40(a)) to a new section (§ 560.130) in its proposed Part 560 on Lending and Investment and is narrowing the scope of the rule.

The current rule covers ''affiliated persons.'' Today's proposal will apply only to directors, officers [21] and natural persons having the power to control the management or policies of savings associations. OTS continues to believe that loan procurement fees paid to these persons pose a threat to the safety and soundness of savings associations. Such fees provide incentives to these individuals to bring loans into the association and to press for their approval, without giving proper consideration to whether they are a good investment for the institution. This is a classic example of a conflict of interest: the person's interest in financial gain from a loan procurement fee would be adverse to the institution's interest in making only high quality loans.

However, by eliminating the reference to ''affiliated person,'' the rule will no longer apply to holding companies and holding company affiliates of savings associations. OTS believes that loan procurement fees paid to corporate affiliates pose less risk for several reasons. First, these fees, unlike fees paid to officers and directors, are subject to section 23B of the Federal Reserve Act (FRA).[22] Under section 23B, all payments to corporate affiliates must be on arms-length terms for services actually rendered. Second, as a practical matter, an individual officer or director generally would have greater ability to directly or indirectly influence a loan approval than a corporate affiliate because of direct reporting relationships.

With the proposed change, affiliates of thrifts that are mortgage brokers will

[14] The term ''director'' is defined in OTS regulations as: any director, trustee or person performing similar functions with respect to an organization. (§ 561.18.)

[15] The term ''officer'' is defined in OTS regulations as: the president, vice-president (but not an assistant vice-president or second vice-president, or other vice-president with similar authority to an assistant or second vice-president), the secretary, the treasurer, the comptroller, any person performing similar functions with respect to any organization, and the chairman of the board of directors if the chairman participates in the management of the organization. (§ 561.35.) The term ''officer'' would include ''senior executive officer,'' defined in OTS regulations as: chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer and any other individual who exercises significant influence over, or participates in major policy decisions of the savings association or a savings and loan holding company. (§ 574.9(a)(2).)

[16] This statement reiterates the current common law fiduciary duty these individuals and entities owe to their institutions. *See, e.g.,* E. Brodsky & M.P. Adamski, *Law of Corporate Officers and Directors: Rights, Duties and Liabilities*, ch. 3 and 4 (1984 and Supp. 1995) (directors and officers have fiduciary duties to avoid conflicts of interest and corporate usurpation); and H. Henn & J. Alexander, *Laws of Corporations*, §§ 235–238 (3d ed. 1983) (controlling shareholders may owe fiduciary duties to corporations).

[17] CEO Letter from Director Ryan (November 18, 1992).

[18] FDIC Financial Institutions Letter 87–92 (December 17, 1992).

[19] The term ''affiliated person'' is defined in OTS regulations to include: officers, directors, controlling persons of savings associations; immediate family members of officers, directors and controlling persons; and corporations and trusts with common ownership or control with the association. (§ 561.5.)

[20] *See* 12 U.S.C. 1817(j) and 1467a.

[21] The proposed rule, like the current rule, would not apply to loan officers and branch managers who do not make significant policy decisions for the institution. However, any loan procurement bonus or incentive system for employees who are not senior executive officers must be consistent with the safe and sound operation of the savings association. For illustrative examples of what compensation provisions OTS may consider unsafe and unsound, *see* OTS Regulatory Bulletin 27a, ''Executive Compensation.'' This bulletin does not specifically apply to incentive programs for employees who are not senior executive officers, but it does provide general guidance in this area.

[22] 12 U.S.C. 371c–1.

be able to receive an arms-length fee when acting as agent soliciting loans for affiliated thrifts.

B. Corporate Opportunity

1. Historical Background

In 1974, the FHLBB adopted a general corporate opportunity policy statement to apprise savings association officers, directors and controlling persons of their fiduciary duty not to appropriate business opportunities that belong to the association.[23] The policy statement was not intended to impose new legal duties, but simply to codify existing common law fiduciary principles.[24]

The following year, the FHLBB promulgated §§ 545.126, 556.16, and 571.9(b). Taken together, these provisions describe in elaborate detail when federal thrifts can refer insurance business to insurance agencies that affiliated persons control without raising concerns about usurpation of corporate opportunity. As structured, these provisions impose a general ban on referral of insurance business to affiliated persons, but then carve out numerous exceptions (*e.g.* when the thrift is located in a state that prohibits insurance sales by thrifts).

The FHLBB developed these rules to apply general corporate opportunity law to the operation of insurance agencies by management of federal associations, and to avoid case-by-case determinations. The rules focused on the insurance business because insurance brokerage had recently been added to the list of preapproved activities for savings association service corporations. These rules were designed to eliminate opportunities for insider abuse and to protect insurance business opportunities for savings associations and their subsidiaries.

2. Disposition of Current Rules

a. *Section 545.126 Referral of Insurance Business.* This section prohibits a federal savings association from referring any insurance business to an agency owned by officers or directors of the association, or by individuals having the power to direct its management, subject to certain exceptions. The exceptions are: (i) a state statute or regulation prohibits a federal savings association's service corporation (or wholly owned subsidiary thereof) from engaging in the insurance business; (ii) the state regulator has denied the association's application to engage in the insurance business; (iii) the state regulator has an established and well-known policy of denying such applications; (iv) the referral takes place within a reasonable time after a change in state law, regulation or policy; and (v) an application to establish or acquire an insurance business is pending with OTS or the appropriate state agency.

OTS proposes to delete this provision. This regulation was enacted over 20 years ago to control the perceived risks of usurpation of corporate opportunity related to the insurance agency business. In the agency's experience, insurance referrals have not presented risks that differ either in degree or kind from the risks presented by referrals of other types of business. Accordingly, insurance referrals, like other referrals, will be reviewed under the proposed general corporate opportunity regulation. (*See* description of the Proposed Rule below.)

b. *Section 556.16 Insurance agencies—usurpation of corporate opportunities.* This section, which substantially duplicates § 545.126, provides that a federal savings association's corporate opportunity to engage in the insurance business is usurped if it refers any insurance business to an agency owned by officers or directors of the association, or by individuals having the power to direct its management, subject to certain exceptions. The policy statement contains a number of exceptions to this general rule. Exceptions apply if the referral takes place: (i) while an application to establish or acquire an insurance business is pending with OTS or the appropriate state agency; (ii) while a state statute or regulation prohibits a federal savings association's service corporation (or wholly owned subsidiary thereof) from engaging in the insurance business; (iii) while the state licensing authority or regulator has an established and well-known policy of refusing to accept or process applications by federal savings associations to engage in the insurance business; or (iv) within a reasonable time after a change in state law, regulation or policy. Additional exceptions apply for referrals where (i) the referral took place before May 20, 1971; (ii) the association's application to obtain necessary state approval to engage in the insurance business was denied; (iii) a disinterested majority of the association's board of directors votes for sound business reasons to reject the opportunity; or (iv) there is no economic justification for the association to engage in the insurance business. This section also provides that if a corporate opportunity is usurped, the association is entitled to the benefit of the transaction.

Section 556.16 was published in 1975 at the same time the FHLBB promulgated § 545.126. It appears that the FHLBB may have intended for § 556.16 to state the standards applicable to insurance referrals that had already occurred and for § 545.126 to state the standards applicable to all subsequent insurance referrals. However, § 556.16 is not worded in a manner that limits it to retrospective application. Thus, OTS has traditionally read both sections together.

OTS proposes repealing § 556.16 for the reasons discussed above under § 545.126.

c. *Section 571.9 Corporate opportunity in savings associations.* Paragraph (a) of this policy statement states that it is a breach of fiduciary duty for a director, officer or person having the power to direct the management of an institution to take advantage of a business opportunity for his or her own or another person's personal profit or benefit when the opportunity is within the corporate powers of the association or its service corporation and when the opportunity is of present or potential practical advantage to the association. Any of these persons who usurps a corporate opportunity is liable to the association or its service corporation for the benefit of the transaction or business.

This paragraph further provides that in determining whether an opportunity is of present or potential practical advantage to the association, OTS will consider, among other things, the financial, managerial and technical resources of the association and its service corporation, and the reasonable ability of the association directly or through a service corporation to acquire such resources.

OTS proposes to codify this policy statement as a regulation, with modifications to shorten and simplify the regulatory language. (*See* description of the Proposed Rule below.) A general regulation concerning usurpation of corporate opportunity will serve as an important reminder to thrift insiders of their fundamental duty to protect the interests of their institution. OTS believes that avoiding corporate usurpation is as essential to safety and soundness as avoiding conflicts of interest. Thus, the OTS believes it is appropriate for the regulations to contain a brief statement regarding corporate usurpation.

Paragraph (b) provides that a usurpation of corporate opportunity to engage in the insurance business is an unsafe and unsound practice. For the reasons set forth above under § 545.126, OTS proposes deleting this paragraph.

[23] 37 FR 6696 (February 22, 1974).

[24] *Id.*

Insurance referrals will be treated the same as other types of referrals. They will be subject to the general standards in the proposed corporate opportunity regulation.

3. Proposed Rule

Paragraph (a) of OTS's proposed corporate opportunity regulation prohibits directors or officers of savings associations, persons having the power to control the management or policies of savings associations and other persons who owe a fiduciary duty to savings associations from taking advantage of corporate opportunities belonging to their savings association or its subsidiaries. Paragraph (b) of the proposed rule, like the current policy statement on corporate opportunity, indicates that a corporate opportunity will be deemed to belong to the savings association if: (a) It is within the corporate powers of the savings association or its subsidiary; and (b) the opportunity is of present or potential practical advantage to the savings association, directly or through its subsidiary.

OTS intends for common law standards governing usurpation of corporate opportunity to be applied in determining when an opportunity would be of present or potential practical advantage to an institution. Examples of the types of issues that fiduciaries should consider under this standard include, without limitation, an institution's financial condition and management resources, the level of risk presented by the business, and potential profit from the business weighed against any profits that might arise from transfer of the business. Prior OTS interpretations have indicated that a usurpation of corporate opportunity does not occur when an institution receives fair market value consideration for transfer of a line of business. By definition, an institution that receives fair market value receives as much as it conveys.

The scope of the proposed regulation on corporate opportunity differs from the scope of the current policy statement in one small respect. The current policy statement refers to directors, officers and other persons having power to direct management of savings associations which includes both natural persons and companies. To this OTS proposes to add a reference to ''other persons who owe fiduciary duties to savings associations.'' [25] This will ensure that the scope of the regulation equates to the scope of common law fiduciary duties.

In the past questions have arisen regarding the extent to which the corporate opportunity doctrine applies to dealings between savings associations and their holding companies. The reference in the proposed regulation to persons having power to direct management or policies of savings associations includes holding companies. Thus, under the proposed regulation, the dealings of holding companies with their subsidiary thrifts will be subject to the doctrine of usurpation of corporate opportunity to the same extent as provided by common law.

OTS realizes, however, that there is not a great deal of common law guidance regarding the nature of a controlling shareholder's duties to the depositors of a wholly-owned thrift or bank, especially with respect to the usurpation doctrine. OTS also believes that the transactions with affiliates provisions of sections 23A and 23B of the FRA,[26] as well as general principles of safety and soundness, generally provide an adequate basis for regulating dealings between thrifts and their holding companies. Thus, barring egregious circumstances or instances where a thrift is undercapitalized or unprofitable, OTS supervisors and examiners will generally defer to holding company decisions regarding where to allocate lines of business within a holding company structure, provided there is no violation of FRA sections 23A and 23B or general principles of safety and soundness.

C. Hazard Insurance

1. Historical Background

The FHLBB published a 1966 policy statement providing for the maintenance of hazard insurance policies on real property securing loans made or purchased by savings associations (§ 571.4).[27] The FHLBB's regulation on restrictions involving loan services (§ 563.35), published in 1975, contains additional hazard insurance requirements.

Over the past several years, the safety and soundness restrictions on thrifts' lending have been substantially revised. The Federal Deposit Insurance Corporation Improvement Act of 1991 [28] required the federal banking agencies to develop uniform real estate lending standards. In 1992, OTS, Board of Governors of the Federal Reserve System, FDIC and OCC adopted a uniform rule on real estate lending and developed Interagency Guidelines for Real Estate Lending Policies. These rules and guidelines generally require that institutions adopt real estate lending policies consistent with safety and soundness and that such policies include prudent underwriting standards. Among other things, prudent underwriting standards include guidelines regarding insurance coverage of security property.

2. Disposition of Current Rules

a. *Section 571.4 Hazard insurance.* Paragraph (a) of this policy statement provides that all savings associations should include in their loan contracts provisions requiring borrowers to maintain hazard insurance in a sufficient amount to protect the savings association from loss in the event of damage to or destruction of the real estate securing the savings association's loans.

Paragraph (b) requires the insurance policy to name and protect the savings association as mortgagee in an amount at least equal to its insurable interest in the security. The policy also must cover perils commonly included in ''Standard Fire and Extended Coverage,'' as well as other perils commonly required by institutional lenders operating in the same area.

Paragraph (c) stipulates that examiners will review loan files for evidence that appropriate hazard insurance is in force.

Details regarding hazard insurance are unnecessary in light of the general safety and soundness requirements set forth in the Interagency Real Estate Lending Guidelines and standard business practices in the mortgage lending industry. OTS proposes to delete this section. As noted in the objectives section, OTS does not believe its regulations should micromanage thrift operations. OTS examiners will review the sufficiency of thrifts' lending standards and practices during examinations.

[25] Employees are specifically mentioned in the proposed conflicts regulation, but not in the proposed corporate opportunity regulation. OTS has encountered a number of instances in which employee conflicts have been problematic. Similar problems have not arisen in the usurpation area. In those rare instances where an employee breaches a common law duty regarding usurpation of corporate opportunity, the employee will be covered by the general reference in the corporate opportunity regulation to ''other persons who owe fiduciary duties to savings associations.''

[26] 12 U.S.C. 371c and 371c–1.

[27] 31 FR 9539 (July 14, 1966). In 1959 the FHLBB published a policy statement requiring federally chartered associations to maintain hazard insurance on the property securing loans (§ 556.4). As part of Phase I of OTS's Regulatory Review, this provision was deleted because it imposed duplicative requirements to those set forth in § 571.4. 61 FR 66866, 66869 (December 27, 1995).

[28] Pub. L. 102–242, 105 Stat. 2236, Dec. 19, 1991.

b. *Section 563.35 Restrictions involving loan services.* Paragraphs (b) and (c) contain additional hazard insurance requirements. Paragraph (b) requires a savings association to inform borrowers of their right to freely select providers of insurance services. Paragraph (c) says a savings association may refuse to make a loan if the borrower's choice of insurance services would provide insufficient coverage.

OTS proposes to repeal § 563.35 (b) and (c). Savings associations have authority to refuse to make loans in the absence of adequate insurance coverage with or without paragraph (c). As for paragraph (b), OTS believes that RESPA provides an adequate safety net regarding loan origination practices. Eliminating paragraphs (b) and (c) will establish parity with banks.

IV. Proposed Disposition of Conflicts of Interest, Corporate Opportunity and Hazard Insurance Regulations and Policy Statements

The following chart displays the proposed disposition of OTS's existing conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements. OTS intends to review all the regulations and policy statements that it is proposing to repeal to determine which are appropriate to convert into guidance in the Thrift Activities Handbook.

Original provision	New provision	Comment
§ 545.126	.....	Removed.
§ 556.16	.....	Removed.
§ 563.35	.....	Removed.
§ 563.40(a)	§ 560.130	Modified.
§ 563.40(b)	.....	Removed.
§ 563.44	.....	Removed.
§ 571.4	.....	Removed.
§ 571.7	§ 563.200	Modified.
§ 571.9(a)	§ 563.201	Modified.
§ 571.9(b)	.....	Removed.

V. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule reduces regulatory burden and clarifies the fiduciary duties that directors, officers and other fiduciaries owe to savings associations. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 556

Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Hazard insurance, Conflict of interests, Corporate opportunity.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.126 [Removed]

2. Section 545.126 is removed.

PART 556—STATEMENTS OF POLICY

3. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§ 556.16 [Removed]

4. Section 556.16 is removed.

PART 560—LENDING AND INVESTMENT

5. Part 560 as proposed to be added at 61 FR 1177 is amended as follows:

a. The authority citation for part 560 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106

b. Section 560.130 is added to read as follows:

§ 560.130 Prohibition on loan procurement fees.

If you are a director, officer, or other natural person having the power to direct the management or policies of a savings association, you must not receive, either directly or indirectly, any commission, fee, or other compensation in connection with the procurement of any loan made by the association or a subsidiary of the association.

PART 563—OPERATIONS

6. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§ 563.35 [Removed]

7. Section 563.35 is removed.

§ 563.40 [Removed]

8. Section 563.40 is removed.

§ 563.44 [Removed]

9. Section 563.44 is removed.

10. Section 563.200 is added to read as follows:

§ 563.200 Conflicts of interest.

If you are a director, officer, or employee of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a savings association, you must not advance your own personal or business interests, or those of others, at the expense of the savings association.

11. Section 563.201 is added to read as follows:

§ 563.201 Corporate opportunity.

(a) If you are a director or officer of a savings association, or have the power to direct its management or policies, or otherwise owe a fiduciary duty to a

savings association, you must not take advantage of corporate opportunities belonging to the savings association.

(b) A corporate opportunity belongs to a savings association if:

(1) The opportunity is within the corporate powers of a savings association or a subsidiary of the savings association; and

(2) The opportunity is of present or potential practical advantage to the savings association, either directly or through its subsidiary.

PART 571—STATEMENTS OF POLICY

12. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§§ 571.4, 571.7, 571.9 [Removed]

13. Sections 571.4, 571.7 and 571.9 are removed.

Dated: May 29, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96–14000 Filed 6–13–96; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 94P–0341]

Medical Devices; Classification/ Reclassification of Immunohistochemistry Reagents and Kits

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify/reclassify immunohistochemistry reagents and kits (IHC's) (in-vitro diagnostic devices) into three classes depending on intended use. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA). The intention of this proposal is to regulate these pre- and post-1976 devices in a consistent fashion. Therefore, FDA is proposing classification or reclassification of these products as applicable.

DATES: Submit written comments by August 30, 1996.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Max Robinowitz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD, 20850–4011, 301–594–1293, ext. 136, or FAX 301–594–5941.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 201 *et seq.*), as amended by the 1976 amendments (Pub. L. 94–295) and the SMDA (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are: Class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act (21 U.S.C. 360c), devices that were in commercial distribution before May 28, 1976, the enactment date of the 1976 amendments, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendations for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and which FDA determines to be substantially equivalent to a device classified under this scheme, is classified into the same class as the device to which it is substantially equivalent. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360 (k)) and part 807 of the regulations (21 CFR 807). A device that was not in commercial distribution prior to May 28, 1976, and that has not been found by FDA to be substantially equivalent to a legally marketed device, is classified automatically by statute (section 513(f) of the act) into class III, without any FDA rulemaking proceeding.

The scope of products covered by this proposal includes both pre-1976 devices which have not been previously classified as well as post-1976 devices which are statutorily classified into class III. The intention of this proposal is to regulate these pre- and post-1976 devices in a consistent fashion. Therefore, FDA is proposing classification or reclassification of these products, as applicable.

Fluorescent-labeled immunohistochemistry in vitro diagnostic devices (IHC's) have been used for patient diagnosis since the early 1940's and enzyme-linked IHC's have been used since the early 1970's. IHC's, however, were not classified as a part of the 1979 FDA classification activities. In addition, new IHC's have been marketed for the first time since the passage of the 1976 amendments. When used in a standardized controlled manner, IHC's enhance the accuracy and scope of surgical pathology, provide objective data to histopathological examination, and contribute to improved patient care. IHC's can specifically and objectively demonstrate the presence and distribution of antigens that may be of use in narrowing differential diagnoses. IHC results are integrated by the user pathologist and interpreted together with other types of data used in pathological diagnostic decisionmaking (Refs. 1 through 4). Because pathologists, the principal users of IHC's, were concerned about the regulation of IHC's, the College of American Pathologists, the American Society of Clinical Pathologists, the Association of Pathology Chairs, the Biological Stain Commission, and the Association of Directors of Anatomic and Surgical Pathology requested a review of the classification of IHC reagents and submitted a Petition for Classification of IHC's as class II (special controls) medical devices during the summer of 1994. In response to this petition, FDA convened the Panel to consider classification/reclassification of these devices.

II. Panel Recommendation

The Hematology and Pathology Devices Panel (the Panel) met on October 21, 1994, and made the following recommendation regarding the classification of five Immunohistochemistry devices.

A. Identification

Immunohistochemistry test systems (IHC's) are in-vitro diagnostic devices that consist of polyclonal or monoclonal antibodies and ancillary reagents that are used to identify, by immunological techniques, antigens in specimens of tissues or intact cells in cytologic specimens. IHC's are primary antibody reagents that are labeled with instructions for use and performance

claims and packaged either prediluted or concentrated (neat), or as kits consisting of optimally-diluted primary antibody combined with detector systems. IHC's identify antigens in tissue or cell preparations using ligand-specific antibodies whose reactivity is detected and marked by secondary reagents that are recognized by pathologists using light or electron microscopes. Most IHC's are adjunctive to conventional histopathology and aid in the qualitative identification of antigens, thereby supplementing the conventional hematoxylin and eosin stains used in the diagnostic classification of normal and abnormal cells and tissues. Some IHC's may provide semi-quantitative or quantitative information about the antigen they identify in normal and abnormal cells and tissues.

B. Recommended Classification of the Hematology and Pathology Devices Panel

Class II (special controls). The Panel recommended that establishing special controls for IHC devices should be a high priority.

C. Summary of Reasons for Recommendation

The Panel recommended that IHC devices be classified into class II (special controls) because they perceived the need for special controls for IHC's that prescribe acceptable sensitivity, specificity, stability, accuracy and precision for these devices, and thereby minimize the possibility that these devices may generate inaccurate diagnostic information. Patients may be placed at unnecessary risk when reliance upon inaccurate diagnostic information results in initiating inappropriate therapies or withholding appropriate therapies.

The Panel stated that general controls for IHC's would not provide sufficient control over sensitivity, specificity, stability, accuracy and precision of IHC devices. The Panel stated that special controls are needed to provide reasonable assurance of the safety and effectiveness of IHC devices and that sufficient information is available to establish these special controls. The Panel recommended that manufacturers of IHC devices should follow the FDA's Guidance for Submission of Immunohistochemistry Applications and that this guidance should serve as a special control.

A major concern of the Panel was that manufacturers of IHC devices should be subject to current good manufacturing practice (CGMP) inspections in a timely manner to ensure safe, reliable, stable, and consistent IHC products.

D. Summary of Data Upon Which the Recommendation is Based

The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with IHC devices, and presentations by Panel members, manufacturers, other interested parties, and FDA (Ref. 5).

E. Risks to Health

IHC in vitro diagnostic devices are intended for use as diagnostic tools. Risk to the patient may result from misdiagnosis and initiation of inappropriate therapies or withholding of appropriate therapies based on the results obtained with the IHC diagnostic device. The degree of risk depends on whether the product is used as an adjunct to conventional histopathological diagnostic techniques or provides information that is used independently of the usual diagnostic process. The highest risk products are those used as independent, stand-alone diagnostic tests that are the sole or major determinant for a medical decision and cannot be confirmed by conventional histopathologic techniques or other diagnostic tests or clinical procedures.

III. Proposed Classification/ Reclassification

Following the Hematology and Pathology Devices Panel meeting, the agency considered the Panel's recommendation. The agency agrees in part and disagrees in part with the Panel's recommendation. FDA believes that general class I controls are sufficient to ensure safety and effectiveness for those adjunctive IHC's that furnish information that may be incorporated into the pathologist's histopathology or cytopathology report but that is not reported directly to clinicians. These general controls include: (1) Existing labeling requirements (21 CFR 809.10) for in vitro devices, (2) compliance with good manufacturing practices, (3) registration, listing, and premarket notification (510(k)), (4) recordkeeping and medical device reporting (MDR), (5) restriction to prescription use (21 CFR 801.109.) Those IHC's that provide pathologists with adjunctive diagnostic information that may be incorporated into the pathologist's report, but that is not ordinarily reported to the clinician as an independent finding, are therefore proposed to be categorized as class I. These IHC's are used in adjunctive tests to subclassify malignant tumors, but the primary diagnosis of tumor (neoplasm) and malignancy is made by conventional histopathology using nonimmunological histochemical stains such as hematoxylin and eosin. Examples of these IHC's proposed for class I are differentiation markers, such as antikeratin antibodies.

The manufacturer (sponsor) of a class I IHC would be required to provide a premarket notification submission to FDA, including data documenting compliance with the labeling requirements in § 809.10 (21 CFR 809.10). Such manufacturers or sponsors may wish to follow the ''FDA Guidance for Submissions of Immunochemistry Applications to FDA'' (Guidance), for the purpose of documenting manufacturing. The FDA Guidance provides details about data that may be submitted to comply with § 809.10.

In considering whether to place any adjunctive IHC's into class I, FDA focused on whether this level of regulation is adequate for the protection of public health. FDA considers the total test performance for any in vitro diagnostic device to be dependent on the net results of preanalytic, analytic, and postanalytic factors. For example, variability in IHC results may be introduced at every step including collection and fixation of the specimen, automated processing, embedding, sectioning, staining of the final slide preparation, and the microscopic interpretation by the pathologist. FDA regulation and review are directed at ensuring that the manufacturer characterizes, manufacturers, and labels the IHC appropriately before it is marketed for professional use. Ongoing initiatives by professional organizations, manufacturers, and FDA are directed at ensuring that pre- and postanalytic, as well as analytic procedures, are properly performed. In the context of these initiatives, FDA believes that class I regulation will assure that these adjunctive IHC's are used safely and effectively.

IHC's that provide the pathologist with adjunctive diagnostic information that is ordinarily reported as independent diagnostic information to the ordering clinician are proposed to be classified in class II. Examples are IHC's for immunologic detection and semi-quantitative measurement of specific ligand markers of proliferation, such as Ki-67, or semi-quantitative determination of other analytes, such as hormone receptors, if they are reported for their prognostic implications. However, this classification does not apply to estrogen and progesterone receptors, which are in class III by previous regulation, and which provide

information that is the basis for significant medical decisions substantially independent of other pathological tests. FDA is proposing that class II IHC's be subject to general controls and to a special control: The FDA Guidance for submissions of Immunohistochemistry Applications to FDA (the guidance) (Ref. 6). The agency believes that the manufacturer/sponsor can establish reasonable assurance of the safety and effectiveness of a class II IHC by providing valid scientific evidence from sponsor-supported studies, as described in the guidance, or from the scientific literature. The guidance was drafted with input from the Biological Stain commission, the Joint Council of Immunohistochemistry Manufacturers, the College of American Pathologists, the American Society of Clinical Pathology, FDA, and comments from the public. The guidance also will provide information to aid the end-users of IHC's (pathologists and other laboratorians) with recommendations about appropriate positive and negative control tissue sections (or cytologic preparations) for each intended use of the IHC. The guidance will also describe the form and content for the package insert of IHC's and provide the sponsor with detailed recommendations about how to comply with § 809.10 (Ref. 6).

IHC's that generate information that is reported directly to the clinician to be used as the basis for significant medical decisions, and that either provide information substantially independent of other pathological (or cytopathological) aspects of the specimen or that have novel claims not supported by current widely accepted scientific pathophysiologic principles, would be categorized as class III. Examples of IHC's FDA proposes to put in class III are markers of clinically significant genetic mutations in tissues that are normal by conventional histopathology.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Taylor, C. R., and Cote, R. C., ''*Immunomicroscopy: A Diagnostic Tool for the Surgical Pathologist*,'' 2d ed., Philadelphia, W. B. Saunders, 1994.

2. True, L. D. (ed)., *Atlas of Diagnostic Immunohistopathology*, Philadelphia, Lippincott, 1990.

3. Nadji, M., and Morales, A. R., ''Immunoperoxidase Techniques: A Practical Approach to Tumor Diagnosis'' Chicago, American Society of Clinical Pathologists Press, 1986.

4. Taylor, C. R., ''Quality Assurance and Standardization in Immunohistochemistry,'' A Proposal for the Annual Meeting of the Biological Stain Commission, June 1991, *Biotechnic & Histochemistry*, 67:110–117, 1992.

5. Transcripts of the Hematology and Pathology Devices Panel meeting, October 21, 1994.

6. FDA Guidance for Submission of Immunohistochemistry Applications to the FDA, FDA Center for Devices and Radiologic Health, 1995, available through the Division of Small Manufacturers' Assistance (DSMA), 1–800–638–2041.

7. Taylor, C. R., et al., Report of the Immunohistochemistry Steering Committee of the Biological Stain Commission, ''Proposed Format: Package Insert for Immunohisto Chemistry Products,'' *Biotechnic & Histochemistry*, 67:328–338, 1992.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the agency believes only a small number of firms will be affected by this rule when finalized, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Request for Comment

Interested persons may, on August 30, 1996 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.1860 is added to subpart B to read as follows:

§ 864.1860 Immunohistochemistry reagents and kits.

(a) *Identification*. Immunohistochemistry test systems (IHC's) are in-vitro diagnostic devices consisting of polyclonal or monoclonal antibodies labeled with directions for use and performance claims, which may be packaged with ancillary reagents in kits. Their intended use is to identify, by immunological techniques, antigens in tissues or cytologic specimens. Similar devices intended for use with flow cytometry devices are not IHC's.

(b) *Classification of immunohistochemistry devices*. (1) Class I for IHC's that provide the pathologist with adjunctive diagnostic information that may be incorporated into the pathologist's report, but that is not ordinarily reported to the clinician as an independent finding. These IHC's are used after the primary diagnosis of tumor (neoplasm) and malignancy is made by conventional histopathology using nonimmunologic histochemical stains such as hematoxylin and eosin. Examples of class I IHC are differentiation markers, such as keratin, which are used in adjunctive tests to subclassify malignant tumors.

(2) Class II for IHC's that provide the pathologist with adjunctive diagnostic information that is ordinarily reported

as independent diagnostic information to the ordering clinician. Examples are IHC's for immunologic detection and semi-quantitative measurement of specific ligand markers of proliferation, such as Ki-67, or semi-quantitative determination of other analytes, such as hormone receptors, if they are reported for their prognostic implications. However, this classification does not apply to estrogen and progesterone receptors that are classified as class III devices.

(3) Class III for IHC's that generate information that is reported directly to the clinician to be used as the basis for significant medical decisions, and that either provide information substantially independent of other pathological (or cytopathological) aspects of the specimen or that have novel claims not supported by current widely accepted scientific pathophysiologic principles. Examples are markers used to identify clinically significant genetic mutations in tissues that are normal by conventional histopathologic examination.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established for the requirement for premarket approval for the devices described in paragraph(b)(3) of this section. See § 864.3 for effective dates of requirement for premarket approval.

Dated: May 31, 1996.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 96–15140 Filed 6–13–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E4573/P662; FRL–5375–1]

RIN 2070–AC18

Fenarimol; Pesticide Tolerance For Residues in or on Filberts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for residues of the fungicide fenarimol in or on the raw agricultural commodity filberts. The proposed regulation to establish a maximum permissible level for residues of the fungicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the docket number [PP 5E4573/P662], must be received on or before July 15, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5E4573/P662]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the ''SUPPLEMENTARY INFORMATION'' section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a .m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 5E4573 to EPA on behalf of the Oregon Filbert Commission.

This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.421 by establishing a tolerance for residues of the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidine methanol] in or on the raw agricultural commodity filberts at 0.02 parts per million (ppm).

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

1. A 1–year feeding study with dogs fed diets containing 0, 1.25, 12.5, or 125 milligrams/kilogram (mg/kg)/day. The no-observed-effects level (NOEL) for this study is established at 12.5 mg/kg/day. The high dose level (125 mg/kg/day) caused increased serum alkaline phosphatase, increased liver weights, an increase in *p*-nitroanisole *o*-demethylase activity, and mild hepatic bile stasis.

2. A 2–year chronic feeding/carcinogenicity study in rats fed diets containing concentrations of 0, 50, 130, or 350 ppm (equivalent to 0, 2.5, 6.5, or 17.5 mg/kg/day) with a systemic NOEL of 130 ppm (equivalent to 6.5 mg/kg/day). An increase in fatty liver changes was observed in rats fed diets containing 350 ppm. There were no carcinogenic effects observed under the conditions of the study.

3. A second 2–year chronic feeding/carcinogenicity study in rats fed diets containing 0, 12.5, 25, or 50 ppm (equivalent to 0, 0.63, 1.25, or 2.5 mg/kg/day) with no systemic or carcinogenic effects observed under the conditions of the study.

4. A 2–year carcinogenicity study in mice fed diets containing concentrations of 0, 50, 170, or 600 ppm (equivalent to 0, 7, 24.3, or 85.7 mg/kg/day) with a NOEL for systemic effects at 170 ppm. An increase in fatty liver changes was observed in mice at the 600 ppm dose level. There were no carcinogenic efects observed under the conditions of the study.

5. A developmental toxicity study with rabbits given oral doses of 0, 5, 10, or 35 mg/kg/day with no developmental toxicity observed under the conditions of the study.

6. A developmental toxicity study with rats given oral doses of 0, 5, 13, or 35 mg/kg/day demonstrated hydronephrosis at 35 mg/kg/day. The NOEL for developmental toxicity in this study is established at 13 mg/kg/day.

7. A second developmental toxicity study in rats (with a postpartum evaluation) again demonstrated hydronephrosis at 35 mg/kg/day. Maternal toxicity (decreased body weight gain) was also observed at the 35 mg/kg/day. The NOEL's for developmental and maternal toxicity in this study are established at 13 mg/kg/day.

8. A 3–generation reproduction study in rats fed diets containing 0, 12.5, 25, or 50 ppm (equivalent to 0.625, 1.25, or 2.5 mg/kg/day) demonstrated decreased mating in males at the 25 ppm and delayed parturition and dystocia in females at 25 ppm and 50 ppm. The NOEL for reproductive effects in this study is established at 12.5 ppm. The infertility effect in male rats is considered to be a species-specific effect mediated by the inhibition of testosterone aromatase which catalyzes the conversion of testosterone to estradiol in the hypothalamus. Estradiol plays an essential role in the development and maintenance of sexual behavior of rats but not in man.

9. Multi-generation reproduction studies that were negative for reproductive effects at 35 mg/kg/day (highest dose tested) in guinea pigs and 20 mg/kg/day (highest doses tested) in mice.

10. An aromatase inhibition study in rats that showed fenarimol to be a moderately weak inhibitor of aromatase activity.

The adverse reproductive effects observed in the rat multi-generation reproduction study are considered to be a species-specific effect caused by aromatase inhibition. The aromatose enzyme promotes normal sexual behavior in rats and mice, but not in guinea pigs, or primates (including humans). A NOEL of 35 mg/kg/day for reproductive effects relevant to humans was established based on the NOEL from the multi-generation reproduction study in guinea pigs.

11. Fenarimol tested negative in several assay systems for gene mutation, structural chromosome aberration and other genotoxic effects. In a micronucleus test in the mouse, fenarimol did produce a significant increase in the percent of polychromatic erythrocytes with micronucleus at 24 hours, but not at 48 hours or 72 hours. The significance of this finding is not known, but the negative results of the other assays demonstrate that the mutagenic potential of fenarimol is very low.

12. Metabolism studies in rats show that fenarimol is rapidly metabolized and excreted. Major metabolic pathways were oxidation of the carbinol-carbon atom, the phenyl rings and the pyrimidine ring.

Based on the above findings, the Agency concluded that fenarimol was not carcinogenic in long-term studies in rats and mice under the test conditions in which the highest dose tested for both species approached a maximum-tolerated dose as evidenced by increased fatty changes in the liver.

The Reference Dose (RfD) is calculated at 0.065 mg/kg bwt/day. The RfD is based on a NOEL of 6.5 mg/kg/bwt/day from the 2–year rat chronic feeding study and an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) from previously established tolerances and the proposed tolerance for filberts utilizes less than 1 percent of the RfD for the general population and less than 2 percent of the RfD for children 1 to 6 years of age (the population subgroup most highly exposed to dietary residues of fenarimol). EPA generally has no concern for exposures below 100 percent of the RfD.

The metabolism of fenarimol in plants is adequately understood for the purposes of the proposed tolerance. The residue of concern is fenarimol per se. An adequate analytical method, is available for enforcement purposes. The analytical method is published in the Pesticide Analytical Manual, Volume II (PAM II).

There is no reasonable expectation that secondary residues of fenarimol will occur in milk, egg, or meat, fat, and meat byproducts of livestock or poultry as a result of this action; there are no livestock feed commodities associated with filberts.

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

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number [PP 5E4573/P662].

A record has been established for this rulemaking under docket number [PP 5E4573/P662] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in t his Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any

''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 3, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.421, the table in paragraph (a) is amended by adding alphabetically the entry for filberts, to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Filberts	0.02
* * * * *	

* * * * *

[FR Doc. 96–15041 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300426; FRL–5374–4]

RIN 2070–AC18

Vinyl Pyrrolidone-Acrylic Acid Copolymer; Tolerance Exemption.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of vinyl pyrrolidone-acrylic acid copolymer when used as an inert ingredient (adhesive, dispersion stabilizer and coating for sustained release granules) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and applied to animals. This proposed regulation was requested by International Specialty Products.

DATES: Written comments, identified by the docket number [OPP–300426], must be received on or before July 15, 1996.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300426]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)–308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: International Specialty Products, 1361 Alps Road, Wayne, NJ 07470, submitted pesticide petition (PP) 6E04659 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346 a(e)), propose to amend 40 CFR part 180.1001(c) and (e) by establishing an exemption from the requirement of tolerance for residues of vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062–44–4), when used as an inert ingredient (adhesive, dispersion stabilizer and coating for sustained release granules) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, under 40 CFR 180.1001(c) and applied to animals under 40 CFR 180.1001(e).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present

minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for vinyl pyrrolidone-acrylic acid copolymer will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Vinyl pyrrolidone-acrylic acid copolymer conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers:

1. Vinyl pyrrolidone-acrylic acid copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Vinyl pyrrolidone-acrylic acid copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen and nitrogen.

3. Vinyl pyrrolidone-acrylic acid copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. Vinyl pyrrolidone-acrylic acid copolymer is not designed, nor it is reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Vinyl pyrrolidone-acrylic acid copolymer is not manufactured or imported from monomers and /or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Vinyl pyrrolidone-acrylic acid copolymer contains only carboxylic acid groups as reactive functional groups.

7. The minimum number-average molecular weight of vinyl pyrrolidone-acrylic acid copolymer is listed as 6,900 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Vinyl pyrrolidone-acrylic acid copolymer has a number average molecular weight of 6,900 and contains less than 10 percent oligomeric material below molecular weight 500 and less than 25 percent oligomeric material below 1,000 molecular weight. Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established for this polymer as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [OPP–300426].

A record has been established for this rulemaking under docket number [OPP–300426] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subject in 40 CFR Part 180

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

Dated: May 31, 1996.

Stephen L.Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180 — [AMENDED]

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

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

2. In § 180.1001, paragraphs (c) and (e), the table in each paragraph is amended by adding alphabetically the inert ingredient ''Vinyl pyrrolidone-acrylic acid copolymer,'' to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

* * * * *

Inert Ingredient	Limits	Uses
* * * * * * *		
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062–44–4), minimum number average molecular weight (in amu) 6,000.		Adhesive, dispersion stabilizer and coating for sustained release granules.
* * * * * * *		

* * * * * (e) * * *

Inert Ingredient	Limits	Uses
* * * * * * *		
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062–44–4), minimum number average molecular weight (in amu) 6,000.		Adhesive, dispersion stabilizer and coating for sustained release granules.
* * * * * * *		

[FR Doc. 96–15197 Filed 6–13–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP5F4545, FAP6H5737/P663; FRL–5375–5]

Quizalofop-P Ethyl Ester; Pesticide Tolerance and Maximum Residue Level

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for the residues of the herbicide quizalofop (2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy])-propanoic acid], and quizalofop ethyl [ethyl-(2-[4-(6-chloroquinoxalin-2-yl) oxy)phenoxy)propanoate), all expressed as quizalofop ethyl in or on the raw agricultural commodity canola seed at 1.0 part per million (ppm) and to establish a maximum residue limit for quizalofop ethyl on canola meal at 1.5 ppm. E.I. DuPont de Nemours Company submitted petitions pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting these regulations to establish certain maximum permissible residue levels for residues of the herbicide.

DATES: Comments, identified by the docket control number [PP PP5F4545, FAP6H5737/P663], must be received on or before July 15, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Word Perfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 5F4545, FAP 6H5737/P663]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the ''SUPPLEMENTARY INFORMATION'' section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices published in the Federal Register of February 1, 1996 (61 FR 3696) (FRL-4994-3), which announced that E.I. Du Pont de Nemours Company, Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, had submitted pesticide petition (PP) 5F4545 to EPA proposing to amend 40 CFR 180.441 by establishing tolerances for residues of the herbicide quizalof [2-4-(6-chloroquinoxalin-2-yl)oxylphenoxy)propanic acid] and quizalofop ethyl(ethyl-2-[4,(6-chloroxyunoxalin-2-yl)oxy)phenoxy]propanonate), all expressed as quizalofop ethyl in or on foliage of legume vegetables (except soybean) at 3.0 ppm and on canola seed at 2.0 ppm. DuPont also submitted a

feed/food additive petition (FAP) 6F5737 proposing to amend 40 CFR 185.5250 by establishing tolerances for the combined residues of the herbicide quizalof [2-[4-(6-chloroquinoxalin-2-yl)oxylphenyl)propanic acide] and quizalofopethyl(ethyl-2-[4,(6chloroxyunoxalin-2-yl)oxy)phenoxy]propanonate), all expressed as quizalofop ethyl in or on the food commodities canola, meal at 3.0 ppm and canola, oil at 0.1 ppm and to amend 40 CFR 186.5250 by establishing tolerances for the combined residues of the herbicide quizalof [2-[4-(6-chloroquinoxalin-2-yl)oxylphenyl)propanic acide] and quizalofop ethyl(ethyl-2-[4,(6-choroxyunoxalin-2-yl)oxy)phenoxy]propanonate), all expressed as quizalofop ethyl in or on the feed commodity canola, meal at 3.0 ppm.

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

During the course of the review of the PP 5F4545, the Agency determined that the filing notice had several errors in the chemical name, that the proposed listing for foliage of legume vegetables (except soybeans) was not necessary since it duplicated a listing under PP 3F4268 (final rule published elsewhere in today's Federal Register) and should be deleted from PP 5F4545. The Agency also determined that the proposed tolerance for canola, seed at 2.0 was higher than necessary. The petitioner subsequently submitted a revised section F deleting the listing for foliage of legume vegetables, and proposing the establishment of a tolerance for the combined residues of the herbicide quizalofop ethyl 2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and quizalofop ethyl (ethyl-2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy] propanoate, all expressed as quizalofop ethyl in on the raw agricultural commodity canola, seed at 1.0 ppm.

During the course of the review of FAP 6H5767, the Agency noted that there were several errors in the filing notice, including the designation of the petition number, the filing notice should have read 6H5737 instead of 6F5737. The Agency also determined that food additive tolerances were not necessary for canola, oil or canola, meal and that a section 701 maximum residue level (MRL) instead of a section 409 feed additive tolerance was needed for canola meal. The petitioner subsequently submitted a revised section F proposing the establishment of a maximum residue limit (MRL) for the combined residues of the herbicide quizalofop ethyl 2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy) propanoic acid), and quizalofop ethyl (ethyl-2-[6-chloroquinoxalin-2-yl)oxy)phenoxy]propanoate, all expressed as quizalofop ethyl in or on canola meal at 1.5 ppm.

In the Federal Register of June 14, 1995 (60 FR 31300) (FRL-4944-2), EPA issued a revised policy concerning when section 409 food and feed additive tolerances were needed to prevent the adulteration of foods and animal feeds. Under EPA's revised policy, a section 409 tolerance is necessary for pesticide residues in processed food when it is likely that the level of some residues of the pesticide will exceed the section 408 tolerance level in ''ready to eat'' processed food. Of particular relevance to the quizalofop ethyl feed additive tolerance is EPA's decision to interpret the term ''ready to eat'' processed food as food ready for consumption ''as is'' without further preparation. For foods that are found to be not ''ready to eat,'' EPA takes into account the dilution of residues that occurs in preparing a ''ready to eat'' food.

EPA has determined that canola meal is not a ''ready to eat'' animal feed. EPA has found no evidence that canola meal is feed to livestock as a stand-alone feedstock. Rather, canola meal is used as an ingredient in animal feeds. The section 408 tolerance for quizalofop ethyl on canola seed is 1.0 ppm. The highest average field trial (HAFT) residue found in canola was 0.65 ppm. A processing study showed that the concentration factor for canola meal was 2.3X. Thus, given this information, it is likely that quizalofop ethyl residues of 1.5 ppm (0.65 x 2.3) could occur in canola meal. However, to project what residues are likely in ''ready to eat'' animal feed containing canola meal the 1.5 ppm level must be divided by 4 to allow for dilution occurring when canola meal is added to other feedstuffs. Once this dilution is taken into account, the maximum residue level of quizalofop ethyl in animal feed would be 0.375 (1.5 ppm/4=0.375 ppm). Since this is below the section 408 tolerance level, animal feed containing such residue levels would not be adulterated, and no section 409 feed additive tolerance is needed.

To aid in the efficient enforcement of the Act, EPA is proposing to establish a maximum residue limit (MRL) for quizalofop ethyl residues in canola meal. The MRL will reflect the maximum residue of quizalofop ethyl in processed foods consistent with a legal level of such residues being present in canola and the use of good manufacturing practices. See 21 U.S.C. 542(a)(2)(c) and rules published December 6, 1995 (60 FR 62366) (FRL-4971-7), and February 29, 1996 (61 FR 7734) (FRL-4996-2), regarding imidacloprid. Processed food not in compliance with an applicable MRL will be deemed adulterated under section 402. Taking into account the degree to which quizalofop ethyl may concentrate during processing using good manufacturing processes (2.3) and the level of residues expected in canola (0.65 ppm), EPA proposes a MRL of 1.5 ppm for canola meal. For purposes of enforcement of the MRL, the same analytical method used for enforcement of the section 408 regulations, should be used.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data submitted in support of these petitions is discussed under a final rule regarding PP 3F4268 and FAP 5H5720, published elsewhere in today's issue of the Federal Register.

Based on the NOEL of 0.9 mg/kg/bwt/day in the 2-year rat feeding study, and using a hundredfold uncertainty factor, the reference dose (RfD) for quazalofop ethyl is calculated to be 0.009 mg/kg/bwt/day. The theoretical maximum residue contribution (TMRC) is 0.000478 mg/kg/bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by less than 0.000077 mg/kg/bwt/day. These tolerances and previously established tolerances utilize a total of 6.8 % of the RfD for the overall U.S. populations, with all exposure coming from published uses. For U.S. subgroup populations, non-nursing infants and children aged 1 to 6 years, the current action and previously established tolerances utilize, respectively a total of 18.842 percent and 11.98 percent of the RfD, with all exposure coming from previously established tolerances, assuming that residue levels are at the established tolerances and that 100 percent of the crop is tested.

There are no desirable data lacking for this petition.

The nature of the residue in plant and livestock is adequately understood. An adequate amount of geographically representative crop field trial residue data were presented which show that the proposed tolerances should not be exceeded when quizalofop ethyl is formulated into ASSURE and used as directed. An adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of

the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I). There are currently no actions pending against the registration of this chemical. Any secondary residues expected to occur in eggs, milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry from this use will be covered by existing tolerances.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and that the tolerance established by amending 40 CFR part 180 will protect the public health, and the establishment of the maximum residue level by amending 40 CFR part 186 is consistent with residue levels permissible in processed foods under 21 U.S.C. 342(a)(2)(C). It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408 (e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 5F4545, FAP 6H5720/P663]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 5F4545, FAP 6H5737/P663](including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

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

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation a specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 26, 1994).

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

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement containing the factual basis for this conclusion was published in the Federal Register of May 4, 1981 (46 FR 24950). Because MRLs function similarly to tolerances and food additive regulations, the establishment of a MRL also does not have a significant effect on a small number of small entities.

List of Subjects in 40 CFR Part 180

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

List of Subjects in 40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: May 26, 1996.

James Tompkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180 [AMENDED]

1. In part 180:

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

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

b. In 180.441, by revising paragraph (a) to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the herbicide quizalofop 2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanic acid], and quizalofop ethyl (ethyl 2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate, all expressed as quizalofop ethyl, in or on the raw agricultural commodities:

Commodities	Part per million
soybeans	0.05
canola, seed	1.0

* * * * *

PART 186—[AMENDED]

2. In part 186:

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

Authority: 21 U.S.C. 342, 348, and 701.

b. In 186.5250, by adding paragraph (c) to read as follows:

§ 186.5250 Quizalofop ethyl.

* * * * *

(c) A maximum residue level regulation is established permitting residues of quizalofop (2-(4-(6-chloroquinoxalin-2-yl)oxy)phenoxy) propanoic acid) and quizalofop ethyl (ethyl 2-[4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)-12-propanoate, in or on the following feed resulting from application of the herbicide to canola.

Feed	Parts per million
canola, meal	1.5

This regulation reflects the maximum level of residues in canola meal consistent with the use of quizalofop ethyl on canola in conformity with 180.441 of this chapter and with the use of good manufacturing practices.

[FR Doc. 96–15200 Filed 6–13–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5519–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Leetown Pesticides Site in Leetown, Jefferson County, West Virginia, from the National Priorities List; Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Leetown Pesticides Site (Site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B to 40 CFR part 300. Part 300 comprises the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the West Virginia Division of Environmental Protection have determined that all appropriate CERCLA actions have been implemented and that the Site poses no significant threat to public health or the environment. Therefore, further remedial measures pursuant to CERCLA are not needed.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before July 15, 1996.

ADDRESSES: Comments may be submitted to EPA's Remedial Project Manager for the Leetown Pesticides Site: Melissa Whittington (3HW23), U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (whittington.melissa@epamail.epa.gov)

Comprehensive information on this Site is available for viewing at the Site information repositories at the following locations:

U.S. EPA Region III, 9th Floor Library, 841 Chestnut Building, Philadelphia, Pennsylvania 19107

Old Charles Town Public Library, 200 East Washington Street, Charles Town, West Virginia 25414

FOR FURTHER INFORMATION CONTACT: Melissa Whittington, Remedial Project Manager, at the address above or by telephone at (215) 566–3235.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the Leetown Pesticides Site, which is located in Leetown, West Virginia, from the National Priorities List (NPL), Appendix B to 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this decision. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As discussed in the NCP at 40 CFR 300.425(e)(3), a site deleted from the NPL remains eligible for remedial action in the unlikely event that conditions at the site warrant such action in the future.

EPA will accept comments on the proposal to delete this Site from the NPL for thirty calendar days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Leetown Pesticides Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP at 40 CFR 300.425(e) provides that sites may be deleted from or recategorized on the NPL where no further response is appropriate. Specifically, this section of the NCP provides that, in making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

The NCP at 40 CFR 300.425(e) further provides that sites may not be deleted from the NPL until the State in which the site is located has concurred on the proposed deletion. All sites deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

III. Deletion Procedures

The procedures required to ensure public involvement during a proposal to delete a site from the NPL are enumerated at 40 CFR 300.425(e)(4). Pursuant to that section, EPA has published this Notice of Intent to Delete, together with concurrent notices in the local newspapers in the vicinity of the Site, to announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the Site from the NPL. All documents supporting EPA's intention to delete the Site from the NPL are available for inspection by the public at the information repositories located at the addresses listed above.

EPA will accept and evaluate public comments on this Notice of Intent to Delete before making a final decision on the deletion. If EPA receives any significant comments during the public comment period, the Agency will prepare a Responsiveness Summary to address those comments.

A deletion occurs when the Regional Administrator places a final deletion notice in the Federal Register. Once this

has occurred, each subsequent publication of the NPL will reflect that the Site has been deleted. Public notices and copies of the Responsiveness Summary, if any, will be placed in the Site information repositories listed above.

IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to delete the Leetown Pesticides Site from the NPL:

A. Site Background

The Site is located in Leetown, Jefferson County, West Virginia, in the extreme northeastern portion of the state, approximately 8 miles south of Martinsburg, West Virginia. The Site consists of three separate parcels in the vicinity of the town of Leetown which were contaminated with pesticides: the former Pesticide Pile Area, the former Pesticide Mixing Shed, and the Crimm Orchard Packing Shed.

The former Pesticide Pile Area is alleged to have received pesticide-contaminated debris from a fire at a local chemical company in 1975. The contamination at the former Pesticide Pile Area was the residue left after the removal of approximately 160 cubic yards of pesticide-contaminated debris in June of 1983.

The former Pesticide Mixing Shed was used during the active operation of the Jefferson Orchard to formulate pesticides for use at the orchard. The eastern portion of the Crimm Orchard Packing Shed was used for the formulation of pesticides for application at the former Crimm Orchard and for storing containers of pesticides, most of which were open and leaking.

The contaminants of concern at the Site included DDT and its metabolites, DDD and DDE, and the alpha, beta, delta, and gamma isomers of hexachlorocyclohexane (HCCH). Gamma HCCH is also known as Lindane.

B. History and Characterization of Risk

Evidence of hazardous waste activity was first brought to the attention of EPA in 1981 by representatives of the National Fisheries Center in nearby Kearneysville, West Virginia. Between 1980 and 1983, EPA conducted a number of investigations which included sampling of the debris pile in the former Pesticide Pile Area and locations in the immediate vicinity of the Pesticide Pile Area, including residential wells, the Fisheries Center, the Grey and Bell Springs, and the Jefferson County solid waste landfill. The Site was proposed for inclusion on the original Superfund NPL in December of 1982, and officially placed on the NPL in September of 1983.

EPA conducted sampling for the Remedial Investigation (RI) between 1984 and 1985. The RI focused on areas in the vicinity of Leetown where the surface disposal of pesticides, agricultural use of pesticides or the landfilling of pesticides had occurred. The areas to be investigated were identified through an aerial photographic survey conducted by EPA and information received from local sources. After evaluating the results of the RI sampling, EPA narrowed the areas of concern to the former Pesticide Pile Area, the former Pesticide Mixing Shed, and the Crimm Orchard Packing Shed. The RI determined the extent of contamination and the risks to human health and the environment posed by the contamination in these areas. The RI was followed by a Feasibility Study (FS), also conducted by EPA, which identified cleanup alternatives to address those risks.

The RI and FS reports were released to the public for review on March 6, 1986. This marked the beginning of the public comment period which closed on March 27, 1986. During the comment period, EPA recommended Alternative 7 from the FS as EPA's preferred remedial alternative. A public meeting to discuss EPA's preferred remedial alternative was held on March 20, 1986. On March 31, 1986, a Record of Decision (ROD) was issued which identified Alternative 7 as the Selected Remedy. Alternative 7 consisted of the following actions: (1) Demolition and off-site disposal of the eastern portion of the Crimm Orchard Packing Shed and its contents; and (2) anaerobic biodegradation of the pesticide-contaminated soils from the former Pesticide Pile Area, the former Pesticide Mixing Shed and the soils from under the Crimm Orchard Packing Shed. A total estimated volume of 3,600 cubic yards of soil were to be consolidated and placed in treatment beds to be constructed on-site.

The demolition and off-site disposal of the eastern portion of the Crimm Orchard Packing Shed and its contents began on February 24, 1988 and was completed on April 22, 1988. EPA performed treatability studies for the bioremediation of the consolidated soils on two separate occasions. The first treatability study, which tested the effectiveness of anaerobic biodegradation, was performed from May 1986 to April 1987. This study was not successful in meeting the cleanup levels specified in the ROD. EPA performed treatability studies for two other biological treatment processes from April 1989 to January 1990. One process utilized white rot fungus; the other process utilized a combination of aerobic and anaerobic biodegradation. Again, neither of these processes were able to successfully treat the soils to meet the cleanup levels specified in the ROD.

In 1990, as part of the second phase of treatability studies, EPA reviewed the cleanup levels established in the ROD to determine if these levels continued to be appropriate to protect human health and the environment. During this review, it was discovered that the methodology used in the 1986 risk assessment was no longer utilized by EPA in determining risks to human health. Specifically, the 1986 risk assessment was based on the maximum human exposure to the contaminants at the Site, including the maximum observed concentrations. However, the Risk Assessment Guidance for Superfund (RAGS) which EPA issued in December of 1989, EPA/540/1–89/002, stated that quantitative risk assessments should be based on Reasonable Maximum Exposure (RME) scenarios. Because the 1986 risk assessment appeared to be overly conservative compared to a risk assessment that would result from utilizing RAGS, EPA recalculated the risks to human health using the RME scenarios and determined that the contaminants of concern at the Site did not pose an unacceptable risk to human health or the environment.

On February 6, 1992, as a result of the revised risk assessment described above, EPA issued a Proposed Remedial Action Plan (Proposed Plan) which identified ''No Further Action'' as EPA's preferred remedial alternative for this Site. Issuance of this Proposed Plan marked the beginning of the public comment period. On February 20, 1992, a public meeting was held at the National Fisheries Center to answer questions from community members and facilitate public input on the Proposed Plan. The public comment period closed on March 6, 1992. On April 7, 1992, EPA issued a ROD Amendment which identified No Further Action as the Selected Remedy for the Site.

On April 7, 1992, EPA also issued a Superfund Preliminary Site Closeout Report. This closeout report indicated that all remedial action activities required for protection of human health and the environment had been satisfactorily completed. The ROD Amendment did not provide any provisions for long-term monitoring of the Site because the only portion of the originally selected remedial action which was completed was off-site

disposal. Therefore, no operation and maintenance activities are required.

Although the remedial action was completed in April of 1988, the monitoring wells installed and utilized during the RI had to be properly abandoned prior to deletion of the Site from the NPL. In the spring of 1995, the U.S. Army Corps of Engineers, Baltimore District was tasked under an interagency agreement with EPA to properly abandon all monitoring wells except those which Jefferson County chose to retain for use in monitoring the groundwater in the vicinity of its solid waste landfill. This work was completed in June of 1995. On August 24, 1995, EPA accepted the Corps of Engineers' report entitled ''Closure Report: Abandonment of Monitoring Wells, Leetown Pesticides Superfund Site, Leetown West Virginia'' as a final document.

EPA is required to review remedial actions every five years if hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unrestricted exposure and unlimited use. Since neither of these conditions exists at this Site, further five-year reviews are not warranted and will not be conducted.

C. Conclusion

The NCP at 40 CFR 300.425(e)(ii) provides that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate.'' EPA, with the concurrance of the State of West Virginia, believes that this criterion for deletion has been met. Therefore, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the Site information repositories listed previously in this document.

Dated: June 4, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, U.S. EPA Region III.

[FR Doc. 96–14911 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 87–10; Notice 8]

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems; Correction

AGENCY: National Highway Traffic Safety Administration; DOT.

ACTION: Correction.

SUMMARY: In Docket 87–10, Notice 6, Notice of Proposed Rulemaking, beginning on page 28124 in the issue of Tuesday, June 4, 1996, make the following correction:

On page 28124 in the second column, 25th line, change the words ''Notice 6'' to ''Notice 7.''

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Atelsek, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992.

Issued: June 10, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–15069 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD91

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Plant Echinocereus lloydii (Lloyd's Hedgehog Cactus) from the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) under the authority of the Endangered Species Act of 1973 (Act), as amended, proposes to remove the plant *Echinocereus lloydii* (Lloyd's hedgehog cactus) from the Federal List of Endangered and Threatened Plants. Lloyd's hedgehog cactus was listed as endangered on October 26, 1979, due to threats of collection and highway projects. Recent evidence indicates that Lloyd's hedgehog cactus is not a distinct species but rather a hybrid. Therefore, Lloyd's hedgehog cactus does not qualify for protection under the Act.

DATES: Comments from all interested parties must be received by August 13, 1996. Public hearing requests must be received by July 29, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Austin Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kathryn Kennedy or Elizabeth Materna, (see ADDRESSES section) (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

Echinocereus lloydii (Lloyd's hedgehog cactus), a member of the cactus family, was first collected by F.E. Lloyd in 1922 and was named in his honor by Britton and Rose (1937). The first plants collected by Mr. Lloyd were from near Fort Stockton, Pecos County, Texas (Weniger 1970).

Lloyd's hedgehog cactus is a cylindrical cactus with one to several stems up to about 20 centimeters (cm) (8 inches (in)) long and 10 cm (4 in) in diameter. The flowers vary from lavender to magenta in color, are about 5 cm (2 in) in diameter, and form mature fruits that are green, tinged with pink or orange when ripe (Correll and Johnston 1979, Poole and Riskind 1987).

Lloyd's hedgehog cactus is known from Brewster, Culberson, Pecos, and Presidio Counties in Texas as well as from Eddy County in New Mexico. It has also been reported from the state of Chihuahua in Mexico. Currently fewer than 15 localities are known from the U.S., most occurring on private lands. These cacti occur in the shrub and brush rangeland of the Chihuahuan Desert, and are usually found associated with *Agave lecheguilla* (lechuguilla), *Prosopis glandulosa* (mesquite), *Larrea tridentata* (creosote bush), *Flourensia cernua* (tarbush), *Viguiera stenoloba* (skeleton-leaf goldeneye), and various cacti (*Opuntia* sp., *Echinocereus* sp., *Echinocactus* sp., and *Coryphantha* sp.) (Poole and Riskind 1987).

Lloyd's hedgehog cactus is usually found on limestone with occasional weathered metamorphic rock. The cacti grow on sandy, gravelly, or rocky soils

on slopes and hillsides, on bare rock ledges (Benson 1982, Weniger 1979), and on fine-textured alluvial soils (Poole and Zimmerman 1985). Elevation of known localities is between 900 and 1650 meters (2950 and 5410 feet) (Benson 1982). Lloyd's hedgehog cactus typically grows on open, fully exposed sites with very scattered forbs, grasses, and brush (Weniger 1979). However, it also occurs in dense mesquite scrub among tall grasses (Poole and Zimmerman 1985).

Lloyd's hedgehog cactus was listed as an endangered species on October 26, 1979 (44 FR 61916) under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At the time of listing, Lloyd's hedgehog cactus was considered to be a distinct species, and to be threatened by overcollection, habitat loss or alteration due to highway construction and maintenance, and potentially by overgrazing by livestock.

It has long been recognized that the physical characteristics of Lloyd's hedgehog cactus are intermediate between those of *Echinocereus dasyacanthus* (Texas rainbow cactus) and *Echinocereus coccineus* (a species of claret-cup cactus). There were several ideas about how such intermediacy could have arisen. One theory was that Lloyd's hedgehog cactus represented a primitive ancestral evolutionary lineage, which diversified over time giving rise to two new lineages producing *E. dasyacanthus* and *E. coccineus.* Another theory was that Lloyd's hedgehog cactus was of hybrid origin, the result of ancient hybridization between *E. dasyacanthus* and *E. coccineus,* but now an independent taxon recognizable as a species.

While interspecific hybridization between members of the genus *Echinocereus* had been reported, hybridization between *E. coccineus* and *E. dasyacanthus* seemed highly unlikely as the two species differ greatly in morphology, have different predominant pollinators (one hummingbird pollinated, the other bee pollinated), and generally grow in different habitats (one a more mesic species and the other typical of more open desert). In addition, anywhere they had been grown or found together they had been observed to bloom at different times with little if any overlap. While many hybrids are sterile, plants of Lloyd's hedgehog cactus were known to be fertile and able to reproduce. Wild populations were known to have persisted for some time, and treatment as a distinct species was generally accepted.

Steve Brack (U.S. Fish and Wildlife Service 1985) reported that in his field examination of Lloyd's hedgehog cactus he had located plants only in proximity to *E. dasyacanthus* and *E. coccineus.* This apparent lack of isolation combined with the intermediate appearance of the plants raised questions about the taxonomic interpretation of Lloyd's hedgehog cactus as a distinct species. It suggested the possibility that Lloyd's hedgehog cactus might be the result of recent and sporadic hybridizations, and simply represent relatively unstable hybrid swarms that were not evolving independently and should not be recognized as a species. The Service determined that the potential hybrid status of Lloyd's hedgehog cactus should be investigated.

Powell, Zimmerman, and Hilsenbeck (1991) conducted experimental crosses, morphological analyses, pollen stainability studies, chromosome counts, and phytochemical studies on the progeny from experimental crosses between *E. dasyacanthus* and *E. coccineus* and on naturally occurring Lloyd's hedgehog cacti. They demonstrated that hybrids between *E. dasyacanthus* and *E. coccineus* could be easily produced, closely resembled naturally occurring Lloyd's hedgehog cacti, and were interfertile and able to backcross to the parental species to produce another generation of plants. If such fertile hybrids were produced in the wild, they could presumably multiply and backcross to the parental species forming the sort of persistent intermediate populations of high variability that are found naturally. Their work suggested that Lloyd's hedgehog cactus could have arisen as a result of hybridization between these other two species of *Echinocereus,* both of which are common and not protected by the Act.

The probability that Lloyd's hedgehog cactus arose through hybridization rather than representing a persistent ancestral condition was heightened by Powell *et al.*'s (1991) finding that naturally occurring Lloyd's hedgehog cacti have tetraploid chromosome numbers, as do *E. dasyacanthus* and *E. coccineus.* Tetraploid chromosome numbers are considered an advanced or recently derived characteristic in the cactaceae, rather than a primitive one. Zimmerman (1992) made additional observations on pollinators and other ecological and phenological isolating mechanisms. He also did cladistic analyses of the primitive and advanced species of the rainbow cacti and claret-cup cacti taxonomic groups and Lloyd's hedgehog cactus. He agreed that Lloyd's hedgehog cactus is not primitive and probably arose through hybridization.

Concluding that plants recognized as Lloyd's hedgehog cactus arose through hybridization raised questions about the integrity or cohesiveness of populations and whether they were sufficiently distinct, isolated, and independently evolving genomes that they should be recognized as distinct species. Powell *et al.*'s (1991) phytochemical, morphological, and crossing studies detected no unique characters or reproductive isolation that would demonstrate any independent evolution had occurred. Though their study lacked comprehensive examination and interpretation of populations in the field and throughout the known range, they suggested that plants recognized as Lloyd's hedgehog cactus might represent mere sporadic hybrid swarms in areas of *E. dasyacanthus* and *E. coccineus* sympatry, and should probably be recognized only as a nothotaxon (a hybrid recognized nomenclaturally for purposes of identification). They designated their artificially produced hybrids as *Echinocereus X lloydii.*

Zimmerman (1992) examined geographical distribution, correlations with geographic variation across the range of Lloyd's hedgehog cactus and its parental species, and population characteristics at several sites in the wild. He found that Lloyd's hedgehog cactus was only found in areas of sympatry between *E. dasyacanthus* and *E. coccineus.* Further, sites with Lloyd's hedgehog cactus did not demonstrate populational integrity or cohesion. Populations were not uniform in appearance and exhibited great variation among individuals consistent with a pattern of backcrossing or introgression with the parental species. Zimmerman could find no evidence of reproductive isolation in the field. The blooming time of Lloyd's hedgehog cactus overlapped both parental species, and Lloyd's hedgehog cactus did not exhibit any habitat preference that would provide any significant physical separation from the parental species. He concluded that Lloyd's hedgehog cactus is not a legitimate species, but felt that plants generally recognized as Lloyd's hedgehog cactus were distinctive enough that for purposes of description and identification it would be convenient to formally designate them as a nothotaxon. His review of the nomenclature resulted in the recommendation that plants formerly recognized as *Echinocereus lloydii* should properly be referred to as the nothotaxon *Echinocereus* X *roetteri* var. *neomexicanus.*

Previous Federal Action

Federal government action concerning Lloyd's hedgehog cactus began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included Lloyd's hedgehog cactus, was presented to Congress on January 9, 1975, and accepted by the Service under section 4(c)(2), now section 4(b)(3)(A), of the Act as a petition to list these species. The report, along with a statement of the Service's intention to review the status of the plant taxa, was published in the Federal Register on July 1, 1975 (40 FR 27823). On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. Lloyd's hedgehog cactus was included in this proposal. Four general hearings pertaining to this proposal were held in July and August of 1976, in the following cities—Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. A fifth public hearing was held on July 9, 1979, in Austin, Texas, for seven Texas cacti, including Lloyd's hedgehog cactus, and one fish. The final rule listing Lloyd's hedgehog cactus as an endangered species was published on October 26, 1979 (44 FR 61916). No critical habitat was designated.

The processing of this proposal to delist follows the Service's final listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events: 1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and 2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for prompt processing of draft listings, including proposed delistings, that were already in the Service's Washington office and already approved by the field and regional offices when the severe funding constraints were imposed in early fiscal year 1996. A draft of this rule was approved by the Service's Albuquerque Regional Director and transmitted to the Washington office on April 4, 1995, where processing was postponed in favor of other, higher priority listing actions.

Summary of Factors Affecting the Species

After a review of all information available, the Service is proposing to remove Lloyd's hedgehog cactus from the List of Endangered and Threatened Plants. Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to or removing them from the Federal lists. The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. Since the time of listing, additional study has shown that Lloyd's hedgehog cactus is not a distinct species, but a hybrid. The Service has concluded that the original taxonomic interpretation upon which the listing decision was based was incorrect, and Lloyd's hedgehog cactus does not qualify for protection because it does not fit the definition of a species as specified in the Act.

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). At the time of listing it was believed that Lloyd's hedgehog cactus was a distinct species and that several of these factors were present. These factors and their application to *Echinocereus lloydii* Britt. & Rose (Lloyd's hedgehog cactus) were discussed in detail in the final rule (44 FR 61916) and included:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Service was concerned that Lloyd's hedgehog cactus was vulnerable from past and potential habitat destruction due to highway construction and maintenance, and the potential destructive impacts of overgrazing in the rural rangeland habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At the time of the final rule and continuing today, Lloyd's hedgehog cactus is in world-wide demand by collectors of rare cacti. Removal of plants from the wild has depleted natural populations.

C. *Disease or predation.* At the time of listing it was believed that Lloyd's hedgehog cactus, particularly young plants, could suffer possible adverse affects from trampling by grazing livestock. The final rule reported that light grazing did not seem to affect the species, however, intense grazing could threaten its continued existence.

D. *The inadequacy of existing regulatory mechanisms.* At the time Lloyd's hedgehog cactus was listed, the states of Texas and New Mexico had no laws protecting endangered and threatened plants. Since the listing, both states have enacted protective laws and regulations for plants. Lloyd's hedgehog cactus is on the New Mexico State List of Endangered Plant Species (9–10–10 NMSA 1978; NMFRCD Rule No. 91–1) and on the Texas List of Endangered, Threatened or Protected Plants (Chapter 88, Texas Parks and Wildlife Code).

On July 1, 1975, all members of the family cactaceae were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

E. *Other natural or manmade factors affecting its continued existence.* Concern about a restricted gene pool due to a low number of populations was listed in the final rule as a factor that could intensify the adverse effects of other threats.

The Service's determination that Lloyd's hedgehog cactus should be proposed for delisting is based on evidence that it is a hybrid that does not qualify for protection under the Act, rather than on the control of threats.

The Service has carefully assessed the best scientific and commercial information available regarding the conclusion that Lloyd's hedgehog cactus is a hybrid that does not qualify for protection under the Act in determining to propose this rule. Based on this evaluation, the preferred action is to remove Lloyd's hedgehog cactus from the List of Endangered and Threatened Plants.

Effects of the Proposed Rule

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply to Lloyd's hedgehog cactus. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign

commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the cactus to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. If Lloyd's hedgehog cactus is removed from the List of Endangered and Threatened Plants, these prohibitions would no longer apply.

If Lloyd's hedgehog cactus is delisted, the requirements under section 7 of the Act would no longer apply. Federal agencies would not be required to consult with the Service on their actions that may affect Lloyd's hedgehog cactus.

The 1988 amendments to the Act require that all species delisted due to recovery be monitored for at least 5 years following delisting. Lloyd's hedgehog cactus is being proposed for delisting because the taxonomic interpretation that it is a species has been found to be incorrect; Lloyd's hedgehog cactus is an unstable hybrid rather than a distinct taxon. Therefore, no monitoring period following delisting is required.

Some protection for Lloyd's hedgehog cactus may remain in place. All cacti, including hybrids, are on Appendix II of CITES. CITES regulates international trade of cacti, but does not regulate trade within the United States or prevent habitat destruction.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning the taxonomic status or threats (or lack thereof) to this apparent hybrid;

(2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current taxonomic interpretation; and

(3) Additional information concerning range, distribution, and population sizes, particularly if it would assist in the evaluation of the accuracy of the current taxonomic interpretation.

The Service will take into consideration the comments and any additional information received and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the Federal Register. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Benson, L. 1982. The cacti of the United States and Canada. Stanford University Press, Stanford, California. 1044 pp.

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Powell, A.M., A.D. Zimmerman, and R.A. Hilsenbeck. 1991. Experimental documentation of natural hybridization in Cactaceae: origin of Lloyd's hedgehog cactus, *Echinocereus* X *lloydii.* Plant Systematics and Evolution 178:107–122.

U.S. Fish and Wildlife Service. 1985. Minutes of the Joint Meeting, Region 2 Plant Recovery Teams, January 10–11, 1985. Region 2, Albuquerque, New Mexico.

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Weniger, D. 1979. Status report on *Echinocereus lloydii.* U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 11 pp.

Zimmerman, A.D. 1992. Systematics of *Echinocereus* X *roetteri* (Cactaceae), including Lloyd's hedgehog-cactus. Southwestern Rare and Endangered Plants; Proceedings of the Southwestern Rare and Endangered Plant Conference. Forestry and Resources Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department. Miscellaneous Publication 2:270–288.

Authors

The primary authors of this document are Elizabeth Materna and Kathryn Kennedy, Ecological Services Austin Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for ''*Echinocereus lloydii*'' under ''FLOWERING PLANTS'' from the List of Endangered and Threatened Plants.

Dated: May 28, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–15124 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960318084–6084–01; I.D. 031396E]

RIN 0648–AG55

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

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

ACTION: Notice of receipt of a petition for regulations, and an application for a

small take exemption; request for comment and information.

SUMMARY: NMFS has received a request from the U.S. Navy for a small take of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast in 1997. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to implement regulations and issue an authorization, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than July 15, 1996.

ADDRESSES: Comments should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to the above address, telephoning the person below (see **FOR FURTHER INFORMATION CONTACT**) or by leaving a voice mail request at (301) 713–4060.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On June 7, 1996, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the U.S. Navy to take marine mammals incidental to shock testing the USS SEAWOLF submarine off the U.S. Atlantic coast. The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. In accordance with 10 U.S.C. 2366, each new class of ships constructed for the Navy cannot proceed beyond initial production until realistic survivability testing of the system is completed. Realistic survivability testing means testing for the vulnerability of the system in combat by firing munitions likely to be encountered in combat. This testing and assessment is commonly referred to as ''Live Fire Test & Evaluation (LFT&E).'' Because realistic testing by detonating torpedoes or mines against a ship's hull could result in the loss of a multi-billion dollar Navy asset, the Navy has established an LFT&E program consisting of computer modeling, component and surrogate testing, and shock testing the entire ship. Together, these components complete the survivability testing as required by 10 U.S.C. 2366.

The shock test component of LFT&E is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat. Shock testing verifies the accuracy of design specifications for shock testing ships and systems, uncovers weaknesses in shock sensitive components that may compromise the performance of vital systems, and provides a basis for correcting deficiencies and upgrading ship and component design specifications. While computer modeling and laboratory testing provide useful information, they cannot substitute for shock testing under realistic, offshore conditions. To minimize cost and risk to personnel, the first ship in each new class is shock tested and improvements are applied to later ships of the class.

The Navy proposes to shock test the USS SEAWOLF by detonating a single 4,536–kg (10,000–lb) explosive charge near the submarine once per week over a 5-week period between April 1 and September 30, 1997. (If the Mayport FL site is selected, the shock tests would be conducted between May 1 and September 30, 1997 in order to minimize risk to sea turtles). Detonations would occur 30 m (100 ft) below the ocean surface in a water depth of 152 m (500 ft). The USS SEAWOLF would be underway at a depth of 20 m (65 ft) at the time of the test. For each test, the submarine would move closer to the explosive so the submarine would experience a more severe shock.

As part of a separate review under the National Environmental Policy Act (NEPA), two sites are being considered by the Navy for the USS SEAWOLF shock test effort. The Mayport site is located on the continental shelf of Georgia and northeast Florida and the Norfolk site is located on the continental shelf offshore of Virginia and North Carolina.

Potential impacts to the several marine mammal species known to occur in these areas from shock testing include both lethal and non-lethal injury, as well as harassment. Death or injury may occur as a result of the explosive blast, and harassment may occur as a result of non-injurious physiological responses to the explosion-generated shockwave and its acoustic signature. The Navy believes it is very unlikely that injury will occur from exposure to the chemical by-products released into the surface waters, and no permanent alteration of marine mammal habitat would occur. While the Navy does not anticipate any lethal takes would result from these detonations, calculations indicate that the Mayport site has the potential to result in one lethal take, 5 injurious takes, and 570 harassment takes, while the Norfolk site has the potential to result in 8 lethal takes, 38 injurious takes, and 4,819 harassment takes. Because of the potential impact to marine mammals, the Navy has requested NMFS to promulgate regulations and issue a letter of authorization under section 101(a)(5)(A) of the MMPA that would authorize the incidental taking.

The Navy's proposed action includes mitigation that would minimize risk to marine mammals and sea turtles. The Navy would: (1) Through pre-detonation aerial surveys, select a test area with the lowest possible number of marine mammals and turtles; (2) monitor the area visually (aerial and shipboard monitoring) and acoustically before each test and postpone detonation if any marine mammal or sea turtle is detected within a safety zone of 3.7 km (2 nmi); and (3) monitor the area after each test to find and treat any injured animals. If post-detonation monitoring shows that marine mammals or sea turtles were killed or injured as a result of the test, testing would be halted until procedures for subsequent detonations could be reviewed and changed as necessary.

NEPA

The Navy has released a draft environmental impact statement under NEPA for public review and comment on this action. NMFS is a cooperating agency as defined by the Council on

Environmental Quality (40 CFR 1501.6). For information on the availability of that document, please refer to the appropriate notice elsewhere in this issue of the Federal Register.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of regulations to allow the taking. NMFS will consider this information in determining the appropriate action to take in response to this request. If NMFS proposes regulations to allow this take, a rule will be published in the Federal Register and interested parties will be given ample time and opportunity to comment.

Dated: June 7, 1996.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–14935 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 285

[I.D. 112995B]

Negotiated Rulemaking Advisory Committee on Tuna Management in the Mid-Atlantic

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

ACTION: Notice of intent; update.

SUMMARY: In February 1996, NMFS announced that Commerce was considering establishing a new advisory committee under the Federal Advisory Committee Act (FACA) to negotiate certain issues between commercial and recreational fishermen competing for tuna off the Mid-Atlantic coast. NMFS has decided to schedule a public meeting for early fall 1996 to brief interested parties on the negotiated rulemaking process and obtain their views as to immediate steps for action that would permit resolution prior to next year's fishing season.

ADDRESSES: Comments should be submitted to the Highly Migratory Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Murray-Brown, 301-713-2347.

SUPPLEMENTARY INFORMATION: On February 1, 1996, NMFS announced that Commerce was considering establishing a new advisory committee under FACA to negotiate issues leading to a proposed rule resolving the gear conflict between recreational and commercial fishermen competing for tuna off the Mid-Atlantic coast (61 FR 3666, February 1, 1996). The decision to use a negotiated rulemaking process—in accordance with the Presidential Directive of March 4, 1995, the report of the National Performance Review, and EO 12866—came in response to the National Fishing Association's petition to employ such a procedure in connection with the tuna dispute. The goal is to produce better regulations, use parties' time and resources more wisely, and reduce litigation, controversy, and uncertainty. The announcement described generally how an advisory committee would be established, participants selected, and requests for representation narrowed. It also set forth a list of possible interests and participants and sought comment on the tentative pool of representatives. Finally, the document set forth a tentative schedule, indicating NMFS' plans to hold meetings of the advisory committee at 2-week intervals starting in March 1996. This document supplements the February announcement, and is intended to provide an update. While NMFS had hoped to start, and finish, the negotiated rulemaking process before the 1996 fishery, this has not been possible.

Following the announcement, NMFS contracted with two dispute resolution professionals, Philip J. Harter and Charles Pou of Washington, DC, for advice on establishment of the advisory committee and to facilitate and mediate the negotiations. The contractors have begun to contact representatives of groups that responded to NMFS's announcement and will be speaking to all of these persons in the near future. The initial contacts indicate that most fishermen are now concentrating on preparing for the summer tuna fishery and, hence, it would be more convenient to postpone any negotiations until near the end of the 1996 season. The contractors have therefore recommended that NMFS hold a public briefing on the negotiated rulemaking process in early fall 1996 and select advisory committee members and commence negotiations soon after the public briefing. NMFS agrees with, and will implement, these recommendations.

The fall 1996 session will bring together representatives of as many affected interests as possible, as well as any others who want to attend, for a briefing on the negotiated rulemaking process; an opportunity for interested persons to offer views and discuss specific potential issues that should be addressed in such a process; and a chance to consider immediate steps for action that would permit resolution prior to commencement of next year's fishing season.

NMFS will work with the contractors over the summer to clarify issues and develop an agenda for the fall briefing, and welcomes input on these matters from interested persons. In addition, the discussion at the fall session, and subsequent negotiations, will be improved substantially if parties collect relevant data and other useful information over the summer, to permit these talks to proceed on the basis of fact. For this reason, NMFS encourages all parties to use the summer to identify and collect information that substantiates or illuminates their claims and concerns.

Authority: 16 U.S.C. 971 *et seq.*

Dated: June 7, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–15166 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 116
Friday, June 14, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting on Withdrawal; Oak Creek Canyon, AZ

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming public meeting on the proposed Forest Service withdrawal application for the protection of recreational and resource values in Oak Creek Canyon near Sedona, Arizona. This public meeting will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: The public meeting will be held on July 16, 1996, from 3:00 p.m. to 7:00 p.m.

ADDRESS: Public meeting held at: Sedona Fire Department #1, 2860 Southwest Drive, Sedona, Arizona 86336.

FOR FURTHER INFORMATION CONTACT:

Pete Mourtsen, Coconino National Forest, (520) 527–3414 or Judy Adams, Sedona Ranger District, (520) 282–4119.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for the Oak Creek Canyon area which was published on March 23, 1994 (56 FR 13740) is hereby modified to allow for a public meeting as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.3–1(2)v.

This meeting will be open to all interested persons who would like to comment in person or to submit written comments on this subject.

FOR FURTHER INFORMATION CONTACT:

All comments should be submitted to the Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, AZ 86004–1890, by July 30, 1996.

Dated: June 10, 1996.

Milo J. Larson,

Acting Deputy Regional Forester.

[FR Doc. 96–15125 Filed 6–13–96; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Notice of Request for Nominations for Board of Trustees

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture is requesting nominations for persons to serve as members of the National Natural Resources Conservation Foundation Board of Trustees.

DATES: Nominations must be received in writing by July 15, 1996.

ADDRESSES: Send written nominations to Chief, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Doug McKalip, Legislative Affairs Division, Natural Resources Conservation Service; (202) 720–2771.

SUPPLEMENTARY INFORMATION:

Board Purpose

The National Natural Resources Conservation Foundation was authorized by the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127—April 4, 1996.

The National Natural Resources Conservation Foundation Board of Trustees will be composed of 9 members appointed by the Secretary of Agriculture to govern the National Natural Resources Conservation Foundation. The purposes of the Foundation are to:

(1) Promote innovative solutions to the problems associated with the conservation of natural resources on private lands, particularly with respect to agriculture and soil and water conservation;

(2) Promote voluntary partnerships between government and private interests in the conservation of natural resources;

(3) Conduct research and undertake educational activities, conduct and support demonstration projects;

(4) Provide such other leadership and support as may be necessary to address conservation challenges, such as the prevention of excessive soil erosion, the enhancement of soil and water quality, and the protection of wetlands, wildlife habitat and strategically important farmland subject to urban conversion and fragmentation;

(5) Encourage, accept, and administer private gifts of money and real personal property for the benefit of, or in connection with, the conservation and related activities and services of the Department, particularly the Natural Resources Conservation Service;

(6) Undertake, conduct, and encourage educational, technical, and other assistance, and activities that support the conservation and related programs administered by the Department (other than activities carried out on National Forest System lands), particularly the Natural Resources Conservation Service, except that the Foundation may not enforce or administer a regulation of the Department; and

(7) Raise private funds to promote the purposes of the Foundation.

Board Membership

The Board will consist of 9 voting members, each of whom shall be a United States citizen and not a Federal officer. The Board shall be composed of—

(1) Individuals with expertise in agriculture conservation policy matters;

(2) A representative of private sector organizations with a demonstrable interest in natural resources conservation;

(3) A representative of statewide conservation organizations;

(4) A representative of soil and water conservation districts;

(5) A representative of organizations outside the Federal Government that are dedicated to natural resources conservation education, and

(6) A farmer or rancher.

Service as a member of the Board shall not constitute employment by, or the holding of an office of the United States for the purposes of any Federal law.

A Board member shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve, proportionally for terms of 1, 2, and 3 years, as determined by the Secretary. No individual may serve more than 2 consecutive 3-year terms as a member of the Board.

A member of the Board shall receive no compensation from the Foundation for the service as a member of the Board.

While away from home or regular place of business of a member of the Board, the member shall be allowed travel expenses paid by the Foundation, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the Government service is allowed under section 5703 of title 5, United States Code.

The Board may complete the organization of the Foundation by adopting the constitution and bylaws consistent with the purposes of the Foundation.

How To Submit Nominations

Nominations must be received by [insert Date 30 days from the date of publication].

Nominations should be typed and should include the following:

(1) A brief summary of no more than two pages explaining the nominee's suitability to serve on the National Natural Resources Conservation Foundation Board of Trustees including relevant experience, current employer or organizational affiliation.

(2) Resume.

Send nominations to the address listed earlier in this notice.

Paul Johnson,

Chief, USDA Natural Resources Conservation Service.

[FR Doc. 96–15185 Filed 6–13–96; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina 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 South Carolina Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on Tuesday, July 2, 1996, at County Square, County Council Chambers, 301 University Ridge, Greenville, South Carolina 29601. The purpose of the meeting is to discuss civil rights progress and problems in the State, discuss followup to the report, Perceptions of Racial Tensions in South Carolina; and hear from invited guests on the current status of race relations in Greenville.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Milton B. Kimpson, 803–779–2597, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 3, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–15085 Filed 6–13–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. AB3–95; AB2–95]

Serfilco, Ltd. and Jack H. Berg, Respondents; Final Decision and Order

I. Summary

Before me for decision is the appeal of respondents, Serfilco Ltd. (Serfilco) and Jack H. Berg (Berg), from the decision and order of the Administrative Law Judge (ALJ). The ALJ found that Berg and Serfilco, a company wholly owned by Berg, each committed nine violations of § 769.2(d) of the Export Administration Regulations (15 C.F.R. § 769.2(d)). The charges were based on their responding to seven of the eight questions contained in a boycott questionnaire (the ''Annex''), and providing two additional items of prohibited information in a cover letter transmitting the answers to the Annex. The ALJ imposed a civil penalty of $10,000 for each of these violations, for a total of $180,000. In addition, Serfilco was found to have committed seven violations of § 769.6 of the regulations for failure to report its receipt of seven boycott-related requests. The ALJ imposed a civil penalty of $4,000 for each of these violations, for a total of $28,000. The civil penalties totaled $90,000 against Berg and $118,000 against Serfilco or $208,000 against the two. Finally, the ALJ imposed on respondents a one year denial of export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and the Republic of Yemen.

I have affirmed the findings of the ALJ that the respondents committed the violations in question. I have, however, reduced the amounts of some of the civil penalties. I have set the penalties at $80,000 for Berg and $38,000 for Serfilco. The total of the civil penalties against the two is now $118,000. I have also affirmed the periods of denial of export privileges to the countries specified for each respondent.

II. Introduction

On August 24, 1995, the Office of Antiboycott Compliance, Bureau of Export Administration, United States Department of Commerce (''agency'' herein) issued charging letters to the respondents, Serfilco, Ltd. and Jack H. Berg. The agency charged that Berg, the President of Serfilco, and Serfilco each committed nine violations of § 769.2(d) of the Export Administration Regulations and that Serfilco committed seven violations of § 769.6 of the Export Administration Regulations. (All references to regulations in this decision are to the Export Administration Regulations in 15 CFR) [1] The respondents and the agency jointly stipulated to, or the respondents requested and received, an extension of the due date for the respondents' answer to the charging letters on nine occasions. On March 27, 1995, the respondents answered the charging letters and requested a hearing. The hearing was held on August 23, 1995 in Washington, D.C. Post-hearing briefs and proposed findings and conclusions were filed by the parties on October 12, 1995; replies were filed on November 9, 1995. The Administrative Law Judge issued his Decision and Order on December 5, 1995. The respondents filed their appeal on January 4, 1996. The agency's reply brief was filed on February 16, 1996, pursuant to an extension of time I granted.

III. Findings of Fact

When the alleged violations occurred, Serfilco was a corporation located in Glenview, Illinois and incorporated in Illinois. All of the violations occurred during 1988, 1989, and 1990 when Berg resided in the United States. Berg wholly owned Serfilco; he was its president, treasurer, and chief executive officer. Serfilco was a United States person, as defined in § 769.1(d), during the time of the alleged violations. At the time of the alleged violations, Serfilco manufactured and exported commercial

[1] On March 25, 1996, the Bureau issued revised Export Administration Regulations (61 *Fed. Reg.* 12714). While those revisions made significant changes to export licensing procedures, they do not affect the result of this case. References in this Decision and Order are to the part numbers used in the Export Administration Regulations prior to March 25.

filtration and pumping equipment. Berg also owned independent operating companies, under the Serfilco name, in Canada and England. In 1989, Serfilco's export sales represented approximately 17 or 18 percent of its total sales. Its sales in the Middle East were a fraction of overall sales. Serfilco also filled Middle East orders for its products from its facility in England. The record does not reflect whether the sales estimates include sales from England. Serfilco has an international department at its Illinois headquarters.

On December 16, 1987, Berg wrote to the U.S. Chamber of Commerce, attaching correspondence, and inquired whether the Chamber of Commerce knew of any reason why his English company should not sell Serfilco pumps to Iran. During the period 1988–1990, Berg was trying to obtain business in Iraq. Between January 1989 and June 1989, Berg sought a distributor in Iraq for his commercial filtration equipment and industrial pumps. As part of that effort, on January 4, 1989, Berg wrote to the senior commercial officer at the U.S. Embassy in Baghdad at the suggestion of M. A. Al-Hantaway, a potential agent for Serfilco's products in Iraq. Berg explained in his letter to the embassy that the Al-Hantaway Bureau in Baghdad would represent Serfilco's products and he sought embassy approval. On January 29, 1989, Russell Y. Smith, the Commercial Attache at the American Embassy in Baghdad, sent Berg a facsimile explaining that ''Iraqi agency law require[s] you to answer questions about your relations with a country boycotted by Iraq.'' The embassy advised Berg that ''U.S. law prohibiting U.S. persons from answering such suggestions may apply.'' Smith told Berg to call 202–377–2381 or 4550, the Office of Antiboycott Compliance, to find out about the requirements of U.S. law.

Also on January 29, 1989, Smith wrote to Berg, reminded him that the United States had an antiboycott law and ''that the Iraqi Agency Law of 1983 may require responses to a series of questions (contained on one sheet) concerning your relations with Israel.'' Smith told Berg that:

> A U.S. person is prohibited from responding to these questions under American law. If you are not familiar with the antiboycott law * * * please contact the Office of Antiboycott Compliance in Washington at (202) 377–4550 or (202) 377–2381. They will be happy to advise you how to comply with the law and also to suggest alternative actions you may take.

Smith also sent Berg the Office of Antiboycott Compliance publication ''Restrictive Trade Practices or Boycotts Including Enforcement and Administrative Proceedings,'' which included the antiboycott regulations. Berg filed Smith's correspondence in his ''Iraqi folder.''

Between May 14, 1989 and June 6, 1989, Berg received a May 14, 1989 letter from M. A. Al-Hantaway, Director of Al-Hantaway Bureau, Commissioning Agency, Baghdad, Iraq. The letter was a request to Berg that he ''approve 6 copies of the (Sales Policy) each with its attached annex * * * and then send them all to us for further process here in Iraq.'' The annex was a single page list of eight questions about respondents' relationships with Israel.

The annex questions were as follows:

1. We do not have now & ever have a branch or main company factory or assembly plant in Israel.

2. We do not have now or ever have general Agencies or offices in Israel for our middle eastern international operations.

3. We have never granted the right using name, trade-marks, royalty, patent, copyright or any of our subsidiaries to Israeli persons or firms.

4. We do not participate or own or ever participate or own shares in Israeli firm or business.

5. We do not render now or ever have rendered any consultance servic[e] or technical assistance to any Israeli firm business.

6. We do not represent now or ever represented any Israeli firm or business in Israel or abroad.

7. (What companies in whose capital are you shareholders? [P]lease state the name and nationality of each company and the percent of share to their total capital.)

8. (What companies are shareholding in your capital, please state the name and nationality of each company and the percentage of share to your total capital.)

On June 6, 1989, Berg answered all of the questions except number five and sent those answers to Al-Hantaway. In his letter to Al-Hantaway accompanying his responses he volunteered:

> Please note that we presently receive orders from Israel, and have also received orders in the past. We have sales dealers or representatives in Israel, same as you. We will continue the above sales.

Berg suggested to Al-Hantaway that he might prefer dealing with Serfilco's office in England. Berg stated that his statement to Al-Hantaway was meant to convey the company's policy to sell its products all over the world without prejudice. Berg maintains that he was not aware of any boycott of Israel when he responded.

Al-Hantaway responded to Berg's June 6, 1989 letter on June 27, 1989 and pointed out that since Berg could not ''sign for all the eight items concerning Israel,'' it would be useless to continue negotiation. Al-Hantaway explained that it would be necessary for Serfilco to ''stop relations with Israelian dealers and representatives and promise to avoid any relation with Israel in the future.'' If Serfilco were to do this, he said, he would then ask the Iraqi authorities to allow him to represent Serfilco. Al-Hantaway's refusal to represent Serfilco, resulted in Berg calling the Office of Antiboycott Compliance, as Commercial Attache Smith had suggested in January.

On July 20, 1989, Berg telephoned the Office of Antiboycott Compliance. Berg told Joyce Shephard of that office that he had received a letter from Commercial Attache Smith about selling to Iraq. he said that a company in Iraq wanted to represent Serfilco but that the company wanted him to sign an agreement about the boycott of Israel. According to a report of that conversation that Shephard wrote, Berg wanted to know if he could ship from his facility in England or Canada and avoid violating the antiboycott law. He also wanted to know whether he would have to agree to boycott Israel. Berg told Shephard that in his absence she should talk with Shirley Futterman, A Serfilco employee. On July 21, 1989, Berg sent Shephard the January 1989 letter from Commercial Attache Smith and his correspondence with Al-Hantaway. Berg told Shephard he wanted to know if there were alternative actions that Serfilco could take that would permit the company to continue its business in Israel and also trade with Iraq. Berg explained to Shepard that Smith had sent him a package containing materials which included a publication called ''Restrictive Trade Practices or Boycotts Including Enforcement and Administrative Proceedings.''

About November 13, 1988, Serfilco received a request for a quotation, with attachments, from Faisal A. Alarfaj, Managing Director, Grace Trading Est. Grace Trading requested that Serfilco include the manufacturer's name and address ''for Israeli Boycott Office verification.'' Berg responded on December 2, 1988 and stated that the manufacturer of the pump offered was Serfilco's subsidiary, ASM Industries, Leola, Pennsylvania.

About May 14, 1989, Serfilco received an inquiry from Ahmad Jassim Heleyel, Commercial Director, State Enterprise for Mechanical Industries Republic of Iraq. The inquiry contained ''General Terms and Conditions'' which were

found in Serfilco's files. Among the conditions was the requirement that ''commercial invoices indicat[e] the name of exporter, manufacturer & that he or his principal is not a branch, mother, sister or partner to establishment included in Israeli boycott'' and the exporter would need to certify that Israeli labor, capital or raw materials were not used, that the ship is not blacklisted and that the ship will not call at any Israeli port. Shirley Futterman on behalf of William H. Smyth, a Serfilco Sales Application Engineer, responded to the letter from Heleyel on June 27, 1989. Futterman sent Heleyel a copy of Serfilco's catalogue and explained that Serfilco had reviewed the Heleyel's requirements but that Serfilco did not have anything to offer.

About May 30, 1989, Serfilco received a request for a quotation from Al-Jubail Fertilizer Company (SAMAD) of Saudi Arabia which attached a document entitled ''Instructions to Bidders.'' Those instructions stated that among the elements to be considered in the evaluating the quotation would be the ''Manufacturer's name and address (for boycott verification).'' The document entitled ''Request for Quotation'' which preceded the instructions also stated that all quotations must contain the manufacturer's name and address for boycott verification purposes. On June 13, 1989, Futterman responded to SAMAD with a quotation for the part sought. She signed on behalf of Serfilco's Export Department.

On or about March 5, 1990, Serfilco, Ltd. received a request for a quotation from Arthur Goveas, Thuwainy Trading Co., W.L.L. in Kuwait, with an attached document from the purchasing department of the Kuwait Oil Company. The Kuwait Oil Company document was called an ''Enquiry'' and provided the following specifications for bidders:

> (K) A Boycott Certificate from the IBO Kuwait or Declaration letter from bidder, should be supplied with the bid confirming that the manufacturer is neither boycotted nor warned, otherwise bid will not be considered.

On or about March 21, 1990, Shirley Futterman on behalf of William H. Smyth, International Sales Application, Serfilco, Ltd. responded to the request from Thuwainy Trading Co.

About April 22, 1990, Serfilco, Ltd. received a request for quotation from Abdullatif Abdalla Almihri, President, Middle East Group—Trading & Contracting W.L.L., with an attached document entitled ''SCHEDULE OF PRICES.'' The request for quotation required the bidder to comply with the following requirement:

> Complete name & address of manufacturer/s must be stated on the offer sheet for clearance from the Israeli Boycott Office—Kuwait, without which your offer will be rejected by the authorities.

By letter dated May 10, 1990, Mark Glodoski, International Sales Appl., Serfilco, Ltd. responded to the request from the Middle East Group—Trading & Contracting W.L.L.

Serfilco did not institute an antiboycott compliance program until ''right after 1992.''

IV. Analysis [2]

A. Furnishing Prohibited Information (§ 769.2(d))

While it is beyond doubt that respondents furnished prohibited information, the 18 charges under § 769.2(d) (nine against Berg and nine against his corporation, Serfilco) and $180,000 penalty pertain to two documents—the annex and the cover letter. Government counsel correctly argues that applicable agency law establishes that the ''proper unit of prosecution'' is each item of prohibited information within a transmission. The ALJ also correctly concluded that he did not have authority to reduce the number of charges. That authority is vested only in the Under Secretary.

Under the longstanding policy and practice of this agency, charges are initiated and penalties are imposed based upon items of information improperly furnished. Here, each charge under § 769.2(d) was based upon a separate piece of information whose transmission could assist in the administration of the boycott. It was appropriate to initiate charges and exact penalties on each of these. I will not exercise my discretion to reduce the number of these charges.

I also concur with the ALJ's finding that Berg and Serfilco are separate entities and are each legally responsible for the violations committed.

1. The Annex

The record clearly demonstrates that respondent Berg was specifically warned that he would be receiving a boycott request and that responding to the request was prohibited. Additionally, he was furnished a copy of the applicable regulations. Therefore, the imposition of the maximum $10,000 penalty against Berg for completing each question in the Annex is appropriate. However, mindful that Serfilco is a small, closely held company whose actions were under the control of respondent Berg, I have exercised my discretion and reduced the penalties against it to $2,500 for each of the seven violations relating to the annex.

2. The Cover Letter

Having completed the Annex, Berg apparently realized that it could create the false impression that he did not do business in Israel. In a misguided attempt to make it clear that he did such business in Israel and intended to continue to do so, Berg provided the additional items of information in his cover letter which form the basis for the second set of § 769.2(d) violations (two against him and two against Serfilco). The body of Berg's letter reads, in its entirety:

> Thank you for your letter of May 16th.
> I have read the attached annex and indicated my answers.
> Please not that we presently receive orders from Israel, and have received orders in the past. We have sales dealers and representatives in Israel, same as you.
> We will continue the above sales, and will be pleased to work with you on the same arrangement. Please advise if this is agreeable. We'll then forward copies of the sales policy to your embassy.

As noted above, I believe that this cover letter constitutes two separate violations of § 769.2(d) for each respondent. I do not, however, believe that imposition of the maximum penalty is appropriate. As a mitigating factor in assessing a penalty for this violation, the record establishes that Berg's objective was to make clear his intention to continue to do business in Israel. Moreover, it should be noted that in his responses to the Annex and in this letter he furnished information only on his firm. Thus, the only furtherance of the boycott resulting from his response was the likely inclusion of his firm on the ''blacklist,'' a result more harmful to himself than supportive of the boycott. Therefore, I have decided to impose two $5,000 penalties against Berg and two $1,000 penalties against Serfilco for furnishing the information contained in the cover letter.

B. Reporting Violations (§ 769.6)

1. Grace Trading Co.

This request was dated November 13, 1988, before Serfilco received specific warnings about the antiboycott laws. Serfilco presented credible evidence that it did not read the ''fine print'' when it did not stock and product in question, but instead responded with a form letter. Since this apparently was Serfilco's first exposure to the Arab boycott of Israel, I give credence to this

[2] Arguments raised by Respondents not discussed below have been considered and rejected as being without merit or as being immaterial to the final decision. The conclusions reached are based on consideration of the record as a whole.

argument in mitigation and reduce the $4,000 penalty imposed by the ALJ to $2,000.

2. Al-Hantaway

The two reporting violations involving Al-Hantaway cover the same subject matter as the previously discussed § 769.2(d) violations. Specifically, Serfilco is charged with failing to report the request to complete the Annex and a subsequent letter from Al-Hantaway informing Serfilco that it must stop its ''relations with Israelian dealers and representatives and promise to avoid any relation with Israel in future.'' While the record is subject to interpretation concerning Serfilco's motivation in contacting the Office of Antiboycott Compliance (OAC) concerning this matter, it does clearly establish that Serfilco provided the OAC, within the prescribed time period, copies of all relevant correspondence. However, Serfilco did not submit the required form. Under these circumstances, I must conclude that Serfilco committed two violations of § 769.6. In view of the mitigating factors noted above, I have decided that the penalty for each of these two violations should be $250.

3. The Four Later Reporting Violations

The record clearly establishes that Serfilco received reportable requests from the State Enterprise for Mechanical Industries, Republic of Iraq; the Al-Jubail Fertilizer Company; the Thunwainy Trading Co.; and the Middle East Group; and failed to report any of them. These four violations all occurred after Serfilco received specific warning about the antiboycott laws, and I affirm the ALJ's imposition of a $4,000 penalty for each.

V. Order

A $10,000 penalty is imposed against Berg for each of the seven § 769.2(d) violations related to the annex. A $5,000 penalty is imposed against Berg for each of the two § 769.2(d) violations involving the cover letter. A $2,500 penalty is imposed against Serfilco for each of the seven § 769.2(d) violations related to the annex. A $1,000 penalty is imposed against Serfilco for each of the two § 769.2(d) violations involving the cover letter. A $2,000 penalty is imposed against Serfilco for the § 769.6 violation regarding Grace Trading. A $250 penalty is imposed against Serfilco for each of the two § 769.6 violations involving Al-Hantaway. A $4,000 penalty is imposed against Serfilco for each of the remaining four § 769.6 violations. The total penalties imposed thus are $80,000 against Berg and $38,000 against Serfilco. The ALJ's imposition, against each respondent, of a one year denial of export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and the Republic of Yemen, is sustained. The period of denial shall begin on the date of this final decision and order. Respondents shall pay these civil penalties within 30 days of the date of this order in accordance with the attached instructions.

Dated: June 10, 1996.

William A. Reinsch,

Under Secretary for Export Administration.

Instruction for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to U.S. Department of Commerce, Bureau of Export Administration, Office of Budget and Financial Management, Room H–3889, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Attn: Victor Micit.

[FR Doc. 96–15074 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy; Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary results in the administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy, covering the period August 1, 1994, through July 31, 1995, because it is not practicable to complete the reviews within the time limits mandated by the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a)(the Act).

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department received a request to conduct an administrative review of the antidumping duty order on granular PTFE resin from Italy. On October 12, 1995, the Department published a notice of initiation (60 FR 53164) of this administrative review covering the period June 1, 1994, through May 31, 1995. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results to September 27, 1996.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34(b). These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: May 30, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–15096 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–560–801, A–583–825, and A–570–844]

Notice of Postponement of Preliminary Determinations: Melamine Institutional Dinnerware Products From Indonesia, Taiwan and the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt, Everett Kelly, or David J. Goldberger, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0629, (202) 482–4194, or (202) 482–4136, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATION: We have determined that respondent parties to these proceedings are cooperating, thus far, in these investigations. We also have determined that all cases are extraordinarily complicated because of the issues raised. The PRC investigation involves a legal issue of first impression

regarding whether the MNC provision, section 773(d) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1930 (the Act), is applicable in an NME investigation. Also, in the Taiwanese investigation petitioners are alleging that one of the Taiwanese respondents has established an export platform in the PRC involving the PRC company that is the subject of the MNC allegation. In the Indonesian investigation an allegation of an affiliation between the sole Indonesian respondent and its sole U.S. customer will require the Department to analyze the complex element of control, as set forth in newly amended section 771(33) of the Act on affiliated parties. In addition, the Indonesian and Taiwanese investigations, and possibly the PRC investigation, present complex model-matching issues involving significant product differences which will require substantial analysis of multiple products within the class or kind of merchandise under investigation. As a result of the novel and complex issues in these three investigations, the Department needs an additional time to fully analyze these issues. Accordingly, pursuant to section 733(c)(1)(B) of the Act, we are postponing the date of the preliminary determinations as to whether sales of melamine institutional dinnerware products from Indonesia, Taiwan and the PRC have been made at less than fair value for additional 30 days (i.e., until Wednesday, August 14, 1996).

This notice is published pursuant to section 733(2) of the Act.

Dated: June 6, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 96–15097 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

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 part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–048. Applicant: U.S. Department of Agriculture, Agricultural Research Service, National Forage Seed Production Research Center, 3450 SW Campus Way, Corvallis, OR 97331–7102. Instrument: Mass Spectrometer System, Model Europa 20–20. Manufacturer: Europa Scientific, Inc, United Kingdom. Intended Use: The instrument will be used to determine fertilizer nitrogen in organic and inorganic forms in soil, water and plant samples. It will also be used to determine gaseous products that are involved in soil metabolism and respiration and are lost from soils into the atmosphere. The objective of the experiments to be conducted will be to improve the understanding of how agricultural management practices affect the chemical and biochemical transformations of nitrogen and carbon in water, soils and plants. Application accepted by Commissioner of Customs: May 6, 1996.

Docket Number: 96–049. Applicant: University of California at San Diego, Scripps Institution of Oceanography, 9500 Gilman Drive, La Jolla, CA 92093. Instrument: Mass Spectrometer, Model VG Sector 54. Manufacturer: VG Isotech, United Kingdom. Intended Use: The instrument will be used in the study of geological materials and natural waters to examine the isotopic composition of certain elements in these samples. The main objectives of the experiments conducted will be to examine the time scales of geologic processes (i.e., dating studies) or to use isotopic compositions of the materials being studied as tracers of geologic processes. In addition, the instrument will be used for educational purposes in the courses: SIO252C: Isotope Geochemistry, SIO299: Independent Research and ES144: Introduction to Isotope Geochemistry. Application accepted by Commissioner of Customs: May 7, 1996.

Docket Number: 96–050. Applicant: University of Michigan, Transportation Research Institute, 2901 Baxter Road, Ann Arbor, MI 48109–2150. Instrument: (10) Infrared Headway Sensor Systems, Model ODIN 4F MS. Manufacturer: Leica AG, Switzerland. Intended Use: The instrument will be used in a study through which a total of ten passenger cars are outfitted and tested with ICC systems. A set of current ''issues'' pertaining to system features, duration of ICC acclimation period, driver characteristics, traffic environments, etc. will be incorporated into the study. The objectives of this investigation are: (1) Test the ability of a vehicle to maintain automatically a safe level of speed and distance between it and preceding vehicles, (2) evaluate improvements in safety, (3) evaluate the potential for decreasing the number and severity of rear end collisions and (4) evaluate the safety impact of the level of convenience which may be higher than is normally offered with standard cruise control. Application accepted by Commissioner of Customs: May 10, 1996.

Docket Number: 96–051. Applicant: Yale University School of Medicine, Department of Cell Biology, 333 Cedar Street, New Haven, CT 06520–8002. Instrument: Free-Flow Electrophoresis Device, Model OCTOPUS PZE. Manufacturer: Dr. Weber GmbH, Germany. Intended Use: The instrument will be used for the separation and isolation of subcellular components from mammalian cells and tissues. Experiments will involve the disruption of various types of cells and the injection of cell homogenates into the FFE chamber for the purpose of collecting individual organelles for biochemical and functional analysis. Application accepted by Commissioner of Customs: May 10, 1996.

Docket Number: 96–052. Applicant: North Carolina State University, Campus Box 7212, Raleigh, NC 27695–7212. Instrument: ISOCMS Accessory for Microanalyzer. Manufacturer: CAMECA Instruments, France. Intended Use: The instrument will be used in conjunction with a microanalyzer to help facilitate determination of the levels of impurities to the PPB and PPT level in materials of engineering importance using the SIMS techniques of dynamic depth profiling, static surface analysis, three dimensional depth profiling, surface mapping, etc. Application accepted by Commissioner of Customs: May 13, 1996.

Docket Number: 96–053. Applicant: Wayne State University, 540 Canfield Avenue, Detroit, MI 48201. Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for morphological examination of ocular (cornea, retina and lens), neuronal (brain and spinal cord) and lung tissues. Cellular mechanisms of the action of bacterial toxins in vitro will also be studied. Application accepted by Commissioner of Customs: May 14, 1996.

Docket Number: 96–054. Applicant: University of Georgia, National Environmentally Sound Production Agriculture Laboratory, Administration

Building, Coastal Plain Experiment Station, Moore Highway, Trifton, GA 31794. Instrument: Ground Conductivity Meter, Model EM38. Manufacturer: Geonics Ltd., Canada. Intended Use: The instrument will be used for studies of subsurface discontinuities in soil properties. Application accepted by Commissioner of Customs: May 15, 1996.

Docket Number: 96–055. Applicant: The Pennsylvania State University, Department of Geosciences, 503 Deike Building, University Park, PA 16802. Instrument: Mass Spectrometer, Model MAT 252. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used to analyze the isotopic composition of fossil air samples extracted from polar ice cores. The data from these experiments will provide the means of reconstructing the composition of the past atmosphere over the last 250,000 years. The objective of the proposed work will be to better understand the factors which influence the biogeochemical cycling of carbon, oxygen and nitrogen in the natural environment. In addition, the instrument will be used in several geoscience courses for demonstrating various techniques used during the acquisition of stable isotope ratios of various air samples. Application accepted by Commissioner of Customs: May 20, 1996.

Docket Number: 96–056. Applicant: Princeton University, PO Box 33, Princeton, NJ 08544–0033. Instrument: Electrical Capacitance Tomography Unit, Model PTL 300–TP–G. Manufacturer: Process Tomography, Ltd., United Kingdom. Intended Use: The instrument will be used to study the mechanics of flow of solid particles consisting of sand grains of about 100 microns in diameters or standard aluminosilicate particles of comparable dimensions suspended in a gas. Application accepted by Commissioner of Customs: May 23, 1996.

Docket Number: 96–057. Applicant: University of Iowa, Mass Spectrometry Facility, 71 Chemistry Building, Iowa City, IA 52242. Instrument: Magnetic Sector Mass Spectrometer, Model VG AutoSpec. Manufacturer: Micromass, Inc., United Kingdom. Intended Use: The instrument will be used primarily for structural studies of organic, organometallic, inorganic and biochemical compounds to determine molecular weight, elemental composition, and other details crucial to the characterization and structure determination of a wide variety of natural and synthetic chemical compounds encountered in research.

Application accepted by Commissioner of Customs: May 23, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–15098 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review.

SUMMARY: On April 26, 1996 the panel review of the final antidumping determination made by the Secretaria de Comerico y Fomento Industrial, in the antidumping investigation respecting Cold-Rolled Steel Sheet Originating in or Exported from Canada was completed. This matter was assigned Secretariat File No. MEX–96–1904–01.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background

On January 26, 1996 Dofasco, Inc. filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination made by the Secretaria de Comercio y Fomento Industrial, in the antidumping investigation respecting Cold-Rolled Steel Sheet Originating in or Exported from Canada. This determination was published in the *Diario Official de la Federacion* on December 27, 1995. Pursuant to subrule 71(2) of the Rules, the panel review in this matter was completed on April 26, 1996.

Dated: May 17, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–15084 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–GT–M

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Binational Panel Decision.

SUMMARY: On May 6, 1996 the Binational Panel issued its decision in the review of the final Determination Not to Revoke Antidumping Duty Orders and Findings Not to Terminate Suspended Investigations made by the International Trade Administration respecting Color Picture Tubes from Canada, Secretariat File No. USA–95–1904–03. The Binational Panel affirmed the final determination. A copy of the complete Panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determination in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The Binational Panel review in this matter was conducted in accordance with these Rules.

Background

On June 26, 1995 Mitsubishi Electronics Industries Canada, Inc. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. After filing of complaints, briefs and other documents and the hearing of oral argument, the Binational Panel issued its decision on May 6, 1996.

Panel Decision

In its May 6 decision, the Binational Panel affirmed the Commerce Department's final determination not to revoke the antidumping duty order on Color Picture Tubes from Canada.

Dated: May 17, 1996.

James R. Holbein.

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–15082 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–GT–M

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Binational Panel Decision.

SUMMARY: On April 30, 1996 the Binational Panel issued its decision in the review of the final antidumping duty administrative review made by the International Trade Administration (ITA) respecting Porcelain-on-Steel Cookware from Mexico, Secretariat File No. USA–95–1904–01. The Binational Panel affirmed in part and remanded in part the final determination for action within 45 days of the issuance of the decision. A copy of the complete Panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The Binational Panel review in this matter was conducted in accordance with these Rules.

Background

On February 8, 1995 Cinsa, S.A. de C.V. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination published in the Federal Register on January 9, 1995 (60 FR 2378) and Amended on February 8, 1995 (60 FR 7521).

Panel Decision

In its April 30 decision, the Binational Panel affirmed the Commerce Department's final determinations with respect to all issues with the following two exceptions: (1) The Panel remanded the issue concerning the error associated with product number 10158 for further proceedings not inconsistent with the opinion, and (2) the Panel remanded the issue of the appropriate adjustment for rebated or uncollected value-added taxes with instructions for the Department to apply the tax neutral methodology approved by the Court of Appeals for the Federal Circuit in *Federal Mogul* v. *United States,* 63 F.3d 1572 (Fed. Cir. 1995). Two panelists wrote a concurring opinion on the issue of the inclusion of profit-sharing in the calculation of cost of production and constructed value. The Department was instructed to provide the Panel with the results of the remand within 45 days of the date of the decision (on or before June 14, 1996).

Dated: May 17, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–15083 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Notice of Approval of Final Management Plan for the Wells National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Approval and Availability of Final Management Plan.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, has approved the revised final management plan for the Wells National Estuarine Research Reserve. A 30-day public comment period was provided, but no comments were received.

The Wells National Estuarine Research was designated in September 1984. Pursuant to section 315 of the Coastal Zone Management Act, 16 U.S.C. Section 1461, and implementing regulations, the Wells Management Authority in conjunction with SRD staff has produced a five-year management plan that provides a course of action for managing the site from 1996 through 2001.

Copies of the document can be obtained from the Wells National Estuarine Research Reserve, 342 Laudholm Road, Wells, Maine 04090. 207/646–1555.

FOR FURTHER INFORMATION CONTACT:

Doris Grimm, OCRM, Sanctuaries and Reserves Division, 1305 East-West Highway, 12th Floor (N/ORM2), Silver Spring, Maryland 20910. (301) 713–3132, extension 118.

Federal Domestic Assistance Catalog Number 11.420, (Coastal Zone Management) Research Reserves

Dated: June 3, 1996.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–15122 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–08–M

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: NOAA will conduct a meeting of the Sanctuary Advisory Council (SAC) for the Hawaiian Islands Humpback Whale National Marine Sanctuary on June 17, 1996, in Honolulu, Hawaii. The SAC was established to advise NOAA's Sanctuaries and Reserves Division regarding the development and management of the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Advisory Council was established under the National Marine Sanctuaries Act.

TIME AND PLACE: The meeting will be held on Monday, June 17, 1996, from 9: AM until 3:30 PM, at the Honolulu International Airport, Interisland Terminal, Ohia Room #1, 7th floor.

AGENDA: General issues related to the Hawaiian Islands Humpback Whale National Marine Sanctuary are expected to be discussed, including an update on recent meetings held in Washington, D.C., updates from the SAC subcommittees (boundary, regulatory and management), and presentations from other West Coast Sanctuary Managers.

PUBLIC PARTICIPATION: The meeting will be open to the public, and interested persons will be permitted to present oral or written statements on agenda items. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT:

Allen Tom (808) 879–2818 or Brady Phillips at (301) 713–3141, ext. 169.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: June 7, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–15221 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 061096B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's Bottomfish Task Force will convene a public meeting.

DATES: The meeting will be held on June 17, 1996, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, Hawaii; telephone: (808) 539–3000. *Council address*: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The Bottomfish Task Force will discuss and make recommendations to the Bottomfish Plan Team on limited entry alternatives to the Mau Zone bottomfish fishery in the Northwestern Hawaiian Islands and consider other business as required.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax).

Dated: June 10, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–15165 Filed 6–11–96; 12:38 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 15, 1996.

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.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services 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 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.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Gloves, Patient Examining

6515–00–NIB–0053 (Small)
6515–00–NIB–0054 (Medium)
6515–00–NIB–0055 (Large)
(Up to 25% of sales under Special Item No.B–14(c) on Federal Supply Schedule 65 II B)
NPA: Bosma Industries for the Blind, Inc., Indianapolis, Indiana

Services

Computer Moving
Morgantown Energy Technology Center
Morgantown, West Virginia
NPA: PACE Training & Evaluation Center, Inc., Star City, West Virginia
Medical Transcription
U.S. Naval Hospital
Patuxent River, Maryland
NPA: Association for the Blind, Inc., Charleston, South Carolina

Deletions

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.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities 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 proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Trunks, General Purpose
8415–01–311–0379 thru –0384

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 96–15170 Filed 6–13–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to 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.

EFFECTIVE DATE: July 15, 1996.

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 April 5 and 26 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 15225 and 18571) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services 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 will not 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

Office and Miscellaneous Supplies
(Requirements for Fort Drum, New York)

Services

Grounds Maintenance, Naval Air Weapons Station, Tot Lot Parks-Housing Area, China Lake, California
Janitorial/Custodial, Naval Surface Warfare Center, Buildings 11, 12 & 13, Bethesda, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 96–15171 Filed 6–13–96; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 27867.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Thursday, June 27, 1996.

CHANGES IN THE MEETING:

The Commodity Futures Trading Commission has changed the closed meeting to discuss Enforcement matters to: 10:00 a.m., Friday, June 28, 1996.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 96–15342 Filed 6–12–96; 3:19 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 96–C0008]

In the matter of Premier Promotions and Marketing, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Premier Promotions and Marketing, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 1, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 10, 1996.

Sadye E. Dunn,

Secretary.

In the Matter of Premier Promotions and Marketing, Inc., a corporation. CPSC Docket No. 96–C0008.

Settlement Agreement and Order

1. Premier Promotions and Marketing, Inc. (hereinafter, ''Premier''), a corporation, enters into this Settlement Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staffs civil penalty allegations that Premier knowingly introduced or caused the introduction in interstate commerce; received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Procedures For Export of Noncomplying Products, section 14(d) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. § 1273(d) and 16 CFR Part 1019, the ''Ghost Blaster,'' a banned hazardous toy, in violation of sections 4 (a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263 (a), (c), and (i).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2053.

3. Premier is a corporation organized and existing under the laws of the State of California, since 1984, with its principal corporate offices located at 14553 Delano Street, Suite 207, Van Nuys, CA 91411. Premier is a marketing and promotions firm. Approximately 75% of Premier's business involves the import and distribution of toys.

II. Allegations of the Staff

4. The Ghost Blaster toy (hereinafter, ''Ghost Blaster'' or ''Ghost Blaster toys'') is a small plastic box which is capable of making two unique electronic sounds when the user presses one of two buttons. The Ghost Blaster is available in white, black, red, and gray. Each unit makes its own unique sound. The Ghost Blaster has an insignia (''logo'') which represents the logo used in the motion picture ''Ghost Busters.'' The insignia is of a ghost inside a red circle with a red line through it.

5. The Ghost Blaster identified in paragraph 4 above is intended for use by children under three years of age.

6. The Ghost Blaster, is subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR Part 1501, in that when tested under the ''use and abuse'' test methods specified in 16 CFR 1500.51 and 1500.52, one or more parts of the toy separated from the toy and the separated parts fit completely within the small parts cylinder when tested using the procedures set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, the Ghost Blaster presents a ''mechanical hazard'' within the meaning of section 2(s) of the FHSA, 15 U.S.C. § 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. The Ghost Blaster is a ''hazardous substance'' pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. § 1261(f)(1)(D).

9. The Ghost Blaster is a ''banned hazardous substance'' pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. § 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance because it presents a mechanical hazard as described in paragraph 7 above.

10. Between April 9, 1989 and June 26, 1989, Premier imported approximately 5.7 million Ghost Blaster toys for distribution by the Hardees restaurant chain.

11. On or about July 7, 1989, Hardees notified the Commission staff that Hardees had received reports of children ingesting one of two 1.5 button cell batteries that powered the Ghost Blaster toys and recalled the products. Hardees was able to recapture approximately 2.5 million Ghost Blaster toys.

12. On or about November, 1989, Premier repurchased the Ghost Blaster toys from Hardees.

13. From July, 1989, through March, 1993, Hardees stored the Ghost Blaster toys while Premier attempted to find an overseas buyer.

14. On or about February 5, 1993, counsel for Hardees advised the Commission staff that Hardees had reached an agreement with Premier regarding the disposition of the Ghost Blaster toys.

15. By letter dated February 17, 1993, the Commission staff advised Hardees and Premier of the Commission's Procedures for the Export of Noncomplying Products, *supra.*

16. By letter dated March 15, 1993, Premier advised the Commission staff it intended to move the Ghost Blaster toys from Hardees' warehouses to Brooklyn Closeout Corporation, (hereinafter, ''Brooklyn Closeout''), 167 Clymer Street, Brooklyn, NY 11211 for subsequent export pursuant to the Commission's Procedures for the Export of Noncomplying Products. Premier moved the Ghost Blaster toys between the last week of March, 1993 and April 2, 1993.

17. By letter dated March 19, 1993, the Commission staff provided Premier a copy of the Commission's Procedures for the Export of Noncomplying Products, *supra.* and by letter dated March 23, 1993, Premier wrote the Commission staff that it was aware of the Commission's Procedures for the Export of Noncomplying Products, *id.*; that it intended to export all the Ghost Blaster toys and would notify the Commission staff pursuant to the Commission's export regulations.

18. On or about March 17, 1993, Premier sold approximately 2.5 million Ghost Blaster toys to SKR Resources, Inc. (hereinafter, ''SKR''), 307 Fifth Avenue, New York, NY 10016. The contract provided no restrictions on the resale of the Ghost Blaster toys by SKR ''with the exception that the units shall only be offered for resale by SKR for export in accordance with the requirements of the Consumer Product Safety Commission (CPSC).'' Premier did not advise the staff of this transaction, or seek guidance about the legality of this sale of the Ghost Blaster toys.

19. As a result of Premier's sales of the Ghost Blaster toys to SKR, the Ghost Blaster toys were distributed in domestic commerce; and/or were exported without notifying the Commission pursuant to section 14(d) of the FHSA, *supra,* and the Commission's Procedures for the Export of Noncomplying Products, *supra,* in violation of sections 4 (a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263 (a), (c), and (i).

20. Premier knowingly introduced or caused the introduction in interstate commerce or delivery for introduction in interstate commerce; received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Procedures For Export of Noncomplying Products, *supra,* the

Ghost Blaster toy identified in paragraph 4 above, a banned hazardous toy, in violation of sections 4 (a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263 (a), (c), and (i).

III. Response of Premier

21. Premier denies the staff's allegations as set forth in paragraphs 4 through 20 above.

22. Premier denies it knowingly introduced or caused the introduction in interstate commerce or delivery for introduction in interstate commerce; received in interstate commerce and delivery or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Export of Noncomplying Products, the Ghost Blaster, a banned hazardous toy, identified in paragraph 4 above, in violation of sections 4 (a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263 (a), (c), and (i).

23. Upon notification by the Commission staff that the Ghost Blaster toys had been distributed in domestic commerce, Premier cooperated with the Commission staff in removing the products from the marketplace.

IV. Agreement of the Parties

24. The Consumer Product Safety Commission has jurisdiction over Premier and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. § 1261 *et seq.*

25. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by this reference.

26. The Commission does not make any determination that Premier knowingly violated the FHSA and/or the CPSA. This Agreement is entered into for the purposes of settlement only.

27. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Premier knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Premier failed to comply with the FHSA and/or the CPSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

28. Upon final acceptance of this Settlement Agreement by the Commission and the issuance of the Final Order, the Commission and Premier knowingly, voluntarily, and completely mutually release such other, their agents, successors, officers, directors, shareholders, and assigns, from any and all disputes, claims, potential claims, controversies, or other differences of any nature whatsoever arising from or relating to the allegations that are contained in this Agreement.

29. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a compliant had issued; and the Commission may publicize the terms of this Settlement Agreement and Order.

30. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedures set forth in 16 C.F.R. §§ 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the Federal Register.

31. The parties further agree that the Commission shall issue the attached Order; and that a violation of the Order shall subject Premier to appropriate legal action.

32. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

33. The provisions of the Settlement Agreement and Order shall apply to the Commission and to Premier and each of its successors and assigns.

Dated April 2, 1996.

Respondent Premier Promotions and Marketing, Inc.

Irving Rubenstein,

President, Premier Promotions and Marketing, Inc. 14553 Delano Street, Suite 207, Van Nuys, CA 91411.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated April 11, 1996.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Premier Promotions and Marketing, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Premier Promotions and Marketing, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further ordered, that upon final acceptance of the settlement Agreement and Order, Premier Promotions and Marketing, Inc. shall pay the Commission a civil penalty in the amount of seventy-five thousand and $^{00}/_{100}$ dollars ($75,000.00) in three (3) payments. The first payment of twenty-five thousand and $^{00}/_{100}$ dollars ($25,000.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the Settlement Agreement. The second payment of twenty-five thousand and $^{00}/_{100}$ dollars ($25,000.00) shall be made within one year after service of the Final Order upon Respondent. The third payment of twenty-five thousand and $^{00}/_{100}$ dollars ($25,000.00) shall be made within two years after service of the Final Order. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 21 of the Settlement Agreement that Premier Promotions and Marketing, Inc. knowingly violated the FHSA. Upon the failure by Premier Promotions and Marketing, Inc. to make a payment or upon the making of a late payment by Premier Promotions and Marketing, Inc. the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 10th day of June, 1996.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–15206 Filed 6–13–96; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Activity Proposed

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of 60-day comment period prior to submitting Volunteers In

Service To America Pre-Application Inquiry, Volunteers In Service To America Project Application, Volunteers In service TO America Project Grant Application, and AmeriCorps*VISTA Project Progress Report form.

SUMMARY: AmeriCorps*VISTA is announcing a 60-day review and comment period during which project sponsors and the public are encouraged to submit comments on the following forms:

VOLUNTEERS IN SERVICE TO AMERICA PRE-APPLICATION INQUIRY, CNCS 3045–0042 (formerly form A–1421)

VOLUNTEERS IN SERVICE TO AMERICA PROJECT APPLICATION, and VOLUNTEERS IN SERVICE TO AMERICA GRANT APPLICATION, CNCS 3045–0038 (formerly forms 1421 and 1421–B)

AMERICORP*VISTA PROJECT PROGRESS REPORT, CNCS 3045–0033 (formerly form 1433)

The Volunteers In Service To America Pre-Application Inquiry is used to request consideration as a project sponsor for AmeriCorps*VISTA Members.

The Volunteers In Service To America Project Application is used to apply for AmeriCorps*Members.

The Volunteers In Service To America Grant Application is used to apply for Federal funds to support AmeriCorps*VISTA Members in carrying out their assignments.

The Project Progress Report form is used by AmeriCorps*VISTA project sponsors and grantees to report on a quarterly basis the progress that has been achieved in relation to the approved Work Plan which is included in the application forms.

Comments on the Volunteers In Service To America Pre-application Inquiry, Volunteers In Service To America a Project Application, and Volunteers In service To America Project forms are invited on (1) whether the forms collect the information needed to decide if a project should be approved, subject to the availability of funds: and (2) accuracy of agency estimates of reporting burden.

Comments are invited on AmeriCorps*VISTA Project Progress Report form on (1) whether the forms collect information sufficient to meet operational management, planning and reporting needs of the AmeriCorps*VISTA program; (2) ways to enhance the quality, utility and clarity of the information collected (3) accuracy of Corporation estimates of reporting burden; and (4) ways to further reduce the reporting burden.

Following the 60-day review and comment period, the AmeriCorps*VISTA Department of the Corporation for National Service will make final revisions to respond to expressed concerns and will submit the instruments to OMB for approval.

DATES: AmeriCorps*VISTA will consider written comments on the proposed applications and reporting requirements received by no later than August 13, 1996.

ADDRESSES TO WHICH TO SEND COMMENTS: David Gurr, AmeriCorps*VISTA, Corporation for National Service, 1201 New York Avenue, NW, Washington, DC 20525.

These documents* are available by calling (202) 606–5000, ext. 212.

- These documents will be made available in alternate formats upon request. TDD (202) 606–6000 ext. 164.

FOR FURTHER INFORMATION CONTACT: David Gurr (202) 606–5000 ext. 212.

Dated: June 11, 1996.

Diana B. London,

*Deputy Director AmeriCorps*VISTA.*

[FR Doc. 96–15159 Filed 6–13–96; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for revision to a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Epidemiologic Studies of Morbidity Among Gulf War Veterans: A Search for Etiologic Agents and Risk Factors; OMB Control Number 0720–0010.

Type of Request: Revision; Emergency processing requested with a shortened public comment period ending June 21, 1996. An approval date of June 28, 1996 is requested.

Number of Respondents: 8,900.

Responses per Respondent: 1.

Annual Responses: 8,900.

Average Burden per Response: 12 Minutes.

Annual Burden Hours: 2,070.

Needs and Uses: This collection of information is necessary to conduct Congressionally directed studies of the health consequences of military service in Southwest Asia during the Persian Gulf War. Information collected hereby will be used to improve the identification, resolution, or prevention of reproductive health illnesses, and the formulation of policy. Respondents are current and former members of all services of the U.S. Military, including reservists and members of the National Guard, as well as female veterans who were pregnant during the Persian Gulf War.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 10, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–15076 Filed 6–13–96; 8:45 am]

BILLING CODE 5000–04–P

Defense Science Board Task Force on Military Personnel Information Management; Notice of Advisory Committee Meeting

SUMMARY: The Defense Science Board Task Force on Military Personnel Information Management will meet in open session on June 26, 1996 at the Radison Hotel, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Norma St. Clair at (703) 696–8710.

Dated: May 10, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–15079 Filed 6–13–96; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program (SERDP), Scientific Advisory Board (SAB)

ACTION: Notice.

In accordance with Title 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: July 9, 1996 from 0800 to approximately 1735, July 10, 1996 from 0800 to approximately 1730, and July 11, 1996 from 0800 to approximately 1240.

Place: Federal Highway Administration Conference Room, 901 N. Stuart Street, Ste. 304, Arlington, VA.

Matters to be Considered: Research and Development Proposals and continuing projects requesting Strategic Environmental Research and Development Programs funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Kimberly Kay, Labat-Anderson Incorporated, 8000 Westpark Drive, McLean, Virginia 22102 or telephone 703–506–1400, extension 552.

Dated: June 7, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–15080 Filed 6–13–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the Realignment of Towed and Self-Propelled Combat Vehicle Mission From Letterkenny Army Depot, Pennsylvania; the Associated Combat Vehicle Material and Management Functions From the Defense Distribution Depot Letterkenny, Pennsylvania (DDLP); and the 142nd Explosive Ordnance Detachment From McClellan, Alabama to Anniston Army Depot (ANAD), Alabama

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the realignment of the towed and self-propelled combat vehicle mission from Letterkenny Army Depot (LEAD), Pennsylvania, to Anniston Army Depot (ANAD), Alabama, and the combat vehicle material and management functions from the Defense Distribution Depot Letterkenny (DDLP) Pennsylvania, to Defense Distribution Depot Anniston, Alabama (DDAA). The Army also proposes to relocate the 142nd Explosive Ordnance Detachment (EOD) from Fort McClellan, Alabama, to ANAD, pursuant to another of the Commission's recommendations.

The Environmental Assessment (EA) evaluates the environmental impacts associated with the transfer of 154 civilian positions from DDLP to DDAA and 17 military positions from Fort McClellan to ANAD. The reallocation of the combat vehicle mission to ANAD involves only the transfer of workload. No additional jobs will transfer because there are adequate personnel at ANAD available to perform the additional workload. It also involves the construction of a new transmission dynamometer facility, a new machining facility, a new operations facility for EOD personnel use, expansion of the recoil repair room, renovation of the recoil honing facility, and upgrade of the firing range. Three parcels of land totaling 137 acres within the Nichols Industrial Complex would be used for storage of combat vehicles before and after maintenance work.

The EA, which is incorporated into the Finding of No Significant Impact, examines potential impacts of the proposed action and alternatives on 13 resource areas and areas of environmental concern: land use, air quality, noise, water resources, geology, infrastructure, training areas, hazardous and toxic materials, biological resources and ecosystems, cultural resources, the sociological environment, economic development, and quality of life.

Based on the analysis found in the EA, which is hereby incorporated in this Finding of No Significant Impact, it has been determined that the implementation of these realignments at ANAD would have no significant or cumulatively significant impacts on the quality of the natural or human environment. Because no significant environmental impacts would result from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Inquiries will be accepted until July 1, 1996.

ADDRESSES: Copies of the Environmental Assessment and Finding of No Significant Impact can be obtained by contacting Dr. Neil Robison at the U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, Alabama 36628–0001 or by telephone at (334) 690–3018.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 96–15094 Filed 6–13–96; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare an Environmental Impact Statement (EIS) for: Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK

AGENCY: U.S. Army, Fort Sill, OK.

ACTION: Notice of intent.

SUMMARY: The purpose of this project is to identify and evaluate the environmental impacts associated with implementation of the Real Property Master Plan (RPMP) for the U.S. Army Field Artillery Center and Fort Sill (USAFACFS).

FOR FURTHER INFORMATION CONTACT: Written comments may be forwarded to U.S. Army Corps of Engineers, ATTN: CESWT–PL–R (J. Randolph), P.O. Box 61, Tulsa, Oklahoma 74121–0061.

SUPPLEMENTARY INFORMATION: The most recent environmental documatation prepared under the guidelines set forth by the National Environmental Policy (NEPA) for Fort Sill activities, including the Master Plan, was the Fort Sill Ongoing Mission EIS completed in September 1978. Since then several changes in legislation, program activities, and missions have occurred. The Fort Sill Master Plan, now referred to as the Fort Sill Real Property Master Plan (RPMP), has become increasingly complex and diverse. Based upon this complexity and diversity of the RPMP, the nature of the activities conducted in the implementation of the RPMP, and its potential to have significant impacts on certain natural, economic, social, and cultural resources of the Fort Sill community, it has been determined that an EIS should be prepared for the RPMP. The study area for environmental concerns will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS which is a complete, objective appraisal of the environmental impact of the installation's RPMP. The purpose of the RPMP EIS is to serve as a planning document for managing activities at the installation by the commanders, Installation Planning Board, Master Planning Office, Directorate of Environmental Quality, and others; a source of public information, and as a reference for mitigation tracking.

Alternatives

1. No-Action Alternative: Whereby, only those RPMP projects that are currently on-going or funded will be completed.

2. Action Alternative 1: Whereby, only those RPMP projects that are considered to have a ''high probability'' of receiving funding, in addition to those currently ongoing or funded, will be completed.

3. Action Alternative 2: Whereby, all the projects of the RPMP will be completed.

Significant Issues

The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resource properties, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects and sited within the 6,015 acre cantonment area, where the majority of the installation historic buildings are located.

List of Affected Parties

A mailing list has been developed for various notices concerning the preparation of this EIS. This list includes local, state, and federal officials having jurisdiction expertise, or other interests in the action: environmental interest groups, and local news media.

Scoping

Comments received as a result of this Notice of Intent will be used to assist the Army in identifying potential impacts to the quality of human and natural environments. Individuals or organizations may participate in the scoping process by written comment or by attending a scoping meeting. The time and location of the scoping meeting will be announced in the Lawton Constitution and by public notice sent to parties indicated in the previous paragraph.

To be considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting. Questions regarding this proposal may be directed to Mr. Jim Randolph at the above address or phone (918) 669–7191.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–15136 Filed 6–13–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Draft Environmental Impact Statement/ Report for Proposed U.S. Food & Drug Administration Laboratory, Irvine, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Food and Drug Administration (FDA) plans to consolidate the functions of several of its California facilities as recommended by the April 15, 1994 document, ''Proposal for Implementing and Managing the Restructuring of the Field Laboratories.'' As a consolidated facility, the laboratory would be multi-functional with respect to FDA activities, including administration functions, such as investigation and compliance activities, and laboratory testing and analytical services. The facility would have a Food chemistry Branch, Drug Chemistry Section, Pesticide Branch, Microbiology Branch, and Biochemistry section for its testing and analytical services. In addition, the FDA, in cooperation with University of California, Irvine, may utilize portions or functions of the laboratory for educational purposes.

FOR FURTHER INFORMATION CONTACT: For a copy of the DEIS/EIR or for further information, please contact Mr. Alex Watt, (213) 452–3860, or by writing to the U.S. Army Corps of Engineers, Los Angeles District (ATTN: CESPL–PD–RQ), P.O. BOX 2711, Los Angeles, CA 90053–2325. Written public comments on the Draft EIS/EIR can be sent to Mr. Alex Watt, U.S. Army Corps of Engineers, c/o Aspen Environmental Group, 30423 Canwood Street, Suite 218, Agoura Hills, CA 91301. Written public comments and suggestions received by July 29, 1996 will be addressed in the Final EIS/EIR.

SUPPLEMENTARY INFORMATION: No long-term adverse ecological or environmental health effects are expected due to the land acquisition for, and the construction and operation of the proposed U.S. Food and Drug Administration Laboratory. No significant impacts are expected to occur.

Scoping: A Scoping Meeting was held in Irvine, California on December 7, 1995. Public notices requesting input and comments from the public concerning issues they believed should be addressed in the environmental impact statement were issued in the regional area surrounding University of Irvine Campus.

A Public Hearing will be held to give individuals and groups the opportunity to comment, either orally or in writing, on the environmental, social and economic impacts of the proposed action as presented in the Draft Environmental Impact Statement/Report (DEIS/EIR). The date, time and location of the hearing will be announced in the local news media. Separate notification of the hearing will also be sent to all parties on the project mailing list.

Copies of the DEIS/R are available for review at the following locations:

UCI Main Library, Reference Desk, P.O. Box 19557, Irvine, California 92713–9557.

UCI Main Library, Government Publications, P.O. Box 19557, Irvine, California 92713–9557.

Heritage Park Regional Library, 14361 Yale Avenue, Irvine, California 92714.

Newport Beach Public Library, Central Library, 1000 Avocado Avenue, Newport Beach, California 92660.

University Park Library, 4512 Sandburg Way, Irvine, CA 92715.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–15134 Filed 6–13–96; 8:45 am]

BILLING CODE 3710–KF–M

Draft Environmental Impact Statement/ Report for Norco Bluffs Bank Stabilization Measures, Norco, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers and the Riverside County Flood Control and Water Conservation District propose to stabilize the Norco Bluffs banks which are located along the Santa Ana River in the City of Norco, California. The toe of the bluffs has undergone substantial erosion resulting in the collapse of sections of the bluff and the endangerment of approximately 56 structure, roadways, and utilities along the bluff. Two alternatives are under consideration. The National Economic Development Alternative is the construction of an earthen toe protection structure with soil cement erosion protection. The Locally Preferred Plan is the preferred alternative, and consists of toe protection with stabilization of the bluff slope using buttress fill.

FOR FURTHER INFORMATION CONTACT: For a copy of the DEIS/EIR or for further information, please contact Mr. Alex Watt, (213) 452–3860, or by writing to the U.S. Army Corps of Engineers, Los Angeles District (ATTN: CESPL–PD–RQ), P.O. Box 2711, Los Angeles, CA 90053–2325. Written comments and

suggestions received by July 29, 1996 will be addressed in the Final EIS/EIR.

SUPPLEMENTARY INFORMATION: Both alternatives would result in significant construction-related impacts, including impacts related to noise, air quality, water quality, traffic safety, and reparian vegetation.

Scoping

A Scoping Meeting was held in Norco, California on September 21, 1995. Public notices requesting input and comments from the public concerning issues they believed should be addressed in the environmental impact statement were issued in the regional area surrounding the City of Norco.

A Public Hearing will be held to give individuals and groups the opportunity to comment, either orally or in writing, on the environmental, social and economic impacts of the proposed action as presented in the Draft Environmental Impact Statement/Report (DEIS/EIR). The date, time and location of the hearing will be announced in the local news media. Separate notification of the hearing will also be sent to all parties on the project mailing list.

Copies of the DEIS/EIR will be available for review at the following locations:

Norco Public Library, 3954 Old Hammer, Norco, CA 91760.
Riverside County Flood Control & Water Conservation District, 1995 Market Street, Riverside, CA 92501.
Corona Public Library, 650 S. Main Street, Corona, CA 91720.
Riverside Public Library, Government Documents, 3581 Mission Inn Avenue, Riverside, CA 92501.
City of Norco, City Clerk's Office, 2870 Clark Avenue, Norco, CA 91760.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–15135 Filed 6–13–96; 8:45 am]

BILLING CODE 3710–KF–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13 and 14 June 1996.

Time of Meeting: 0900–1600 (both days).

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study on ''The Impact of Information Warfare on Army C4I Systems'' will meet for report writing sessions. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–15343 Filed 6–13–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Amendment to notice of meeting.

SUMMARY: This amends the notice of an open meeting of the National Educational Research Policy and Priorities Board published on Tuesday, May 21, 1996, in Vol. 61, No. 99, page 25484. This notice changes the status of the meeting from open to partially closed, if necessary. This document is intended to notify the general public of the possibility of a closed session.

DATES: June 6, 1996.

TIMES: 2 p.m. to 4 p.m., (open): 4 p.m. to 5 p.m., (closed).

SUPPLEMENTARY INFORMATION: The meeting of the Board may be closed to the public from 4 p.m. to 5 p.m. under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c). The board may discuss matters that relate to the internal personnel rules and practices of the Board and to the personal qualifications and experience of candidates for the position of executive director. Such discussions would touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting.

Dated: June 6, 1996.

Sharon P. Robinson,

Assistant Secretary.

[FR Doc. 96–15168 Filed 6–13–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–551–000]

MidAmerican Energy Company; Notice of Application

June 10, 1996.

Take notice that on May 31, 1996, MidAmerican Energy Company (MidAmerican), P.O. Box 778, Sioux City, IA 51102 filed in Docket No. CP96–551–000, an application pursuant to Sections 1(c) and 7(c) of the Natural Gas Act (NGA) and Part 284.224 of the Commission's Regulations for a declaration of Hinshaw exemption and blanket marketing certificate of public convenience and necessity authorizing MidAmerican to transport, sell, and assign natural gas in interstate commerce as though it were an intrastate pipeline as defined in Section 311 of the Natural Gas Policy Act (NGPA), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MidAmerican requests the Commission to declare its service territory exempt from the regulatory jurisdiction of the Commission pursuant to Section 1(c) of the NGA. MidAmerican seeks such a Hinshaw exemption for all of its service territory except for two areas which the Commission has designated as NGA Section 7(f) service areas in Docket No. CP95–265–000. MidAmerican further requests the Commission to grant it a blanket marketing certificate for use within its service territory pursuant to Section 284.224 of the Commission's regulations.

MidAmerican states that its rates and services are subject to regulation by state or local authorities in Iowa, Illinois, South Dakota and Nebraska. MidAmerican further states that it will use the blanket marketing certificate to permit it to maximize its use of its pipeline facilities. MidAmerican also states that a complete copy of the application has been mailed to the Iowa Utilities Board, Illinois Commerce Commission, South Dakota Public Utilities Commission, Natural Gas Pipeline Company of America, Northern Natural Gas Company, ANR Pipeline

Company and Northern Border Pipeline Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 1, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MidAmerican to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15095 Filed 6–13–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5521–1]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units/Information Collection Request Burden Analysis; OMB No. 2060–0072 EPA No. 1088.08

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) for NSPS Subpart Db: Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: SANDY FARMER AT EPA, (202) 260–2740, AND REFER TO EPA ICR NO. 1088.08 AND OMB NO. 2060–0072.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart Db: Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units (OMB number 2060–0072; EPA ICR No. 1088.08). This is a request for extension of a currently approved collection.

Abstract: Owners/Operators of Steam Generating Units subject to Subpart Db must notify EPA of construction, modification, start-up, shut-downs, malfunctions, dates and results of initial performance tests. Owners/Operators of these Steam Generating Units would be required to keep records of design and operating specifications of all equipment installed to comply with the standards. This information is necessary to ensure that equipment design and operating specifications are met. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 8, 1995 (FR 63035); one written and two verbal comments were received concerning this information collection.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 414,257 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 696.

Estimated Number of Respondents: 696.

Frequency of Response: Quarterly and Annually.

Estimated Total Annual Hour Burden: 414,257 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1088.08 and OMB Control No. 2060–0072 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 6, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–15188 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL 5521–2]

Agency Information Collection Activities: Extension for Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State and Local Agencies (OMB No. 2060–0264, EPA ICR No. 1643.02)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the continuing Information Collection Request (ICR) has been sent to the Office of Management and Budget (OMB) for review and comment: Extension for Application Requirements

for the Approval and Delegation of Federal Air Toxics Programs to State and Local Agencies, OMB No. 2060–0264 (EPA ICR No. 1643.02). (The current EPA ICR No. 1643.01 expires on July 31, 1996). The ICR describes the nature of the information collection and its expected burden.

DATES: Comments must be submitted on or before July 15, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1643.02.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are State, local, or tribal governments that voluntarily participate. No industries are included among the applicants.

Title: Extension for Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State and Local Agencies, OMB No. 2060–0264 (EPA ICR No. 1643.02).

Abstract: This collection is a voluntary application from State, local, or tribal governments that voluntarily request delegation of Federal air toxics programs or approval of State, local, or tribal air toxics programs that meet the objectives of the relevant Federal programs. Affected entities have requested such delegations and approvals in order to gain approval of their programs which they can implement at lower costs, thus providing them with a net decrease in overall program expenditures. Because the participation of the affected entities is voluntary, EPA believes there will be a net reduction in burden and costs to the affected entities.

The procedures and requirements for these delegations and approvals were codified as Subpart E of 40 CFR 63 in accordance with section 112(l)(2) of the Clean Air Act (Act), as amended in 1990. The Act calls for EPA to ''publish guidance that would be useful to the States in developing programs * * * allowing for delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements.''

The approval process includes options that allow the affected entities to adjust or substitute for a Federal rule or program. The options vary in the types of changes allowed and in the level of demonstrations required for approval. Affected entities interested in utilizing this program are required to submit an application package to the reviewing agency.

All submissions are voluntary on the part of the affected entities. Therefore, the information collection requirements apply only to those entities that voluntarily submit applications. All application packages are submitted to the Administrator for approval. The information is needed to determine if the entity submitting a request has met the criteria established in the 40 CFR Part 63, Subpart E rule. The collection of information is authorized under 42 U.S.C. 7401–7671q. Information obtained by EPA is safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B, Confidentiality of Business Information. See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on March 22, 1996 (61 FR 11832–11833). There were no comments in response to the notice.

Burden Statement: The Agency has estimated the annual public reporting and recordkeeping burden for this voluntary collection of information to average less than 2000 hours per affected entity, using reasonable upper bound estimates. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including the time to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated Number of Respondents: 42.

Estimated Frequency: 3 times over a 3-year period.

Estimated Total Annual Hour Burden: 80,000 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, S.W., Washington, D.C. 20503; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, D.C. 20503. Please refer to EPA ICR No. 1643.02 and OMB Control No. 2060–0264 in any correspondence.

Dated: June 10, 1996.

Joseph Retzer,

Director, Regulatory Information Division, Integration Division.

[FR Doc. 96–15189 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5470–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 3, 1996 through June 7, 1996 pursuant to 40 CFR 1506.9.

EIS No. 960262, DRAFT EIS, NPS, WA, Klondike Gold Rush National Historical Park, General Management Plan (GMP), Implementation, Skagway, Alaska and Seattle, WA, Due: July 31, 1996, Contact: Willie Russell (206) 553–7220.

EIS No. 960263, FINAL EIS, FHW, AL, Southern Bypass and Weatherly Road Extension Project, Hobbs Island Road to I–565 Interchange, Funding and COE Section 404 Permit, City of Huntsville, Madison County, AL, Due: July 15, 1996, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 960264, DRAFT EIS, COE, FL, Brevard County Shore Protection Study, Implementation, Beach Restoration Project, Brevard County, FL, Due: July 29, 1996, Contact: Michael Dupes (904) 232–1689.

EIS No. 960265, FINAL EIS, FHW, MO, US 61 Relocation, US 61/24 Interchange north of Hannibal to the vicinity of US 61/M Intersection south of Hannibal, Funding and Possible COE Section 404 Permit, Marion and Ralls Counties, MO, Due: July 15, 1996, Contact: Don Neumann (314) 636–7104.

EIS No. 960266, DRAFT EIS, SFW, SC, Waccamaw National Wildlife Refuge Establishment, Preserve and Protect

the Diverse Habitat Components and Coastal River Ecosystem, Great Pee Dee and Waccamaw Rivers, Georgetown, Horry and Marion Counties, SC, Due: July 31, 1996, Contact: Charles R. Danner (800) 419–9582.

EIS No. 960267, DRAFT EIS, NPS, NH, Saint-Gaudens National Historic Site, General Management Plan and Development Concept Plan, Implementation, Sullivan County, NH, Due: July 29, 1996, Contact: John Reber (303) 969–2418.

EIS No. 960268, DRAFT EIS, USN, FL, VA, USS SEAWOLF Submarine Shock Testing, Implementation, located Offshore Mayport, FL or Norfolk, VA, Due: July 29, 1996, Contact: Will Sloger (803) 820–5797.

EIS No. 960269, FINAL EIS, FTA, CA, San Francisco International Airport Extension, Transportation Improvements, Bay Area Rapid Transit District (BART) Funding, San Mateo County, CA, Due: July 15, 1996, Contact: Robert Hom (415) 744–3116.

EIS No. 960270, DRAFT EIS, TVA, TN, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN, Due: July 8, 1996, Contact: David W. Robinson (423) 751–2502.

The above EIS should have appeared in the May 24, 1996 Federal Register. The 45 day Comment Period is Calculated from the Intended Federal Register Date of May 24, 1996.

Dated: June 11, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–15203 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5470–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 28, 1996 through May 31, 1996 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) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–AFS–K61141–CA Rating EC2, Snowcreek Golf Course Expansion, Construction and Operation, Special Use Permit, Inyo National Forest System Lands, Mono County, CA.

Summary: EPA expressed environmental concerns with the separate environmental evaluation of the related Snowcreek ski area and Snowcreek golf course projects, the need for the golf course, water quality and quantity, and potential impacts to wildlife habitat. The final EIS should develop mitigation measures for potential cumulative impacts.

ERP No. D–AFS–K65181–CA Rating EC2, Sequoia National Forest Land and Resource Management Plan, Amendment ''Grazing Management'', Implementation, Kern, Tulare and Fresno Counties, CA.

Summary: EPA expressed environmental concerns with the preferred alternative. It does not address forage utilization or an all season monitoring plan which allows for adaptive management.

ERP No. D–AFS–L65261–AK Rating EC2, Port Houghton/Cape Fanshaw Timber Harvest Sale Project, Implementation, Tongass National Forest, Chatham and Stikine Areas, South of Juneau, AK.

Summary: EPA expressed environmental concerns regarding project impacts on water quality and the marine environment.

ERP No. D–BLM–K67034–NV Rating EO2, Talapoosa Gold Mine Project, Construction and Operation, Plan of Operations Approval, Special-Use-Permit and COE Section 404 Permit Issuance, Silver Springs, Lyon County, NV.

Summary: EPA expressed environmental objections due to potential groundwater and post-mining pit lake impacts. EPA requested additional information on groundwater modeling, pit water quality, ecological risk assessment, geochemical characterization and waste rock disposal, seepage rates from waste rock dumps, facilities design and reclamation, and mitigation measures.

ERP No. D–DOE–L09807–WA Rating EC2, Hanford Site K Basins Management of Spent Nuclear Fuel, Storage and Disposal, Application for Approval of Construction and NPDES Permit Issuance, Columbia River, Richland, Benton County, WA.

Summary: EPA expressed environmental concerns regarding permitting, accidential releases, and economic analysis.

ERP No. D–OSM–E67003–TN Rating EC2, Fern Lake Petition Area for Surface Coal Mining Operations, Designation or Undesignation as Unsuitable for Coal Mining Operations, Claiborne County, TN.

Summary: EPA expressed environmental concerns over surface mining in the Fern Lake watershed because of potential adverse impacts to water quality, aquatic life and the water supply for the City of Middlesboro.

ERP No. DS–NPS–K61126–AZ Rating LO, Tumacacori National Historical Park General Management Plan, Additional Information, Santa Cruz County, AZ.

Summary: EPA expressed a lack of objections with the new preferred alternative.

Final EISs

ERP No. F–AFS–K67031–NV. Dash Open Pit and Underground Mining Project, Implementation, Expanding existing Gold Mining Operations at the Jerritt Canyon Project, Plan of Operation Approval and COE Section 404 Permit, Humboldt Toiyabe National Forest, Independence Mountain Range, Elko County, NV.

Summary: EPA expressed environmental concerns regarding potential water quality impacts and recommended that the Forest Service conduct modeling to predict the concentrations and effects of contaminants in streams. EPA also expressed concern regarding the placement of waste rock in waters of the United States and the need for additional information on mitigation measures for this activity.

ERP No. F–BLM–K67020–AZ. Cyprus Bagdad Copper Mine, Mill Tailings and Waste Rock Storage Expansion, Plan of Operation Approval, NPDES and COE Section 404 Permits Issuance, Yavapai County, AZ.

Summary: EPA expressed environmental objections about the project as proposed. EPA recommended that quantitative modeling of the post-project quality of pit water be conducted prior to BLM's Record of Decision. Mitigation of and monitoring for impacts to waters of the U.S. should have been addressed in the EIS and EPA suggests that the mitigation and monitoring plan be discussed in the Record of Decision.

ERP No. F–BLM–K67032–NV. Round Mountain Mine Mill and Tailings Facility, Construction and Operation for the Smoke Valley Operation, Plan of Operations Amendment Approval, Nye County, NV.

Summary: EPA expressed environmental objections regarding cumulative impacts of the proposed project effectiveness of mitigation

measures and suggested that the Plan of Operation provide an appropriate opportunity for BLM and the State of Nevada to collect a contingency fund, which may be necessary for future remedial action, based on the predicted pit lake water quality.

Dated: June 11, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–15204 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30412; FRL–5373–7]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products, except for the chemical ethepon which is currently registered on cotton pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 15, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30412] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30412]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 13 George LaRocca,	Rm. 204, CM #2 (703–305–6100); e-mail: larocca.george@epamail.epa.gov	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 22 Cynthia Giles-Parker,	Rm. 229, CM #2 (703–305–5540); e-mail: giles-parker.cynthiajames@epamail.epa.gov	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products, except for the chemical ethepon which is currently registered on cotton pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 10308–EU. Applicant: Sumitomo Chemical Company Limited 5-33 Kitahama, 4-Chome, Chou-Ku Osaka 541, Japan. Product name: Pralle. Insecticide. Active ingredient: [2,5-Dioxo-3-(2-propynyl)-imidazolidinyl]methyl (1*RS*)-*cis,trans*-chrysanthemate at 50.5 percent. Proposed classification/Use: None. For formulation use only. Type registration: Conditional. (PM 13)

2. File Symbol: 1021–RAIN. Applicant: McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427. Product name: Multicide Intermediate 2734. Insecticide. Active ingredients: Imiprothrin [2,5-Dioxo-3-(2-propynyl)-imidazolidinyl]-methyl (1*RS*)-*cis,trans*-chrysanthemate at 16.00 percent, 3-phenoxybenzyl-(1*RS*,3*RS*;1*RS*,3*SR*)-2,2-dimethyl-3-(2-methylprop-1-enyl) cyclopropanecarboxylate at 11.20 percent, and *N*-octyl bicycloheptene dicarboximide at 20.00 percent. Proposed classification/Use: None. For manufacturing use only. Type registration: Conditional. (PM 13)

3. File Symbol: 1021–RATO. Applicant: McLaughlin Gormley King Co. Product name: Multicide Pressurized Roach Spray 27341. Insecticide. Active ingredients: Imiprothrin [2,5-Dioxo-3-(2-propynyl)-imidazolidinyl]-methyl (1*RS*)-*cis,trans*-chrysanthemate at 0.400 percent, 3-phenoxybenzyl-(1*RS*,3*RS*;1*RS*,3*SR*)-2,2-dimethyl-3-(2-methylprop-1-enyl) cyclopropanecarboxylate at 0.500 percent, and *N*-octyl bicycloheptene dicarboximide at 1.000 percent. Proposed classification/Use: None. For indoor use on ants, cockroaches, crickets, and other pests. Type registration: Conditional. (PM 13)

4. File Symbol: 4822–UUT. Applicant: S.C. Johnson and Son, Inc., Racine, WI 53403–2236. Product name: Raid Ant and Roach 17. Insecticide. Active ingredients: Imiprothrin [2,4-Dioxo-1-(prop-2-ynyl)-imidazolidin-3-ylmethyl (1*R*)-*cis,trans*-chrysanthemate at 0.100 percent and cypermethrin [cyano (3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate at 0.100 percent. Proposed classification/Use: None. For household use. Type registration: Conditional. (PM 13)

5. File Symbol: 264–LAU. Applicant: Rhone-Poulenc AG Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. Product name: Finish. Insecticide. Active ingredients: Ethepon (2-chloroethyl)phosphonic acid at 35.1 percent and cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid at 4.3 percent. Proposed classification/Use: None. For use as a harvest aid on cotton. (PM 22)

6. File Symbol: 464–LAL. Applicant: Rhone-Poulenc Co. Product name: Cyclanilide Technical. Insecticide. Active ingredient: Cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid at 98.5 percent. Proposed classification/Use: None. For manufacturing use only. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30412] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 4, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–15199 Filed 6-13–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 5E4575/T693; FRL 5377–6]

Aspergillus flavus AF 36; Establishment of Temporary Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary exemption from the requirement of a tolerance for residues of the microbial pesticide *Aspergillus flavus* AF 36 in or on the raw agricultural commodity cotton.

DATES: This temporary exemption from the requirement of a tolerance expires May 20, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Fifth Floor, Crystal Station 1, 2800 Crystal Drive, Arlington, VA, (703) 308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Inter-Regional Reserach Project No. 4, New Jersey Agricultural Experiment, Rutgers Cook College, P.O. Box 231, New Brunswick, NJ 08903, has requested in pesticide petition PP 5E4575, the establishment of an exemption from the requirement of a tolerance for residues of the microbial pesticide *Aspergillus flavus* AF 36 in or on the raw agricultural commodity cotton. This temporary exemption from the requirement of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 69224-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Inter-Regional Research Project No. 4, must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires May 20, 1999. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: June 6, 1996.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–15196 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 6G4622/T692; FRL 5377–5]

Trichodex; Establishment of Temporary Exemption from the Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary exemptions from the requirement of tolerances for residues of the microbial pesticide *Trichoderma harzianum* isolate T-39 and microbial antifungal agent ABG-8007 in or on certain raw agricultural commodities.

DATES: These temporary exemptions from the requirement of tolerances expire May 9, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Fifth Floor, Crystal Station 1, 2800 Crystal Drive, Arlington, VA (703) 308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176, has requested in pesticide petitions (PP) 6G4622 the establishment of exemptions from the requirement of tolerances for residues of the microbial pesticide *Trichoderma harzianum* isolate T-39 when used as an antifungal agent in or on the raw agricultural commodities table grape, wine grape and strawberry. The microbial antifungal agent is also referred to as ABG-8007 and contains dried fermentation solids resulting from fermentation of *Trichoderma harzianum* isolate T-39, containing T-39 fungus propagules as either conidia or mycelia.

These temporary exemptions from the requirement of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 11678-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. Makhteshim-Agan of North America Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirement of tolerances expire May 9, 1998. Residues remaining in or on all raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

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

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 6, 1996.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–15192; Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 6G4684/T691; FRL 5375–4]

Abbott Laboratories; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the plant growth regulator, (*S*)-*trans*-2-Amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride in or on certain raw agricultural commodities. These temporary tolerances were requested by Abbott Laboratories.

DATES: These temporary tolerances expire June 1, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Fifth Floor, Crystal Station 1, 2800 Crystal Drive, Arlington, VA, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, Dept. 28R, Bldg, Al, 1401 Sheridan Rd., North Chicago, IL 60064–4000, has requested in pesticide petition (PP) 6G4684, the establishment of temporary tolerances for residues of the plant growth regulator, (*S*)-*trans*-2-Amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride in or on the raw agricultural commodities apples and pears at 0.075 parts per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 275-EUP-80, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Abbott Laboratories must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 1, 1997. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

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

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: June 10, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–15198 Filed 6-13–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–654; FRL–5370–7]

Pesticide Tolerance Petitions; Notice of Filings and Withdrawals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filings and withdrawal of pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number [PF–654], must be received on or before July 15, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–654]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Connie Welch (PM 21)	Rm. 233, CM #2, 703–305–6226, e-mail: welch.connie@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–5540, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do
Joanne I. Miller (PM 23).	Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov.	Do.
Robert J. Taylor (PM 25).	Rm. 245, CM #2, 703–305–6027, e-mail: taylor.robert@epamail.epa.gov.	Do.
Mike Mendelsohn (PM 90).	5th Fl., CS #1, 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.	2800 Crystal Drive, Arlington VA 22202

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment/amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities and the withdrawal of certain pesticide petitions.

Initial Filings

1. *PP 5F4550*. Elf Atochem North America, Inc., 2000 Market St. Phildelphia, PA 19103–3222, proposes to amend 40 CFR 180.371 by establishing tolerances for the residues of the fungicide thiophanate-methyl, its oxygen analogue and its benzamidazole-containing metabolites in or on the raw

agricultural commodities grapes at 5.0 ppm and pears at 7.0 ppms. (PM 21)

2. *PP 6F4643*. Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709–2014, proposes to amend 40 CFR part 180 by establishing tolerances for residues of the plant growth regulator cyclanilide 1-(2,4-dichlorophenylaminocarbonyl)-cyclopropane carboxylic acid in or on the raw agricultural commodities cottonseed at 0.75 ppm, milk at 0.03 ppm, beef, cattle, goat, and sheep liver at 0.25 ppm, beef, cattle, goat, and sheep kidney at 2.5 ppm, beef, cattle, goat, and sheep fat at 0.07 ppm, beef, cattle, goat, and sheep meat byproducts at 2.5 ppm, beef, cattle, goat, and sheep organ meat at 2.5 ppm, beef, cattle, goat, and sheep lean (fat free) meat at 0.03 ppm, and horse meat at 0.03 ppm. The proposed analytical method for determining residues is gas chromotagraphy. (PM 22)

3. *PP 6F4668*. Bayer Corporation, P.O. Box 4913, 8400 Hawthorne Road, Kansas City, MO 64120–0013, proposes amending 40 CFR 180 by establishing tolerances for the residues of the fungicide tebuconazole (alpha-(2-(4-(chlorophenyl)ethyl)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on the following raw agricultural commodities: apples at 0.03 ppm, and pears at 0.05 ppm. (PM 21)

4. *PP 6F4694*. Ciba Crop Protection, Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419–8300 proposes to amend 40 CFR part 180 by establishing tolerances for the residues of the fungicide fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4yl-)-1*H*-pyrrole-3-carbonitrile) in or on the raw agricultural commodity potatoes (potato tubers) at 0.5 ppm. (PM 21)

5. *PP 6F4695*. BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to amend 40 CFR 180.412 by establishing a tolerance for the combined residues of the herbicide 2-[1-(ethoxyimino)buty]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety in or on grapes at 0.7 ppm, succulent beans at 15.0 ppm, bean forage at 13.0 ppm, and soybeans at 16.0 ppm. (PM 25)

6. *PP 6E4657*. Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198 proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance glyphosate oxidoreductase and the genetic material necessary for the production of this protein in or on all raw agricultural commodities when used as a plant-pesticide inert ingredient. (PM 90)

7. *PP 6H5747*. Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005 proposes to amend 40 CFR 185.3500 by establishing tolerances for the residues of glyphosate [*N*-(phosphonomethyl)glycine] resulting from the application of the isopropylamine salt of glyphosate and/or the monammonium salt of glyphosate in or on potato flakes at 1.0 ppm and potato granules at 0.6 ppm. (PM 25)

8. *PP 6H5751*. BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528, proposes to amend 40 CFR 185.2800 by establishing a tolerance for the combined residues of the herbicide 2-[1-(ethoxyimino)buty]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety on raisins at 3.5 ppm. (PM 25)

9. *PP 9F3766*. Sandoz Agro Inc., 1300 East Touhy Avenue, Des Plaines, IL 60018–3300 proposes to amend 40 CFR 180.356 by establishing tolerances for combined residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone] and its desmethyl metabolite [4-chloro-5-(amino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on the following raw agricultural commodities: alfalfa, forage at 3.0 ppm, alfalfa, seed at 0.1 ppm, alfalfa, hay at 5.0 ppm; cattle, goats, hogs, horses, and sheep, meat by products, (except liver) at 0.1 ppm; cattle, goats, hogs, horses, and sheep liver at 0.25 ppm. The proposed analytical method for determining residues is gas chromotography with electron capture detection. (PM 23)

Petitions Withdrawn

PP 5F4454. E. I. DuPont de Nemours Company, Agricultural Products, Walker Mill, Barley Mill Plaza, Wilmington, DE 19880–0038 has withdrawn pesticide petition (PP) 5F4454 which proposed the establishment of a regulation to permit residues of the herbicide chlorimuron ethyl(ethyl-2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate) in or on the raw agricultural commodities corn, field, grain, corn, field, forage and corn, field, fodder at 0.05 ppm. The original notice of filing published in the Federal Register on May 24, 1995 (60 FR 27506). (PM 25)

A record has been established for this notice under docket number [PF–654] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

List of Subjects

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

Dated: June 6, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–15044 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

June 6, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not

conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 15, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060-0126.

Title: Section 73.1820 Station Log.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; not-for-profit institutions.

Number of Respondents: 13,519.

Estimated Time Per Response: approximately 1 hour.

Total Annual Burden: 13,611.

Needs and Uses: Section 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Broadcast System (EBS) for commercial stations. The data is used by FCC staff in field investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EBS is operating properly.

OMB Approval Number: N/A.

Title: Part101 Governing the Terrestrial Microwave Fixed Radio Services.

Form No: Not applicable.

Type of Review: New collection consolidating existing collections.

Respondents: Businesses; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 1,025 respondents and 19,000 recordkeepers.

Estimated Time Per Response: 1.77 hours per response and 120 hours per recordkeepers. This reflects an annual estimate of 1,025 respondents making various filings and an estimated 19,000 licensees maintaining records.

Total Annual Burden: 1609.

Total Estimated Cost: $90,624.

Needs and Uses: The information requirements are used to determine technical, legal, and other qualifications of applicants to operate a station in the public and private operational fixed services. The information is also used to ensure the applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act, 47 U.S.C. Section 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–15072 Filed 6–13–96; 8:45 am]

BILLING CODE 6712–01–F

Sunshine Act Meeting; Corrected FCC To Hold Open Commission Meeting Wednesday, June 12, 1996

June 12, 1996–G

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, June 12, 1996, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Wireless Telecommunications	*Title:* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143). *Summary:* The Commission will consider action concerning establishment of E911 rules for wireless carriers.
2	Wireless Telecommunications	*Title:* Interconnection and Resale obligations Pertaining to Commercial Mobile Radio Services (CC Docket No. 94–54). *Summary:* The Commission will consider resale for providers of commercial mobile radio services.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and Video Tapes of this meeting can be purchased from Telspan International at (301) 731–5355.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–15264 Filed 6–12–96; 11:57 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the

Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Trading Partners, Inc., 11 East 44 Street, Suite 508, New York, NY 10017, Officers: Philip J. Wahl, President, Mary J. Cesare, Exec. Vice President

Transportation Logistics, Inc., 7525 Connelley Drive, Suite R, Hanover, MD 21076, Officer: Gregory John McCloskey, President

King Senderax, Incorporated d/b/a, King Senderax Cargo, 1530 North Gower Street, Suite 101, Los Angeles, CA 90028, Officers: Anupam Biswas, President, Norbert Giessmann, Vice President, Mahua Biswas, Treasurer

Gulf Eagle USA, Inc., 521 Kent Road, Glen Burnie, MD 21060, Officer: Mark Bruins, Director

International Logistics Corporation, 1701 Quincy Avenue, Suite 5, Naperville, IL 60540, Officers: John D. Staton, Chairman, Mark C. Goss, Exec. Vice President

Turtle Express Line, Inc., 6115 Polo Drive, Cumming, GA 30130, Officer: Heeok Chung, President

Arriaga & Associates, Inc., 9011 Sheldon Road, Houston, TX 77049, Officers: Pandora Daugherty, President, Darryl William Cullick, Vice President

Dated: June 7, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–15108 Filed 6–13–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Myron H. Reinhart, Richmond, Virginia; to acquire a total of 24.9 percent of the voting shares of Regency Financial Shares, Inc., Richmond, Virginia, and thereby indirectly acquire Regency Bank, Richmond, Virginia.

Board of Governors of the Federal Reserve System, June 10, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15144 Filed 6–13–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking 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 interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Compass Bancshares, Inc., Compass Banks of Texas, Inc., both of Birmingham, Alabama, and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; all to acquire 100 percent of the voting shares of ProBank, The Woodlands, Texas.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Bradford Bancorp, Inc., Greenville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Bradford National Bank of Greenville, Greenville, Illinois.

Board of Governors of the Federal Reserve System, June 10, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15142 Filed 6–13–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for 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 on the question whether the proposal complies with the standards of section 4 of the

BHC Act, including 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'' (12 U.S.C. 1843). 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 June 28, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire Leader Financial Corporation, Memphis, Tennessee, and thereby indirectly acquire Leader Federal Bank For Savings, Memphis, Tennessee, and thereby engage in owning and operating a savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Notificant also has applied to acquire Leader Enterprises, Inc., Memphis, Tennessee, and Leader Services, Inc., also of Memphis, Tennessee, and thereby engage in acting as agent, in the sale of insurance (including home mortgage redemption insurance) that is directly related to an extension of credit by Notificant or any of its subsidiaries, and is limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability or involuntary unemployment of the debtor, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y, and in full-service securities brokerage activities, pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y; Leader Federal Mortgage, Inc., Memphis, Tennessee, and thereby engage in mortgage loan origination, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Leader Leasing, Inc., Memphis, Tennessee, and thereby engage in originating and servicing nonoperating leases, pursuant to § 225.25(b)(5) of the Board's Regulation Y, and in originating and servicing commercial loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Asset Advisory Group, Inc., Memphis, Tennessee, Leader Funding Corporation I, Memphis, Tennessee, and thereby engage in making, acquiring, and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; Leader Funding Corporation II, Memphis, Tennessee (which is inactive and will remain inactive after consummation), and Leader Funding Corporation III, Memphis, Tennessee, and thereby engage in making, acquiring, and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. Union Planters Corporation also proposes to retain Leader Financial Corporation's 49.5 percent ownership interest in Millcreek Development Partnership, L.P., Memphis, Tennessee, and thereby engage in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y; and Leader Federal Mortgage, Inc.'s 50 percent ownership interest in Southeastern Mortgage of Alabama, L.L.C., Birmingham, Alabama, and thereby engage in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation and Bremer Financial Corporation, both of St. Paul, Minnesota; to engage *de novo* through its subsidiary, Bremer Business Finance Corporation, St. Paul, Minnesota, in making, acquiring, and servicing loans and other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and in leasing personal and real property, pursuant to §§ 225.25(b)(5)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 10, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-15143 Filed 6-13-96; 8:45 am]

BILLING CODE 6210-01-F

Government in the Sunshine; Meeting Notice

TIME AND DATE: 10:00 a.m., Wednesday, June 19, 1996.

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: June 12, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15245 Filed 6–12–96; 9:52 am]

BILLING CODE 6210–01–P

Agency information collection activities: Submission to OMB under delegated authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. Report title: Domestic Finance Company Report of Consolidated Assets and Liabilities
Agency form number: FR 2248
OMB Control number: 7100-0005
Frequency: Monthly
Reporters: Domestic finance companies
Annual reporting hours: 1,920
Estimated average hours per response: 1.3
Number of respondents: 120
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §225(a)) and is given confidential treatment (5 U.S.C. §552(b)(4)).

Abstract: The FR 2248 collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), the report collects information on other assets and liabilities outstanding as well as information on capital accounts in order to provide a full balance sheet.

The Federal Reserve has reduced the authorized size of the FR 2248 reporting panel from 142 finance companies to 120 finance companies. The Federal Reserve has also reorganized the form by classifying assets as consumer-, real estate-, business-, or lease-related to make the form more compatible with respondents accounting procedures and thus reduce burden. No changes were made to the liabilities items. Several items were added to the supplemental section, and securitization items were reorganized to be consistent with the new asset classification.

2. Report title: Finance Company Survey
Agency form number: FR 3033s
OMB Control number: 7100-0277
Frequency: quinquennial
Reporters: Domestic finance companies
Annual reporting hours: 840
Estimated average hours per response: 1.4
Number of respondents: 600
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. §§225a, 263, and 353-359) and is given confidential treatment (5 U.S.C. §552(b)(4)).

Abstract: The FR 3033s survey, which is collected about every five years, asks for detailed information on the assets and liabilities of a stratified random sample of domestic finance companies. The sample is based on the responses to the first stage of the survey, the Finance Company Questionnaire (FR 3033p; OMB No. 7100-0277). From the questionnaires returned, the Federal Reserve determined which of the respondents were eligible for the FR 3033s panel.

The Federal Reserve uses the information collected in the survey to benchmark the data series constructed from the monthly report, the Domestic Finance Company Report of Consolidated Assets and Liabilities (FR 2248; OMB No. 7100-0005).

As with the FR 2248, the Federal Reserve reorganized the form by classifying assets as consumer-, real estate-, business-, or lease-related to make the form more compatible with respondents accounting procedures and thus reduce burden. There was one minor consolidation to a liabilities item. Several items were added to the supplemental section, and securitization items were reorganized to be consistent with the new asset classification.

Board of Governors of the Federal Reserve System, June 10, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–15121 Filed 6–13–96; 8:45AM]

Billing Code 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC); Announcement of Meeting

Name: Scientific and Technical Meeting on Occupational Exposure to Asphalt During Roofing Operations.

Times and Dates: 1 p.m.–5 p.m., July 22, 1996; 8:30 a.m.–5 p.m., July 23, 1996; 8:30 a.m.–12 noon, July 24, 1996.

Place: The Omni Netherland Plaza Hotel, Landmark Center Meeting Room, 5th and Race Streets, Cincinnati, Ohio 45202.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 250 people.

Purpose: NIOSH is planning to convene a meeting to discuss the scientific and technical issues relevant to the development of recommendations for controlling occupational exposures to asphalt during asphalt roofing operations.

NIOSH is convening a panel of individuals knowledgeable of the potential health effects and of current control technologies of asphalt exposure. The panel will be asked to prescribe the types of remedial action (e.g., engineering controls, exposure limit) that may be needed to protect workers' health. The goal of the meeting is to seek the widespread support of the participants in identifying and resolving issues relevant to reducing exposure to asphalt. However, NIOSH retains the responsibility for developing the conclusions and recommendations in the final document. The public is invited to attend and comment on the deliberations of this meeting.

Contact Persons for Additional Information: Technical information may be obtained from Ralph Zumwalde, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio, 45226, telephone 513/533–8319, e-mail address: rdzl@NIOSDT1.em.cdc.gov.

Persons wishing to attend the meeting, obtain a copy of the working paper, or reserve overnight accommodations at the Omni Netherland Plaza Hotel, should respond by close of business July 3, 1996, to Kellie Wilson, NIOSH, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, telephone 513/533–8362, fax 513/533–8285, e-mail address: kmp0@NIOSDT1.em.cdc.gov.

Persons interested in providing comments on the working paper should submit comments by close of business August 23, 1996, to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226. Information may also be obtained by calling 1–800–35–NIOSH or by the Internet NIOSH Homepage:

http:/www.cdc.gov/niosh/homepage.html.

Dated: June 7, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–15128 Filed 6–13–96; 8:45 am]

BILLING CODE 4160–19–M

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Uniform Reporting Requirements for IV–A and IV–F Funded Child Care for Non-JOBS Participants, Tribal JOBS Participants, Transitional Child Care and AT-Risk Child Care.

OMB No.: 0970–0115.

Description: The child care information, collected on pages 1 and 2 of Form ACF–115, for AFDC-Basic, AFDC–UP, AFDC applicants, and families in transition will be used to ensure that section 402(g)(1)(A) of the Social Security Act is being effectively implemented. The child care information from page 3 for AT-Risk families will be used to ensure that section 402(i)(6) of the Social Security Act is being effectively implemented. States are required to report child care data on a quarterly basis.

Respondents: State government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–115	54	4	35	7,560

Estimated Total Annual Burden Hours: 7,560.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 10, 1996.

Larry Guerrero,

Director, Office of Information Services.

[FR Doc. 96–15175 Filed 6–13–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Medical Imaging Drugs Advisory Committee	February 28, 1998
Gastrointestinal Drugs Advisory Committee	March 3, 1998
Advisory Committee for Reproductive Health Drugs (formerly Fertility and Maternal Health Drugs Advisory Committee)	March 23, 1998
Arthritis Advisory Committee	April 5, 1998
Veterinary Medicine Advisory Committee	April 24, 1998
Anesthetic and Life Support Drugs Advisory Committee	May 1, 1998
Blood Products Advisory Committee	May 13, 1998

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: June 6, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–15091 Filed 6–13–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of July 1996:

Name: Advisory Committee on Infant Mortality.

Date and Time: July 11–12, 1996, 9:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD.

The meeting is open to the public.

Agenda: Topics that will be discussed include: Updates on the Healthy Start Program, Evaluation, and Media Campaign; Early Postpartum Discharge; and the Department's Pregnancy Prevention Program.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: June 10, 1996.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 96–15090 Filed 6–13–96; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: May 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of May 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is

imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
Aguero, Martha, Miami, FL	06/11/96
Anderson, James Burns, Russellville, AL	06/11/96
Brown, Rhonda, Bryan, TX	06/03/96
Coleman, Anita Brass, Wisner, LA	06/06/96
Cognigy, Shirley M., Ebensburg, PA	06/09/96
Cullen, Arthur L., Uniontown, PA	06/09/96
Daniels, Gary V., Texarkana, TX	06/03/96
Daniels, Monica Brown, Bryan, TX	06/04/96
Daniels, Kerry, Oakdale, LA	06/06/96
Doolin, Janis, Duxbury, MA	06/09/96
Douglas, James Leroy, Oakdale, LA	06/06/96
Foster, Nancy, Miami, FL	06/11/96
Fox, Janice A., Augusta, ME	06/09/96
Franks, Steve, Dublin, GA	06/11/96
Gil, Concepcion, Miami, FL	06/11/96
Herring, Lula, Wisner, LA	06/06/96
Hoff, Gregory, Rocheport, MO	06/19/96
Ibarra, Amanda, Marianna, FL	06/11/96
Iowa Foot Health Center, P.C., Des Moines, IA	06/19/96
King, Patsy, Bryan, TX	06/04/96
Lyons, Mose, Monroe, LA	06/06/96
Martin, Celia Morfa, Miramar, FL	06/11/96
McGowan, Kris Leatrese, Gatesville, TX	06/04/96
Miller, Roger L., Gettysburg, PA	06/09/96
Miller, Timothy Lee, Houma, LA	06/06/96
Morfa, Marta, Hialeah Gardens, FL	06/11/96
Mullen, Delores, A., Fall River, MA	06/09/96
Preston, Johnny Mack, Grady, AR	06/06/96
Reed, Fred L. Jr., Lake Providence, LA	06/06/96
Renfro, George A., Plano, TX	06/04/96
Rodriguez-Abreu, Gilberto, Hialeah, FL	06/11/96
Salczenko, Jeffrey G., Baton Rouge, LA	06/06/96
Stat. Registered Nursing SVC, PC, Northport, NY	06/19/96
Support Products, Inc., Houston, TX	06/04/96
Tomlinson, Karl E., New York, NY	06/19/96
Walters, Jessie James, Oakdale, LA	06/06/96
Westview Enterprises, Inc., Scottdale, PA	06/09/96
Wilson, William Robert Jr., El Paso, TX	06/04/96
Patient Abuse/Neglect Convictions	
Bartscher, Mildred, Oakdale, NY	06/19/96
Duncan, Angela, Troy, AL	06/11/96
Dykes, Jimmy West, Athens, TX	06/04/96
Gray, Elizabeth A., East Camden, AR	06/06/96
Gully, Elaine, Fort Dodge, IA	06/19/96
Hobbs, Leroy H. Jr., Ankeny, IA	06/19/96
Hughey, Ranea M., Stephens, AR	06/06/96
Ingram, Debra Ann, Hampton, AR	06/06/96
Kahawai, Lori-Ann, Kaneohe, HI	06/09/96
Kahumoku, Randal, Honolulu, HI	06/09/96
McBorrough, Gladys Kimber, Providence, RI	06/09/96
Macham, Sherwood, Tuscaloosa, AL	06/11/96
Mercinko, Janice, Belfast, ME	06/09/96
Newton, Katina Marie, Chatham, LA	06/06/96
Oxner, Aaron, Delight, AR	06/06/96
Schoonover, Margaret Ann, Wapello, IA	06/19/96
Siu, Stephen M., Osage Beach, MO	06/19/96
Vaughn, Virginia Ann, Forth Worth, TX	06/04/96
Vieira, Kenneth J., Riverside, RI	06/09/96
Weber, Linda Sue, Armstrong, IA	06/19/96
Weiskopf, Ellaine Lois, Lakewood, CO	06/09/96
Wright, Sheila Madge, Des Moines, IA	06/19/96
Conviction for Health Care Fraud	
Daubney, Peter P., New Port Richey, FL	06/19/96
Douglas, Monica, Brooklyn, NY	06/09/96
Controlled Substance Convictions	
Campbell, Richard Paul, Chicago, IL	06/19/96
Gordon, Jeffrey Paul, Fairton, NJ	06/09/96
License Revocation/Suspension/Surrender	
Argus, Philip A., Rensselaerville, NY	06/09/96
Chua, Maximo, Centereach, NY	06/19/96
Deliere, Renee, Cecil, PA	06/09/96
Ferrell, Matthew B., Muscle Shoals, AL	06/11/96
Gray, Patricia, Killen, AL	06/11/96
Hansen, Stephen C., Santa Rosa, CA	06/09/96
Ives, Kathy M., Charleston, SC	06/11/96
Klein, Edmund, Williamsville, NY	06/19/96
Kleiner, Kenneth, Woodside, NY	06/19/96
Leone, Nelson F., La Mesa, CA	06/09/96
Martin, Carol A., East Greenwich, RI	06/09/96
Mershon, Sharon, Erie, PA	06/09/96
Morgan, Michael James, Montgomery, AL	06/11/96
Pillai, Omprakash, Brighton, MA	06/09/96
Pitts, John D., Little Compton, RI	06/09/96
Rohde, William A., Dorchester, MA	06/09/96
Tan, Sung Dam, Yonkers, NY	06/19/96
Thomas, Alexander D., Sumiton, AL	06/11/96
Tingstrom, Linda G., Shell Knob, MO	06/19/96
Turner, Roderick H., Boston, MA	06/09/96
Tyrka, Bernard, Watervliet, NY	06/19/96
Watson, Jacob, Portland, ME	06/09/96
Federal/State Exclusion/Suspension	
Adams, Vickie Mechelle, Dallas, TX	06/04/96
Cata, Mercedes, Schaumburg, IL	06/19/96
Davis, Hyacinth, New York, NY	06/19/96
Nieman Pharmacy, Chicago, IL	06/19/96
Owned/Controlled by Convicted/Excluded	
D & B Medical Transportation, Winnsboro, LA	06/04/96
Kilgore Clinic, Torrington, WY	06/09/96
Lula's Transportation, Wisner, LA	06/06/96
One Stop Medical Clinic, Inc., Lake Providence, LA	06/06/96
Strange Drug Company, Dublin, GA	06/11/96
Wilmette-Huerbinger Drug Co., Lincolnwood, IL	06/19/96
Default On Heal Loan	
Bock, Jerome V., Barrington, IL	06/19/96
Boone, Robert L., Champaign, IL	06/19/96
Boyer, Arther G., St. Louis, MO	06/19/96
Cooperman, Bruce W., Philadelphia, PA	06/09/96
Coyman, Merre J., Beaufort, SC J	06/11/96
Dvorsky, Jay W., Los Angeles, CA	06/09/96
Falkinburg, Rory Dean, Williamsburg, MA	06/09/96
Florez, Stephen D., Bassett, CA	06/09/96
Gaines, Lisa V., New Brunswick, NJ	06/19/96
Gordon, Doris J., Yonkers, NY	06/19/96
Horsley, Ronald G., Kennesaw, GA	06/11/96
Leonas, Theodore S., Palos Heights, IL	06/19/96
Luckey, John M., Victorville, CA	06/09/96
Meckler, Laurie B., New York, NY	06/19/96
Nahai, John M., Sayerville, NJ	06/19/96
Nath, Kailash R., Brockton, MA	06/09/96
Pehush, Marie L., Spring Valley, NY	06/19/96
Pfeiffer, Arlene H., Huntington Beach, CA	06/09/96
Rossrucker, Kenneth S., Orlando, FL	06/11/96

Subject city, state	Effective date
Santucci, Gerald M., Sacramento, CA	06/09/96
Serratos, Ernesto, Crestline, CA	06/09/96
Taylor, Timothy R., Chico, CA	06/09/96

Dated: June 5, 1996.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 96–15157 Filed 6–13–96; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–89]

Office of the Assistant Secretary for Community Planning and Development; 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.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; 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 24 CFR Part 581 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 December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities 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. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 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, (24 CFR part 581).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available

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 Mark Johnston 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: Army: Mr. Derrick Mitchell, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; (These are not toll-free numbers).

Dated: June 7, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/14/96

Unsuitable Properties

Buildings (by State)

Alabama

5 Bldgs., Fort Rucker
3821, 3917, 3918, 3920, 3921
Ft. Rucker Co:Dale AL 36362–
Landholding Agency: Army
Property Number: 219620371
Status: Unutilized
Reason: Extensive deterioration.

7 Bldgs., Fort Rucker
617, 618, 4111, 5505, 6012, 5008, 5009
Ft. Rucker Co:Dale AL 36362–
Landholding Agency: Army
Property Number: 219620372
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 6606, 6607, Fort Rucker
Ft. Rucker Co:Dale AL 36362–
Landholding Agency: Army
Property Number: 219620373
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs., Fort Rucker
503, 3407, 3805, 3907, 3916
Ft. Rucker Co:Dale AL 36362–
Landholding Agency: Army
Property Number: 219620374
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs., Fort Rucker
103, 5113, 5304, 6801, 26704
Ft. Rucker Co:Dale AL 36362–
Landholding Agency: Army
Property Number: 219620375
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 3812, 6609, Fort Rucker
Ft. Rucker Co:Dale AL 36362–
Landholding Agency: Army
Property Number: 219620376
Status: Unutilized
Reason: Extensive deterioration.

Alaska

Bldg. 1065
Fairbanks North Star
Fort Wainwright AK 99703–
Landholding Agency: Army
Property Number: 219620369
Status: Underutilized

Reason: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area.

Bldg. 45070, Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219620370
Status: Unutilized
Reason: Extensive deterioration.

Arkansas

Bldg. 240, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–
Landholding Agency: Army
Property Number: 219620377
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 251, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–
Landholding Agency: Army
Property Number: 219620378
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1590, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–
Landholding Agency: Army
Property Number: 219620379
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1628, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–
Landholding Agency: Army
Property Number: 219620380
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1680, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–
Landholding Agency: Army
Property Number: 219620381
Status: Unutilized
Reason: Extensive deterioration.

California

Bldg. 401
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219620382
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

National Training Center
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 219620383
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Colorado

Bldg. 1094, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620384
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1095, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620385
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 1304, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620386
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1405, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620387
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1406, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620388
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2343, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620389
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2840, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620390
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2841, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620391
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2846, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620392
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2848, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620393
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2940, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620394
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2941, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620395
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3565, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620396
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3566, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620397
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3567, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620398
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3568, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620399
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9300, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620400
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3569, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620401
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3570, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620402
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3668, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620403
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3670, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620404
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6089, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620405
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6127, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620406
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9636, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620407
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9618, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620408
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9617, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219620409
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Bldg. T–1052
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army

Property Number: 219620410
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–7762
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219620411
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–7912
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219620412
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 8715
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219620413
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–8222
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219620414
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–833
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219620415
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 667, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620416
Status: Unutilized
Reason: Secured Area.

Bldg. 668, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620417
Status: Unutilized
Reason: Secured Area.

Bldg. 669, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620418
Status: Unutilized
Reason: Secured Area.

Bldg. 670, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620419
Status: Unutilized
Reason: Secured Area.

Bldg. 671, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620420
Status: Unutilized
Reason: Secured Area.

Bldg. 672, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219620421
Status: Unutilized
Reason: Secured Area.

Hawaii

Bldg. T–1425
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620422
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–33
Dillingham Military Reservation
Waialua HI 96791–
Landholding Agency: Army
Property Number: 219620423
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–30
Dillingham Military Reservation
Waialua HI 96791–
Landholding Agency: Army
Property Number: 219620424
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–136
Dillingham Military Reservation
Waialua HI 96791–
Landholding Agency: Army
Property Number: 219620425
Status: Unutilized
Reason: Floodway, Extensive deterioration.

Bldg. T–1512, Fort Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219620426
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 135
Rock Island Arsennal
Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219620427
Status: Unutilized
Reason: Secured Area.

Bldg. 141
Rock Island Arsennal
Rock Island Il 61299–
Landholding Agency: Army
Property Number: 219620428
Status: Unutilized
Reason: Extensive deterioration.

Indiana

Bldg. 661
Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219620429
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 662
Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219620430
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 663
Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219620431
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 671
Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219620432
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 672
Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219620433
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 673
Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219620434
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. TC–055
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620435
Status: Unutilized
Reason: Secured Area.

Bldg. TC–112
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620436
Status: Unutilized
Reason: Secured Area.

Bldg. TC–113
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620437
Status: Unutilized
Reason: Secured Area.

Bldg. 605–18A
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620438
Status: Unutilized
Reason: Secured Area.

Bldg. 616–02B
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620439
Status: Unutilized
Reason: Secured Area.

Bldg. 616–02C
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620440
Status: Unutilized
Reason: Secured Area.

Bldg. 2541
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620441
Status: Unutilized
Reason: Secured Area.

Bldg. 2563
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620442
Status: Unutilized
Reason: Secured Area.

Bldg. 2571
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620443
Status: Unutilized
Reason: Secured Area.

Bldg. 2581
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620444
Status: Unutilized
Reason: Secured Area.

Bldg. 2582
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620445
Status: Unutilized
Reason: Secured Area.

Bldg. 2629
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620446
Status: Unutilized
Reason: Secured Area.

Bldg. 5402
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620447
Status: Unutilized
Reason: Secured Area.

Bldg. 5403
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620448
Status: Unutilized
Reason: Secured Area.

Bldg. 5405
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620449
Status: Unutilized
Reason: Secured Area.

Bldg. 6001
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620450
Status: Unutilized
Reason: Secured Area.

Bldg. 6002
Indiana Army Ammunition Plant
Charleston Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620451
Status: Unutilized
Reason: Secured Area.

Bldg. 6017
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620452
Status: Unutilized
Reason: Secured Area.

Kansas

Bldg. T–297, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219620453
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–2009, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219620454
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–295, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219620455
Status: Unutilized
Reason: Extensive deterioration.

Building 50
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620518
Status: Unutilized
Reason: Secured Area.

Building 112
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620519
Status: Unutilized
Reason: Secured Area.

Building 210
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620520
Status: Unutilized
Reason: Secured Area.

Buildings 212, 221
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620521
Status: Unutilized
Reason: Secured Area.

Building 219
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620522
Status: Unutilized
Reason: Secured Area.

Buildings 209, 509, 724, 813,
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 902, 1002
Landholding Agency: Army
Property Number: 219620523
Status: Unutilized
Reason: Secured Area.

Building 231, 244
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620524
Status: Unutilized
Reason: Secured Area.

Building 246
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620525
Status: Unutilized
Reason: Secured Area.

Building 247
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620526
Status: Unutilized
Reason: Secured Area.

Buildings 248, 252
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620527
Status: Unutilized
Reason: Secured Area.

Building 302
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620528
Status: Unutilized
Reason: Secured Area.

Building 304
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620529
Status: Unutilized
Reason: Secured Area.

Building 305
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620530
Status: Unutilized
Reason: Secured Area.

Building 306
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620531
Status: Unutilized
Reason: Secured Area.

Building 308
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620532
Status: Unutilized
Reason: Secured Area.

Building 311
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620533
Status: Unutilized
Reason: Secured Area.

Building 312
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620534

Status: Unutilized
Reason: Secured Area.

Building 315
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620535
Status: Unutilized
Reason: Secured Area.

Building 316
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620536
Status: Unutilized
Reason: Secured Area.

Building 321
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620537
Status: Unutilized
Reason: Secured Area.

Building 322
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620538
Status: Unutilized
Reason: Secured Area.

Building 324
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620539
Status: Unutilized
Reason: Secured Area.

Building 325
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620540
Status: Unutilized
Reason: Secured Area.

Building 326
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620541
Status: Unutilized
Reason: Secured Area.

Building 327
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620542
Status: Unutilized
Reason: Secured Area.

Building 328
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620543
Status: Unutilized
Reason: Secured Area.

Buildings 329, 516, 746, 819,
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 936, 931, 939, 941, 943, 1026, 1029, 1031, 1034, 1099, 1232, 1558, 1626, 1723, 1830, 1991
Landholding Agency: Army
Property Number: 219620544
Status: Unutilized
Reason: Secured Area.

Building 503
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620545
Status: Unutilized
Reason: Secured Area.

Buildings 504, 512
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620546
Status: Unutilized
Reason: Secured Area.

Building 505
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620547
Status: Unutilized
Reason: Secured Area.

Building 513
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620548
Status: Unutilized
Reason: Secured Area.

Building 515
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620549
Status: Unutilized
Reason: Secured Area.

Building 701
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620550
Status: Unutilized
Reason: Secured Area.

Buildings 702, 704, 707, 709,
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 711, 712, 727, 729, 735, 737, 738, 742, 743, 747
Landholding Agency: Army
Property Number: 219620551
Status: Unutilized
Reason: Secured Area.

Buildings 703, 708, 710, 713
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 720, 721, 728, 730, 731, 732, 734, 736, 739
Landholding Agency: Army
Property Number: 219620552
Status: Unutilized
Reason: Secured Area.

Buildings 705, 706
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620553
Status: Unutilized
Reason: Secured Area.

Buildings 715, 716, 717
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620554
Status: Unutilized
Reason: Secured Area.

Building 722
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620555
Status: Unutilized
Reason: Secured Area.

Building 723
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620556
Status: Unutilized
Reason: Secured Area.

Building 725
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620557
Status: Unutilized
Reason: Secured Area.

Building 726
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620558
Status: Unutilized
Reason: Secured Area.

Building 740
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620559
Status: Unutilized
Reason: Secured Area.

Building 741
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620560
Status: Unutilized
Reason: Secured Area.

Building 744
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620561
Status: Unutilized
Reason: Secured Area.

Building 745
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620562
Status: Unutilized
Reason: Secured Area.

Building 749
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620563
Status: Unutilized
Reason: Secured Area.

Building 750
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620564
Status: Unutilized
Reason: Secured Area.

Building 782
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–

Landholding Agency: Army
Property Number: 219620565
Status: Unutilized
Reason: Secured Area.

Buildings 802, 808
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620566
Status: Unutilized
Reason: Secured Area.

Building 804
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620567
Status: Unutilized
Reason: Secured Area.

Building 812
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620568
Status: Unutilized
Reason: Secured Area.

Building 818
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620569
Status: Unutilized
Reason: Secured Area.

Building 828
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620570
Status: Unutilized
Reason: Secured Area.

Building 841
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620571
Status: Unutilized
Reason: Secured Area.

Building 901
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620572
Status: Unutilized
Reason: Secured Area.

Building 903
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620573
Status: Unutilized
Reason: Secured Area.

Bldg. 904
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620574
Status: Unutilized
Reason: Secured Area.

Bldg. 905
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620575
Status: Unutilized
Reason: Secured Area.

Bldgs. 906, 908, 911
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 916, 993
Landholding Agency: Army
Property Number: 219620576
Status: Unutilized
Reason: Secured Area.

Bldg. 907
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620577
Status: Unutilized
Reason: Secured Area.

Bldg. 910
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620578
Status: Unutilized
Reason: Secured Area.

Bldg. 912
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620579
Status: Unutilized
Reason: Secured Area.

Bldg. 913
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620580
Status: Unutilized
Reason: Secured Area.

Bldg. 915
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620581
Status: Unutilized
Reason: Secured Area.

Bldg. 920
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620582
Status: Unutilized
Reason: Secured Area.

Bldgs. 921, 923, 973, 974
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 983, 984, 986, 989
Landholding Agency: Army
Property Number: 219620583
Status: Unutilized
Reason: Secured Area.

Bldg. 924
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620584
Status: Unutilized
Reason: Secured Area.

Bldg. 929
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620586
Status: Unutilized
Reason: Secured Area.

Bldg. 930
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620587
Status: Unutilized
Reason: Secured Area.

Bldg. 946
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620588
Status: Unutilized
Reason: Secured Area.

Bldg. 951
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620589
Status: Unutilized
Reason: Secured Area.

Bldg. 952
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620590
Status: Unutilized
Reason: Secured Area.

Bldg. 927
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620591
Status: Unutilized
Reason: Secured Area.

Bldg. 997
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620592
Status: Unutilized
Reason: Secured Area.

Bldg. 1003
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620593
Status: Unutilized
Reason: Secured Area.

Bldgs. 1004, 1018
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620594
Status: Unutilized
Reason: Secured Area.

Building 1005
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620595
Status: Unutilized
Reason: Secured Area.

Building 1006
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620596
Status: Unutilized
Reason: Secured Area.

Buildings 1007, 1009
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620597
Status: Unutilized

Reason: Secured Area.

Building 1008
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620598
Status: Unutilized
Reason: Secured Area.

Building 1011
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620599
Status: Unutilized
Reason: Secured Area.

Buildings 1012, 1022, 1023
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620600
Status: Unutilized
Reason: Secured Area.

Building 1017
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620601
Status: Unutilized
Reason: Secured Area.

Building 1019
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620602
Status: Unutilized
Reason: Secured Area.

Building 1020
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620603
Status: Unutilized
Reason: Secured Area.

Building 1025
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620604
Status: Unutilized
Reason: Secured Area.

Building 1028
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620605
Status: Unutilized
Reason: Secured Area.

Building 1047
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620606
Status: Unutilized
Reason: Secured Area.

Buildings 1048, 1068, 1090
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620607
Status: Unutilized
Reason: Secured Area.

Building 1064
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620608
Status: Unutilized
Reason: Secured Area.

Building 1065
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620609
Status: Unutilized
Reason: Secured Area.

Buildings 1072, 1082, 1095
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620610
Status: Unutilized
Reason: Secured Area.

Building 1124
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620611
Status: Unutilized
Reason: Secured Area.

Building 1202
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620612
Status: Unutilized
Reason: Secured Area.

Building 1205
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620613
Status: Unutilized
Reason: Secured Area.

Building 1206
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620614
Status: Unutilized
Reason: Secured Area.

Building 1207
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620615
Status: Unutilized
Reason: Secured Area.

Building 1223
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620616
Status: Unutilized
Reason: Secured Area.

Building 1225
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620617
Status: Unutilized
Reason: Secured Area.

Buildings 1402, 1403, 1404
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 1405, 1406, 1407, 1408, 1409, 1410
Landholding Agency: Army
Property Number: 219620618
Status: Unutilized
Reason: Secured Area.

Buildings 1502 thru 1556
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: (55 total)
Landholding Agency: Army
Property Number: 219620619
Status: Unutilized
Reason: Secured Area.

Buildings 1602 thru 1625
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: (24 total)
Landholding Agency: Army
Property Number: 219620620
Status: Unutilized
Reason: Secured Area.

Buildings 1702 thru 1721
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: (20 total)
Landholding Agency: Army
Property Number: 219620621
Status: Unutilized
Reason: Secured Area.

Buildings 1803, 1804, 1805,
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: 1806, 1807, 1810, 1811, 1812, 1813, 1816, 1818, 1819, 1823, 1825
Landholding Agency: Army
Property Number: 219620622
Status: Unutilized
Reason: Secured Area.

Buildings 1931 thru 1989
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Location: Except 1961, 1974, 1976
Landholding Agency: Army
Property Number: 219620623
Status: Unutilized
Reason: Secured Area.

Building 2002
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620624
Status: Unutilized
Reason: Secured Area.

Building 2105A
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620625
Status: Unutilized
Reason: Secured Area.

Building 3004
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620626
Status: Unutilized
Reason: Secured Area.

Building 3005
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620627
Status: Unutilized
Reason: Secured Area.

Building 3006
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army

Property Number: 219620628
Status: Unutilized
Reason: Secured Area.

Building 3007
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620629
Status: Unutilized
Reason: Secured Area.

Building 3008
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620630
Status: Unutilized
Reason: Secured Area.

Building 3009
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620631
Status: Unutilized
Reason: Secured Area.

Building 3010
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620632
Status: Unutilized
Reason: Secured Area.

Building 3011
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620633
Status: Unutilized
Reason: Secured Area.

Building 3012
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620634
Status: Unutilized
Reason: Secured Area.

Building 3014
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620635
Status: Unutilized
Reason: Secured Area.

Building 3015
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620636
Status: Unutilized
Reason: Secured Area.

Building 3016
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620637
Status: Unutilized
Reason: Secured Area.

Building 3017
Kansas Army Ammunition Plant
Parsons Co: LaBette KS 67357–
Landholding Agency: Army
Property Number: 219620638
Status: Unutilized
Reason: Secured Area.

Kentucky

Bldg. 2159, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620456
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02169, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620457
Status: Unutilized
Reason: Extensive deterioration.

Louisiana

Bldg. 7420
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620458
Status: Unutilized
Reason: Floodway; Extensive deterioration.

Bldg. 7426
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620459
Status: Unutilized
Reason: Floodway.

Bldg. 7441
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620460
Status: Unutilized
Reason: Floodway.

Bldg. 7442
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620461
Status: Unutilized
Reason: Floodway.

Bldg. 7458
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620462
Status: Unutilized
Reason: Floodway.

Bldg. 7459
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620463
Status: Unutilized
Reason: Floodway.

Bldg. 7460
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620464
Status: Unutilized
Reason: Floodway.

Bldg. 7822
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620465
Status: Unutilized
Reason: Floodway; Extensive deterioration.

Bldg. 7825
Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620466
Status: Unutilized
Reason: Floodway; Extensive deterioration.

Maryland

Bldg. E357
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 219620467
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 629
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 219620468
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. E1671
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 219620469
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. E1673
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 219620470
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. E5422
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 219620471
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Montana

Bldg. T–0033
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 219620473
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration.

Bldg. T–0451
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 219620474
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration.

Bldg. T–0452
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 219620475
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration.

New Jersey

Bldg. 314C
Armament Research

Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219620476
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. A–3969/8
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620477
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–1937
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620478
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–1950
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620479
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–1950
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620479
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–1944
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620480
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–3437
Simmons Army Airfield
Fort Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620481
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4–2402
Simmons Army Airfield
Fort Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620482
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A-AREA
Simmons Army Airfield
Fort Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620483
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–2034
Simmons Army Airfield
Fort Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620484
Status: Unutilized
Reason: Extensive deterioration.

Ohio

Bldg. 116
Defense Supply center, Columbus (DSCC)
Columbus Co: Franklin OH 43216–
Landholding Agency: Army
Property Number: 219620491
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Oklahoma

Bldg. 10–B
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219620485
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 21
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219620486
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 474
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219620487
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 475
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219620488
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 496
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219620489
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

Bldg. 600
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219620490
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Pennsylvania

Bldg. T–684
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 219620492
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–685
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 219620493
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–896
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 219620494
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–898
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 219620495
Status: Unutilized
Reason: Extensive deterioration.

Virginia

Bldgs. 411, 412, 417, 418
Fort Eustis
Newport News VA 23604–
Landholding Agency: Army
Property Number: 219620496
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–9101, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620497
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–8502, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620498
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–8038, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620499
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–6235B, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620500
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–6018, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620501
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1501, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620502
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1215, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620503
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1205, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620504
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–1228, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620505

Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–2400, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620506
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–11036, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620507
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–12051, Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620508
Status: Unutilized
Reason: Extensive deterioration.

Washington

Bldg. 6053
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620509
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3066
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620510
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620511
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2414
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620512
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6497
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620513
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2416
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620514
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6991
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620515
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9639
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620516
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A01011
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620517
Status: Unutilized
Reason: Extensive deterioration.

Land (by State)

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Other
Comment: Landlocked.

[FR Doc. 96–14958 Filed 6–13–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–815764

Applicant: Roger Black, Alexandria, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–815762

Applicant: Charles Black, Shreveport, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–815626

Applicant: Southwest Foundation for Biomedical Research, San Antonio, TX.

The applicant requests a permit to import plasma and red cell samples from captive-held and captive-bred maned wolves (*Chrysocyon brachyrus*) living in Brazilian zoos to enhance the survival of the species through scientific research.

PRT–815897

Applicant: Charles Kunz, Rye, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 10, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–15100 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–55–P

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has 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–815942

Applicant: National Biological Service, Iowa Cooperative Fish and Wildlife Unit, Ames, Iowa (Clay L. Pierce, Principal Investigator).

The applicant requests a permit to take (capture and release) Pallid sturgeon (*Scaphirhynchus albus*) within the Missouri River in Iowa, Nebraska, and Missouri. Activities are proposed in conjunction with benthic fish population and habitat use studies along

the River. Data obtained will assist Federal agencies and others in planning activities on the River in compliance with the Endangered Species Act.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written requests 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, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536, x250); FAX: (612/725–3526).

Dated: June 10, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–15127 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–55–M

Convention on International Trade in Endangered Species (CITES) Notification; Review of the Effectiveness of the Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a public meeting to discuss an international study of the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and announces the availability for public comment of a questionnaire as part of this study. This study is the result of a decision of the Ninth Meeting of the Conference of the Parties to CITES in Fort Lauderdale, Florida in November 1994. This decision gave the CITES Standing Committee the responsibility to conduct a review of the effectiveness of the provisions and implementation of the Convention, and to report its findings to the next meeting of the Conference of the Parties. An international contractor in the United Kingdom has been engaged for this study by the CITES Standing Committee, and has produced a questionnaire for governments to respond to. The Service, in preparing the U.S. government response, seeks the comments of interested non-governmental organizations. The questionnaire itself is extensive and would therefore be very expensive and time consuming to reproduce here. The Service prefers to make this questionnaire available by electronic means if possible. However, should some member of the public not have access to the transfer of this questionnaire by electronic means, alternate arrangements such as faxing or mailing of copies will be made. Public input from written comments received by the Service will be considered in formulating the United States response to this questionnaire.

DATES: The Service will consider comments and information received by July 15, 1996.

ADDRESSES: The public meeting will be held at 10:00 a.m. on July 19, 1996, in the Auditorium of Marymount University, 2807 N. Glebe Road, Arlington, Virginia. Comments on the questionnaire should be sent to Dr. Susan Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA 22203. Requests for copies of the questionnaire should either be sent electronically to ''R9IA—OMA.MOB@mail.fws.gov'', via regular mail, or via fax to (703) 358–2280. Electronic requests for copies of the questionnaire should have as their subject line ''SEND QUESTIONNAIRE''.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, telephone (703)358–2095, or E-mail to Susan__Lieberman@mail.fws.gov.

SUPPLEMENTARY INFORMATION: At the Ninth Meeting of the Conference of the Parties to CITES in Fort Lauderdale, Florida, November 1994 (COP9), the Conference of the Parties decided to assign the CITES Standing Committee the task of conducting a review of the effectiveness of the provisions and implementation of the Convention, and to report its findings to the next meeting of the Conference of the Parties. This decision is found in COP9 document number Com. 9.10. The CITES Standing Committee plans to conduct this review in several phases, the first of which is incorporated in the questionnaire made available by this Notice.

The CITES Standing Committee was directed to appoint a team to undertake the review including an independent consultant and two individuals chosen by the CITES Standing Committee for the information gathering portion of the project. These two members would ensure efficient access to information about the Convention and complement the expertise made available by the independent consultant. On December 21, 1994, the CITES Secretariat published Notification to the Parties No. 831, which contained a call for proposals from prospective consultants to conduct the study on the effectiveness and implementation of the Convention. The firm of Environmental Resources Management (ERM), based in London, United Kingdom, was ultimately selected for the task. That selection was made by a Monitoring Committee of CITES Parties, including several representatives to the CITES Standing Committee. The Monitoring Committee, which was selected by the Standing Committee, is made up of representatives of the following governments: Argentina, Canada, Japan, Namibia, New Zealand, and United Kingdom. The study itself and the report that is produced will be monitored and reviewed by the same Monitoring Committee and will be presented to the December 1996 meeting of the CITES Standing Committee. The CITES Standing Committee selected Jaques Berney (retired Deputy Secretary General of CITES) and Marshall Jones (Assistant Director for International Affairs, U.S. Fish and Wildlife Service) or Dr. Susan Lieberman (Chief, CITES Operations Branch, Office of Management Authority, U.S. Fish and Wildlife Service), as the technical advisors on the project.

The initial phase of this review is designed to collate information including but not necessarily limited to the following: The stated and implied objectives of the Convention and their continued relevance to the conservation of wild fauna and flora; the degree of effectiveness of conservation for representative species listed in the three Appendices of CITES and the extent of this degree of conservation that can be attributed to the implementation of the Convention; the relationship of the Convention to other global or regional conservation treaties or agreements and how the objectives of the Convention may be enhanced or hindered by the existence and implementation of these treaties or agreements; the ease and effectiveness of implementation, including enforcement, of the Convention in Party states; and the anticipated and actual roles of various participants in the implementation of the Convention, including Party states, non-Party states, national and international conservation organizations, and national and international trade and development organizations.

ERM, the contractor on the study, has transmitted a Questionnaire to all CITES

Parties (currently 132 countries), as well as international non-governmental organizations. In addition, ERM is meeting in person with several governments, in order to obtain more detailed responses to the questionnaire and in order to assist ERM in preparing its report on the effectiveness of the Convention. Each country that is visited has been asked by ERM to independently decide how to consult with neighboring countries, as well as with non-governmental organizations; the questionnaire sent to the Parties recommends broad consultation. The United States supports an exceedingly broad, transparent, and consultative process, with active input from all non-governmental organizations interested in the effectiveness of CITES and the conservation of species subject to international trade. ERM has stated that it is limited in the countries it plans to visit, based on limited time and funds. The Monitoring Committee mentioned above worked with ERM to plan the country visits. ERM plans to consult with the following CITES regions and countries during June and July 1996; those consultations will either involve a personal delegation (an ERM representative) or a consultation in-country by ERM's regional office staff: Europe (delegation to Brussels for meetings with the European Commission and European CITES Committee), Asia (Japan and Thailand for the delegation, China and India for consultations); Oceania (Australia and Papua New Guinea for consultations); North America (delegation to the United States); Africa (delegation to Zimbabwe, consultations in Cameroon, Egypt, Kenya, South Africa, and Senegal), and Central and South America and the Caribbean (consultations in Argentina, Brazil, Chile, Colombia, Costa Rica and possibly Trinidad and Tobago). The United States will make every effort to include representatives of Canada and Mexico in the meetings and consultations in the United States.

The United States will review comments received from national and international non-governmental organizations based in the United States, in the formulation of its response to the questionnaire. Representatives of the Service, as CITES Management and Scientific Authority, along with other federal agencies, will meet with the ERM delegation to provide input on the U.S. responses to the questionnaire and the U.S. views on how to improve the effectiveness of the Convention. The public meeting with non-governmental organizations that is announced in this Notice will provide those organizations with an opportunity to provide input directly to ERM. ERM will use that information in the preparation of its report to the Standing Committee.

Author: This notice was prepared by Mark Phillips and Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095; fax 703/358–2280).

Dated: June 6, 1996.

J.L. Gerst,

Acting Director.

[FR Doc. 96–15201 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[CA–065–06–1990–01]

Environmental Impact Statement for the California Desert Conservation Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to close the public scoping period regarding the preparation of an Environmental Impact Statement for an open pit, heap leach gold mine on portions of public lands in the California Desert Conservation Area, Kern County, CA. Comments will be accepted until June 30, 1996.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) will be closing the scoping comment.

ADDRESSES: Scoping comments may be sent to: BLM Ridgecrest Resource Area Manager, 300 S. Richmond, Ridgecrest, CA 93555, ATTN: Ahmed Mohsen, EIS Coordinator.

SUPPLEMENTARY INFORMATION: Golden Queen is proposing to construct and operate the Soledad Mountain Project, an open pit precious metals (gold and silver) mining and cyanide leaching processing operation at the Soledad Mountain project area located approximately five miles southwest of the town of Mojave in Kern County, California.

The proposed action includes: construction of facilities; mining and processing of precious metals ores at the rate of three to four million tons per year for a period of ten to sixteen years; stockpiling of overburden materials; sales of overburden materials as aggregate and construction materials; and reclamation of the project site.

The project area is approximately 1,228 acres, of which 959 acres are private land and 269 acres are unpatented mining claims on public lands administered by BLM. The proposed surface disturbance is approximately 782 acres on private lands and 153 acres on public lands. The proposed mining operation includes twelve interconnected open pit mining areas within the ultimate pit boundary of the proposed open pit.

A March 28, 1996 Notice invited comments and suggestions on the scope of the analysis and notified the public of upcoming meetings.

Two public meetings were held on:

Date: April 16, 1996, Tuesday

Time: 6:30 p.m.–10:00 p.m.

Place: Rosamond High School, 2925 Rosamond Blvd., Rosamond, CA 93560, Glennan Gymnasium

Date: April 17, 1996, Wednesday

Time: 6:30 p.m.–10:00 p.m.

Place: Mojave High School, 15732 ''O'' St., Mojave, CA 93501, Mustang Gymnasium.

Comments were received from the attendees during the public meetings and by mail. Comments will be accepted until June 30, 1996.

BLM has set up a WEB PAGE for sharing information on the process and the project. It can be accessed by reaching http://www.ca.blm.gov/GoldenQueen

For further information contact: Ahmed Mohsen, BLM EIS Coordinator at (619) 384–5421.

Dated: May 24, 1996.

Lee Delaney,

Area Manager.

[FR Doc. 96–15081 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

Final General Management Plan, Saint-Gaudens National Historic Site, New Hampshire; Notice of Availability

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the Saint-Gaudens National Historic Site General Management Plan/Final Environmental Impact Statement, New Hampshire.

In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service has prepared and announces the release of the Final Saint-Gaudens National Historic Site General Management Plan and Environmental Impact Statement, New Hampshire. An environmental impact statement is required to assess the impacts of implementing the General Management Plan. The National

Park Service is the responsible federal agency.

The document proposes a plan and rationale for addressing national historic site issues and concerns, resource preservation and visitor service needs.

Since 1965, Saint-Gaudens NHS has remained virtually unchanged in appearance. In 1990 the National Park Service began a long-range planning effort to determine the future needs of the site. That effort looked at site interpretation, staffing, collections preservation, and administrative, maintenance, and visitor facilities needs. Because this is a long-range plan, funding for implementation of the proposed actions will occur over an extended period of time, perhaps as much as 20 years.

The plan outlines a two-phased program that addresses each of the areas of concern while minimizing impacts on historic structures and landscape. The first phase focuses on rehabilitating and modestly expanding existing structures to address site needs, minimizing new construction and its associated impacts on the historic landscape. The second phase, a much longer range vision, provides for growth onto two adjacent properties, providing additional interpretive potential and upgraded administrative and security facilities in existing structures. It also provides the visitor with a much greater understanding of Saint-Gaudens, the milieu in which he lived, and the sculpture process, and also provides greater coverage of the Cornish Art Colony.

The General Management Plan/Final Environmental Impact Statement incorporates public and agency comments received during the public review period of the draft document which occurred from May 12 to July 10, 1995. Copies of the General Management Plan/Final Environmental Impact Statement are available for review by contacting the Superintendent, Saint-Gaudens National Historic Site. Any comments on this plan or the environmental impact statement must be received by the Superintendent before July 14, 1996.

For further information contact: Superintendent, John Dryfhout, Saint-Gaudens National Historic Site, Rural Route 3, P.O. Box 73, Cornish, New Hampshire 03745, Telephone 603–675–2175.

John H. Dryfhout,

Superintendent.

[FR Doc. 96–15119 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notice on NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks that did not have clear boundaries when they were designated.

In accordance with the National Historic Landmark program regulations 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and gives them an opportunity to comment on the proposed boundary documentation.

The 60-day comment period on the National Historic Landmark listed below has ended and the boundary documentation has been approved. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from the National Register of Historic Places, National Park Service, P.O. Box 37127, Suite 250, Washington, DC 20013–7127, Attention: Marilyn Harper (Phone: 202–343–9546). Carlsbad Irrigation District (Carlsbad Reclamation Project) National Historic Landmark, North of Carlsbad, Eddy County, New Mexico, Designated a Landmark on July 19, 1964.

Carol D. Shull,

Chief of the National Historic Landmarks Survey and Keeper of the National Register.

[FR Doc. 96–15118 Filed 6–13–96; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the Federal Register notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received by no later than August 13, 1996.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

Summary of Form Under Review

Type of Request: Revision.

Title: Sponsor Disclosure Report—In Support of an Application for Financing.

Form Number: OPIC 129.

Frequency of Use: Once per project sponsor per project.

Type of Respondents: Individuals, Business, or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies or Individuals investing overseas in emerging economies.

Reporting Hours: 4 hours per project.

Number of Responses: 70 per year.

Federal Cost: $1,200.

Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Sponsor Disclosure Report—In Support of an Application for Financing, requests information as required per OPIC's governing legislation. Such information is needed to determine whether a project and its sponsor meet eligibility criteria for OPIC financing, specifically with regard to creditworthiness, effects on the U.S. economy, and legislative and regulatory compliance.

Dated: June 11, 1996.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 96–15160 Filed 6–13–96; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under Comprehensive Environmental Response, Compensation and Liability Act Action

Notice is hereby given that two consent decrees in *United States* v. *Richard A. Kline, et al.*, Civil Action No. PJM–95–3023, were lodged with the

United States District Court for the District of Maryland (Southern Division) on May 20, 1996.

On October 6, 1995, the United States filed a complaint against two owner defendants and an arranger defendant under Section 107 of the Comprehensive Environmental Response Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for recovery of response costs incurred by the United States at the Windsor Manor Superfund Site (the ''Site''), located in Prince George's County, Maryland. Under one consent decree, Richard A. Kline will pay the United States $569,389. Under the second consent decree, Mr. George Diggs and Mrs. Gloria Diggs will pay the United States a cash settlement of $5000, and, following the sale of the Site property which they own, will pay the United States 65% of the net proceeds from the sale of the property, valued at approximately $45,000.

The Department of Justice will accept written comments relating to these proposed consent decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Richard A. Kline et al.*, DOJ 90–11–2–1090.

Copies of the proposed consent decrees may be examined at the Office of the United States Attorney, District of Maryland, 6500 Cherrywood Lane, Greenbelt, Maryland 20770; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005 (202) 624–0892. Copies of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting copies of the proposed consent decrees, please enclose a check payable to the Consent Decree Library in the following amounts: $4.50 for the Kline Consent Decree, and $5.00 for the Diggs Consent Decree.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. States Department of Justice.

[FR Doc. 96–15087 Filed 6–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to Section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that on May 22, 1996, a proposed Consent Decree in *Sierra Club* v. *Public Service Company of Colorado, Inc.*, Civil Action No. 93–B–1749, was lodged with the United States District Court for the District of Colorado. The proposed Consent Decree settles the claims of the plaintiff Sierra Club, and the proposed plaintiff-intervenors, the United States and the State of Colorado, pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the State of Colorado's State Implementation Plan against the defendants Public Service Company of Colorado, Inc., Salt River Project Agricultural Improvement and Power District and PacifiCorp. The claims of Sierra Club, the United States and the State of Colorado relate to the operation of Hayden Station, a fossil fuel-fired power generating facility in Hayden, Colorado, owned and operated by the defendants.

Under the terms of the Consent Decree, the defendant will pay a $2,000,000 civil penalty to the United States Treasury to resolve the claims of Sierra Club and the United States. The defendants must determine within 180 days of lodging whether the two power generating units at Hayden Station will be converted from combusting coal as a primary fuel source to combusting natural gas. If the defendants elect to continue combusting coal at Hayden Station, air pollution control equipment to reduce emissions of sulfur dioxide, nitrogen oxides and particulate matter must be installed at Hayden Station for Unit 1 by December 31, 1998 and for Unit 2 by December 31, 1999. If the defendants elect to convert Hayden Station to natural gas, the conversion must be completed by December 31, 1998. In either event, the Consent Decree establishes more stringent emission limitations for Hayden Station for sulfur dioxide, nitrogen oxides, and particulate matter.

To protect and improve the air quality in the Yampa Valley where Hayden Station is located, the Consent Decree requires the defendants shall pay $2,000,000 for land conservation purposes and $250,000 for the conversion of wood stove and/or vehicles to natural gas in the Yampa Valley.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to Sierra Club v. Public Service Company of Colorado, Inc., D.O.J. Ref. 90–5–2–1–2069.

The proposed Consent Decree may be examined at any of the following locations: The Office of the United States Attorney for the District of Colorado, 1961 Stout Street, Suite 1100, Denver, Colorado 80294; the Region VIII Office of the United States Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 (contact Sheldon Muller, Esq. (303/312–6916)); and at the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202/624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 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 $17.00 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–15088 Filed 6–13–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

President's Committee on Employment of People With Disabilities; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the President's Committee on Employment of People with Disabilities is soliciting

comments concerning the proposed extension of the Job Accommodations Network Employer Accommodation Input Questionnaire.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 13, 1996. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarify the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: President's Committee on Employment of People with Disabilities, Attn: Catherine Brietenbach, 1331 F Street NW, Third Floor, Washington, DC 20004, Telephone 202–376–6200 (this is not a toll-free number) Fax 202–376–6200, TDD 202–376–6205, Internet cbrieten@pcepd.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Job Accommodation Network (JAN), established in October of 1983 as a service of the President's Committee on Employment of People with Disabilities, was designed to provide information on possible accommodations to employers and others desiring to hire, retain or promote people with disabilities within the workforce.

II. Current Actions

A. Necessity of Information Collection

The original premise when JAN was established was that employers would like to provide vocational opportunities to persons without regard to their functional limitations, but they frequently lack the resources necessary to determine what accommodations might best be suited to their particular needs. The Americans with Disabilities Act added further impetus to JAN's mission in that most employers are now required to make reasonable accommodations for persons with disabilities. The need for such accommodation information has been clearly corroborated by the fact that during the five year period preceding ADA implementation the JAN staff handled 21,522 cases; in the five years following ADA implementation 83,076 cases were handled.

Much of the information provided to employers in both the public and private sectors was obtained through the use of this data collection questionnaire. This instrument was used to obtain information about actual examples of accommodations made by employers for workers with disabilities or qualified applicants. The increasing quality and complexity of the calls processed by the Network's staff indicates an escalating need for a greater number and variety of such accommodation examples.

B. There are no revisions to the existing collection.

Type of Review: Extension.

Agency: President's Committee on Employment of People with Disabilities.

Title: Job Accommodation Network Employer's Accommodation Input Questionnaire.

OMB Number: 1225–0022 10/93.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, federal agencies, state, local or tribal government, small businesses and organizations.

Form: Attached.

Total Respondents: 500.

Frequency: On occasion.

Total Responses: 500.

Average Time per Response: 30 minutes per questionnaire.

Estimated Total Burden Hours: 250.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintaining): Total cost to the government for questionnaire utilization, including mailing, processing and analyzing data and having it available to JAN users is estimated to be $580.00 per year.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 10, 1996.

John Lancaster,

Executive Director.

[FR Doc. 96–15178 Filed 6–13–96; 8:45 am]

BILLING CODE 4510–23–M

Office of the Secretary

Submission for OMB Review; Comment Request

June 10, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Pension Welfare Benefits Administration.

Title: Annual Report.

OMB Number: 1210–0016.

Agency Number: 5500, Schedule A, B and C, 5500–C, 5500–R for Play Year 1995.

Frequency: Annually.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms.

Number of Respondents: 822,000.

Estimated Time Per Respondent: 1.23 hours.

Total Burden Hours: 1,014,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $25,350,000.

Description: Section 104(a)(1)(A) of the Employment Retirement Income Security Act (ERISA) of 1974 requires plan administrators to file an annual report contained the information described in section 103 of ERISA. The form 5500 series provides a standard form for fulfilling that requirement.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–15177 Filed 6–13–96; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decision

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 wages 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, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number 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 V

Texas
TX960109 (June 14, 1996).

Modifications 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

Massachusetts
MA960007 (March 15, 1996)

Volume II

District of Columbia
DC960001 (March 15, 1996)
DC960002 (March 15, 1996)
DC960003 (March 15, 1996)
Pennsylvania
PA960004 (March 15, 1996)
PA960005 (March 15, 1996)
PA960021 (March 15, 1996)
PA960025 (March 15, 1996)
PA960026 (March 15, 1996)
PA960030 (March 15, 1996)
PA960031 (March 15, 1996)
PA960040 (March 15, 1996)
PA960042 (March 15, 1996)

Volume III

Florida
FL960014 (March 15, 1996)
FL960017 (March 15, 1996)
Georgia
GA960023 (March 15, 1996)
GA960033 (March 15, 1996)
GA960044 (March 15, 1996)

Volume IV

Illinois
IL960016 (March 15, 1996)
IL960027 (March 15, 1996)
IL960028 (March 15, 1996)
IL960043 (March 15, 1996)
IL960068 (March 15, 1996).
Wisconsin
WI960001 (March 15, 1996)
WI960002 (March 15, 1996)
WI960003 (March 15, 1996)
WI960004 (March 15, 1996)
WI960005 (March 15, 1996)
WI960006 (March 15, 1996)
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WI960031 (March 15, 1996)
WI960033 (March 15, 1996)
WI960034 (March 15, 1996)
WI960035 (March 15, 1996)
WI960041 (March 15, 1996)

Volume V:

Arkansas
AR960001 (March 15, 1996)
AR960008 (March 15, 1996)
Missouri
MO960001 (March 15, 1996)
MO960002 (March 15, 1996)
Nebraska
NE960011 (March 15, 1996)
Texas
TX960002 (March 15, 1996)
TX960005 (March 15, 1996)
TX960007 (March 15, 1996)
TX960010 (March 15, 1996)
TX960015 (March 15, 1996)
TX960018 (March 15, 1996)
TX960019 (March 15, 1996)
TX960033 (March 15, 1996)
TX960034 (March 15, 1996)
TX960037 (March 15, 1996)
TX960051 (March 15, 1996)
TX960053 (March 15, 1996)
TX960059 (March 15, 1996)
TX960060 (March 15, 1996)
TX960061 (March 15, 1996)
TX960063 (March 15, 1996)
TX960069 (March 15, 1996)
TX960081 (March 15, 1996)
TX960093 (March 15, 1996)
TX960096 (March 15, 1996)
TX960100 (March 15, 1996)
TX960109 (June 14, 1996)
TX960114 (March 15, 1996)
Index

Volume VI

Alaska
AK960001 (March 15, 1996)
Idaho
ID960001 (March 15, 1996)
ID960002 (March 15, 1996)
ID960014 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960002 (March 15, 1996)
NV960005 (March 15, 1996)
Oregon
OR960001 (March 15, 1996)
OR960017 (March 15, 1996)
Washington
WA960001 (March 15, 1996)
WA960002 (March 15, 1996)
WA960003 (March 15, 1996)
WA960007 (March 15, 1996)
WA960008 (March 15, 1996)
Wyoming
WY960013 (March 15, 1996)
WY960023 (March 15, 1996)

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 county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy 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 are distributed to subscribers.

Signed at Washington, D.C. this 7th Day of June 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–14871 Filed 6–13–96; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Vinyl Chloride Standard 29 CFR 1910.1017. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 13, 1996. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Comments are to be submitted to the Docket Office, Docket No. ICR–96–5, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT:

Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW, Washington, D.C. 20210. Telephone: (202) 219–8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the Vinyl Chloride Information Collection Request, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at htt://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Vinyl Chloride Standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to vinyl chloride. The standard requires employers to monitor employee exposure to vinyl chloride (VC), to monitor employee health and to provide employees with information about their exposures and the health effects of injuries. In addition employers are required to notify OSHA area directors of regulated areas, changes to regulated areas, and of emergencies.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Vinyl Chloride Standard. Extension is necessary to provide continued protection to employees from the health effects associated with occupational exposure to vinyl chloride.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Vinyl Chloride.

OMB Number: 1218–0010.

Agency Number: Docket Number ICR–96–5.

Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.

Total Respondents: 80.

Frequency: On occasion.

Total Responses: 5,787.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 12 hours to develop a compliance program.

Estimated Total Burden Hours: 2,203.

Estimated Capital: Operation/Maintenance Burden Cost: $258,042 Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 6, 1996.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 96–15176 Filed 6–13–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before July 29, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION:

Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Congressional Budget Office (N1–520–95–1). Comprehensive Records Schedule.

2. Department of the Army (N1–AU–90–9). Sound recordings associated with routine criminal investigation case files.

3. Department of Commerce, Patent and Trademark Office (N1–241–96–1). Revisions to portions of the comprehensive schedule covering records of the Office of the Commissioner.

4. Department of Education (N1–441–96–1). Administrative records of departmental committees and task forces.

5. Department of Health and Human Services (N1–468–96–1). Reduction in retention period for citizen mail on health care reform.

6. Department of Justice (N1–060–96–2). Copies of cost documentation from EPA contractors remediating Love Canal Superfund site.

7. Department of Transportation, Bureau of Transportation Statistics (N1–398–96–1). Motor carrier reports accumulated by the Section of Accounting and Reporting.

8. Department of Veterans Affairs, Veterans Health Administration (N1–015–96–2). Mammography X-rays.

9. Department of Veterans Affairs, Veterans Health Administration (N1–015–96–3). Cardiac Catheterization films.

10. Commission on the Roles and Capabilities of the United States Intelligence Community (N1–220–96–8). Tracking and Control Data Base.

11. National Archives and Records Administration (N1–GRS–96–3). Addition to General Records Schedule 21 (Audiovisual Records) to cover

audiovisual items identified as lacking in historical value during archival processing by NARA staff.

12. National Archives and Records Administration (N1–GRS–96–4). Addition to General Records Schedule 12 for telephone call detail records.

Dated: June 6, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–15158 Filed 6–13–96; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

MidAmerican Energy Company; Notice of Indirect Transfer of Control of License

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the indirect transfer of control of the licenses held by MidAmerican Energy Company (MidAmerican) with respect to its 25 percent ownership interest in Quad Cities Nuclear Power Station, Units 1 and 2, to MidAmerican Energy Holdings Company (Holdings). By letter dated April 4, 1996, MidAmerican informed the Commission that the current holders of MidAmerican common stock will receive one share of Holdings common stock in exchange for each share of MidAmerican. Holdings will own all common stock of MidAmerican.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission consents in writing after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to hold the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. MidAmerican has requested consent under 10 CFR 50.80 for the indirect transfer of the licenses effected by the restructuring resulting in the newly formed holding company.

For further details with respect to this action, see the April 4, 1996, letter, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland this 7th day of June 1996.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15151 Filed 6–13–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Tuesday, June 18, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Tuesday, June 18

10:00 a.m. Briefing on Status of NRC Operator Licensing Initial Examination Pilot Process (PUBLIC MEETING) (Contact: Stuart Richards, 301–415–1031)

11:30 a.m. Affirmation Session (PUBLIC MEETING) *(PLEASE NOTE: These items will be affirmed immediately following the conclusion of the preceding meeting.)

a. Final Rulemaking—Revision to 10 CFR Parts 2, 50, and 51, Related to Decommissioning of Nuclear Power Reactors.

b. Yankee Atomic Electric Company (Yankee Nuclear Power Station) Docket No. 50–029–DCOM (Tentative) (Contact: Andrew Bates, 301–415–1963)

* * * * *

This notice id distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: June 11, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–15263 Filed 6–12–96; 10:45 am]

BILLING CODE 7590–01–M

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

Phased Withdrawal From the Small Business Innovation Research (SBIR) Program in FY 1996

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The NRC has participated in the SBIR program since its inception in 1982. However, due to significant reductions in the NRC's FY 1996 budget, the extramural research and development (R&D) budget falls substantially below the $100 million threshold for mandatory participation in the SBIR program. This current trend is expected to continue into future fiscal years. The NRC must focus its limited research funds on high priority work needed to support, confirm, or refine judgments used in regulatory decisions affecting public health and safety. Therefore, the NRC requested, in a letter to the U.S. Small Business Administration, Office of Technology dated September 19, 1995, approval for a phased withdrawal from the SBIR program in FY 1996 and beyond. SBA responded on April 16, 1996, that the NRC's phased withdrawal was approved. Should the NRC's extramural R&D budget increase above the $100 million threshold in the coming years, the NRC would again participate in the SBIR program.

The phased withdrawal is being accomplished as follows: (1) A SBIR Phase I solicitation will not be issued in FY 1996 or future years while the NRC is below the mandatory threshold for participation in this program; (2) in FY 1996 the NRC will fund between one-third and one-half of the Phase II proposals resulting from its FY 1995 SBIR Phase I awards; and (3) the NRC is informing the small business community of this action through this Federal Register Notice and will issue letters to the small businesses on its SBIR mailing list.

FOR FURTHER INFORMATION CONTACT: Marianne Riggs on (301) 415–5822 or Deborah Neff on (301) 415–8160.

SUPPLEMENTARY INFORMATION: The NRC continues to support small business opportunities. For further information regarding the NRC small business program, you may contact the Office of Small Business and Civil Rights on (301) 415–7380.

Dated at Rockville, MD this 10th day of June 1996.

For the Nuclear Regulatory Commission.

Mary H. Mace,

Contracting Officer.

[FR Doc. 96–15152 Filed 6–13–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 17f–4
SEC File No. 270–232
OMB Control No. 3235–0225

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 17f–4 [17 CFR 270.17f–4] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (the ''Act'') specifies conditions under which a registered management investment company or its custodian may place the company's securities in a securities depository. The rule requires a custodian to provide confirmations and keep records of transactions, and requires the custodian, its agents, and depositories to provide reports on internal accounting controls. Confirmations and records give the company objective evidence of transactions performed on its behalf. Reports on internal controls provide information necessary to evaluate the safety of depository arrangements.

Approximately 100 custodians are subject to the requirement to provide confirmations and keep records, and those custodians and approximately 150 other agents and six depositories are subject to the requirement to provide internal control reports. The 256 respondents make approximately 25,256 responses and spend approximately 25,256 hours annually in complying with the reporting and recordkeeping requirements of the rule.

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and the Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15113 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10512]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Del Global Technologies Corp., Common Stock, $.10 Par Value)

June 10, 1996.

Del Global Technologies Corp. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on March 26, 1996 to withdraw the Security from listing on the Amex and instead, to list the Securities on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq/NMS'').

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's stockholders than the present listing on the Amex because:

1. The Nasdaq system of multiple, competing market makers will provide the Company with increased visibility within the financial community, thereby encouraging greater investor awareness of the Company's activities.

2. The Nasdaq system will enable the Company to attract its own group of market makers and expand the capital base available for purchases of its Security;

3. The Nasdaq system will, in the Company's directors' opinions, stimulate increased demand for the Security and result in greater liquidity for the Company's shareholders; and

4. The firm making a market in the Security on Nasdaq will be more likely to institute and issue research reports on the Company, which will increase the availability of information about the Company and enhance the Company's visibility to investors.

Any interested person may, on or before July 1, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–15110 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–13596]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Disc Graphics, Inc., Common Stock, $.01 Par Value)

June 10, 1996.

Disc Graphics, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on December 14, 1995 to withdraw the Security from listing on the Amex and instead, to list the Security on the Nasdaq National Market (''NNM'').

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the NNM will be more beneficial to the Company's

stockholders than the present listing on the Amex because trading firms are reluctant to trade or market securities listed on the Amex and that this has been a factor in the thin volume and lack of interest in the Company's Security. Also, because firms have not been interested in trading the Company's Security, it has been difficult to obtain research coverage for the Company. As a result, it is the Board's belief that the Company's investors have not been as well served by an Amex listing as they are likely to be by a NNM listing.

Any interested person may, on or before July 1, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–15109 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37290; File No. SR–NSCC–96–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Modifying the Automated Customer Account Transfer Service To Facilitate the Transfer of Shares Being Tracked in the Initial Public Offering Tracking System

June 7, 1996.

On February 27, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–96–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') which modifies NSCC's Automated Customer Account Transfer (''ACAT'') service.[1] Notice of the proposal was published on March 12, 1996, in the Federal Register to solicit comments on the proposed rule change.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's proposed rule change modifies NSCC's rules relating to its ACAT service to facilitate the transfer of shares which are purchased in an initial public offering (''IPO'') and which are being tracked in The Depository Trust Company's (''DTC'') IPO Tracking System.[3]

NSCC, through its ACAT service, currently provides an automated and standardized service for the transfer of assets in a customer account from one brokerage firm to another. The proposed rule change modifies NSCC's Rule 50 to state that shares to be transferred through the ACAT system that are being tracked through DTC's IPO Tracking System will not be entered into NSCC's Continuous Net Settlement (''CNS'') accounting operation even if such shares are CNS eligible.[4] Rule 50 also states that NSCC will prepare ACAT receive and deliver orders for such shares.

Under DTC's IPO Tracking System, broker-dealers will have IPO control accounts at DTC for IPO shares and free accounts for shares purchased in the secondary market. The segregated accounts aid in tracking the movement of IPO shares. In NSCC's CNS system, deliver obligations must be made from the free account. If IPO shares for which there is an ACAT deliver obligation were to settle in NSCC's CNS system, the shares would have to be moved out of the DTC member's segregated IPO control account and into the DTC member's free account. The IPO Tracking System would register the movement from the IPO control account into the free account as a flip[5] and would no longer be able to track the shares.

NSCC's proposed rule change requires IPO shares transferred through the ACAT service to be delivered ex-CNS (*i.e.,* outside of the CNS system). The shares will be delivered pursuant to DTC's new IPO customer account transfer function where the shares will continue to be tracked and will not register as flipped even though they are subject to an ACAT deliver obligation.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3) (A) and (F).[6] Sections 17A(b)(3) (A) and (F) require that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because by implementing these changes to its ACAT service, NSCC will make it easier and more efficient to transfer IPO securities held in customer accounts at one broker-dealer to another broker-dealer. Without this enhancement, IPO shares transferred through NSCC's ACAT service from one brokerage account to another would register as a flip in DTC's IPO Tracking System. When shares register as a flip, syndicate members may forfeit the concession they earn from the initial sale to the retail customer. As a result, retail customers could be discouraged from transferring their accounts during the tracking period. As a result of this rule change, transfers of customer IPO securities through DTC's IPO Tracking System will be accurately recorded thereby enhancing retail investors' ability to transfer their accounts.

The proposed rule change is an important component in creating an accurate tracking system. The tracking system is intended to reduce the number of IPO transactions that settle through delivery of physical certificates and to increase the number of IMP transactions settled through book entry. By enhancing the IPO Tracking System as described above, the proposal will further promote the prompt and

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36931 (March 6, 1996), 61 FR 10050.

[3] This filing is made in conjunction with DTC's proposed rule change seeking to implement the IPO Tracking System. The IPO Tracking System will allow lead managers and syndicate members of equity underwritings to monitor flipping of new issues in an automated book-entry environment. For a complete description of the IPO Tracking System, refer to Securities Exchange Act Release No. 37208 (May 13, 1996), 61 FR 25253 (order approving a proposed rule change seeking to implement the IPO Tracking System).

[4] CNS Eligible securities are those securities that are eligible for transfer on the books of a securities depository registered with the Commission under Section 17A of the Act and that are contained in a list maintained by NSCC as subject to clearance and settlement in its CNS system.

[5] Flipping occurs when a syndicate's lead manager is supporting the IPO with a stabilization bid (*i.e.,* the lead manager is purchasing shares in the secondary market in order to keep the price of the issue from dropping its initial offering price) and when securities that had been distributed to investors are resold by those investors in the secondary market back to the syndicate. The lead manager may wish to identify flipped transactions so that underwriting concessions (the discount from the offering price received by the syndicate member) can be recovered from the appropriate syndicate members.

[6] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with Sections 17A(B)(3) (A) and (F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15182 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26530]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 7, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 1, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[7] CFR 200.30–3(a)(12) (1995).

New England Electric System (70–8819)

New England Electric System (''NEES''), 25 Research Drive, Westborough, Massachusetts 05182, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 45, 90 and 91 thereunder.

The Federal Energy Regulatory Commission (''FERC'') has recently promulgated guidelines setting forth requirements for open and comparable transmission access. In response, NEES seeks to establish a subsidiary to be named NEES Transmission Services, Inc. (''NEES Trans''), for the purpose of operating the transmission assets owned by, or subject to the control of, NEES' utility subsidiaries (''NEES Transmission Assets'').

In operating these assets, NEES will serve as the interface between wholesale electric customers and the NEES transmission system as the transmission service provider. NEES Trans will serve both associates and nonassociates and will charge the same tariff to each. NEES Trans will make no retail sales of electricity.

Rights to operational control over the NEES Transmission Assets will be provided by a Transmission and Support Agreement (''Agreement'') among NEES, NEES Trans, and NEES' utility subsidiaries Massachusetts Electric Company (''MEC''), The Narragansett Electric Company (''NERC''), Granite State Electric Company (together with MEC and NEC, ''Retail Companies'') and New England Power Company (''NEP''). Pursuant to the Agreement, NEES Trans will have operational control over the NEES Transmission Assets only to the extent necessary to accomplish a FERC-jurisdictional transmission transaction. The Agreement also grants NEES Trans use of the distribution systems of the Retail Companies as they may be needed to support wholesale transactions.

NEES does not propose to transfer ownership of the NEES Transmission Assets to NEES Trans at this time. However, NEES will have the responsibility of planning the expansion of the transmission system and will notify NEP of the need for additions to the system. NEES Trans will have the obligation to expand transmission capacity as needed, to arrange for NEES affiliates to license, engineer and construct the necessary additions, and to provide operational services necessary to maintain transmission system reliability.

NEES proposes to provide initial financing for NEES Trans by the purpose of one thousand shares of common stock, par value $1.00 per share, for a total purchase price of $1,000. NEES then proposes to make capital contributions and/or loans to NEES Trans from time to time, in amounts not to exceed $10 million in the aggregate outstanding at any one time. Any such loans will be in the form of non-interest bearing subordinated notes payable in twenty years or less from the date of issue. NEES requests authority to make such investments through December 31, 1999.

NEES Trans additionally seeks authority through October 31, 1997 to borrow and lend money in the NEES Money Pool, the terms of which are described in an order of the Commission dated October 25, 1995 (HCAR No. 25399), and to borrow from banks on a short-term basis. NEES proposes that NEES Trans have access to the NEES Money Pool on the same priority as the Retail Companies. The aggregate principal amount of debt outstanding under this authority will not at any time exceed $15 million. Amounts owed under the Money Pool would be payable on demand. Amounts owned to banks for short-term borrowings would be payable within one year.

The proceeds from the proposed borrowings are to be used (i) to pay then outstanding notes initially issued to banks and/or borrowings from the Money Pool and (ii) for other cooperate purposes relating to ordinary business operations, including working capital, and funds to cover timing differences in payments received and payments due.

NEES' utility subsidiaries and NEES' service company subsidiary, New England Power Service Company, may assign certain technical and support staff personnel to NEES Trans to work on NEES Trans operations. Not more than two percent of the total employees of such companies would be assigned to NEES Trans in any one year. All costs associated with such staff (including compensation, overheads, and benefits) would be fully reimbursed by NEES Trans in accordance with rules 90 and 91 of the Act.

Central Power and Light Company, et al. (70–8869)

Central Power and Light Company (''CPL''), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma (''PSO''), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, and West Texas Utilities Company (''WTU''), 301 Cypress, Abilene, Texas 79601 (collectively, ''Applicants''), each a

wholly owned subsidiary company of Central and South West Corporation, a registered holding company, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rule 44 thereunder.

Applicants propose, through December 31, 1999, to: (i) incur obligations in connection with the proposed issuance by Red River Authority of Texas (''Red River'') of up to $113.3 million aggregate principal amount of pollution control revenue bonds (''New Bonds'') in one or more series; (ii) obtain credit enhancement for the New Bonds, with could include bond insurance, a letter of credit or a liquidity facility;[1] (iii) issue first mortgage bonds (''First Mortgage Bonds'') as security for the payment of the New Bonds; (iv) deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds (''Statement of Policy'');[2] and (v) use hedging products to manage interest rate risk or lower their interest rate costs.

Of the total aggregate principal amount of New Bonds to be issued, (i) up to $63.3 million aggregate principal amount may be pollution control revenue refunding bonds (''Refunding Bonds''), and (ii) up to $50 million aggregate principal amount may be new money revenue bonds (''New Money Bonds''). The issuance of New Money Bonds may be combined with the issuance of Refunding Bonds.

The Refunding Bonds will be used to reacquire all or a portion of $63.3 million of outstanding 7⅞ Pollution Control Revenue Bonds Series 1984 issued by Red River (''Old Bonds'').[3] The New Bonds will be used to reimburse the Applicants' treasuries for any expenditures made that qualify for tax-exempt financing or for current solid waste expenditures.

Applicants and Red River entered into an installment sale agreement (''Sale Agreement'') to provide for the issuance of the Old Bonds. The proceeds from the Old Bonds were used to acquire, construct and improve certain air and water pollution control and solid waste disposal facilities at the Oklaunion Electric Generating Plant, located near Vernon, Texas, in which CPL, PSO and WTU own 7.8%, 15.6% and 54.7% undivided interests, respectively. In connection with the issuance of the New Bonds, Applicants will (i) amend or supplement the Sale Agreement, (ii) enter into an agreement with substantially the same terms as the Sale Agreement and/or (iii) enter into a new installment sale agreement.

The New Bonds will bear interest at a fixed or floating rate, may or may not be secured with First Mortgage Bonds and will mature in not more than forty years. The interest rate, redemption provisions and other terms and conditions applicable to the New Bonds will be determined by negotiations between the Applicants and one or more investment banking firms or other entities that will purchase or underwrite the New Bonds (''Purchasers''). It is anticipated that: (i) the New Bonds will be redeemable at any time in whole at the option of the Applicants at the principal amount thereof plus accrued interest, upon the occurrence of various extraordinary events specified in the Amended Sale Agreement; (ii) the New Bonds will be subject to optional redemption in whole or in part at times and with premiums to be determined by negotiations between the Applicants and the Purchasers; and (iii) the New Bonds will be subject to special mandatory redemption, in whole or in part, at the principal amount thereof plus accrued interest, in the event the interest on the New Bonds becomes subject to federal income tax.

Pursuant to the Sale Agreement, Applicants transferred the Facilities to Red River, which financed the acquisitions and related costs thereof with the proceeds of the Old Bonds. The Sale Agreement contains commitments by the Applicants to pay to Red River at specified times amounts sufficient to enable Red River to pay debt service on the Old Bonds, including principal, interest and redemption premium, if any.

Applicants also request authority to issue First Mortgage Bonds as security for the payment of the New Bonds, at its option, depending upon market conditions at the time of issuance of the New Bonds. The First Mortgage Bonds will be held by the Trustee solely for the benefit of the holders of the New Bonds and will not be transferable except to a successor Trustee. The First Mortgage Bonds will be issued in the exact amounts and have substantially the same terms as the New Bonds.

Applicants also state that the First Mortgage Bonds and the New Bonds may include: (i) up to a 15 year optional redemption limitation; (ii) an omission of sinking fund provisions; and (iii) a limitation on dividends to a percentage of net income available for dividends on common stock if the Applicant's common stock equity is not maintained at a certain percentage of total capitalization. Applicants request that the Commission authorize these deviations from the Statement of Policy.

The proceeds of the offering of the New Bonds will be used to: (i) redeem the Old Bonds pursuant to the terms of the Indenture; and (ii) reimburse the Applicant's treasuries for any expenditures made that qualify for tax-exempt financing or to provide for current solid waste expenditures. The proceeds of any offering may also be used to reimburse the Applicants' treasuries for Old Bonds previously acquired.

Applicants may be required to deposit the proceeds of the New Bonds with the Trustee in connection with the Redemption of the Old Bonds. Any additional funds required to pay for the redemption of Old Bonds and the costs of issuance of the New Bonds will be provided by the Applicants from internally generated funds and short-term borrowings pursuant to orders of the Commission dated March 31, 1993, September 28, 1993, March 18, 1994, June 15, 1994 and March 21, 1995 (HCAR Nos. 25777, 25897, 26007, 26066 and 26254, respectively), or subsequent orders.

Applicants propose to manage interest rate risk and/or lower their interest costs through the use of hedging products, including fixed-for-floating interest rate swaps, forward swaps (i.e., where a swap agreement is entered into but the exchange of fixed and floating payments does not begin until a future date, which is generally the call date on outstanding bonds), caps and collars and through forward transactions. Applicants also request authorization to enter into revenue (or offsetting) interest rate swap arrangements, or other contractual arrangements, in order to limit the impact of anticipated movements in interest rates or offset the effect of existing interest rate swap agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15111 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants anticipate that they would be required to pay a premium or fee to obtain the credit enhancement.

[2] HCAR No. 13105, as supplemented by HCAR No. 16369.

[3] The Old Bonds may not be redeemed prior to their first redemption date and thereafter may be redeemed at the then applicable redemption price plus accrued interest to the redemption date. The Old Bonds will be redeemable on September 15, 1996 at 103% of principal amount.

[Release No. 34–37288; File No. SR–Amex–96–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170 Pertaining to Specialists' Liquidating Transactions

June 7, 1996.

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 April 30, 1996, the American Stock Exchange, Inc. (''Amex'' 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 Amex requests permanent approval of a pilot program that amends Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or zero plus tick, when covering a ''short'' position, without Floor Official approval.[3] The pilot program also amends Exchange Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

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).

[2] 17 CFR 240.19b–4.

[3] A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price. Conversely, a zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 21, 1995, the Commission approved a one-year extension of a pilot program that amends Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval.[4] The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has monitored compliance with the requirements of the Rule, and the Amex's findings in this regard have been forwarded to the Commission under separate cover. The Exchange believes the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction has been strengthened. The Exchange is therefore proposing approval of the amendments to Exchange Rule 170.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The proposed rule change also is consistent with Section 11(b) of the Act[7] which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

[4] Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 38870. The Commission originally approved the pilot program in Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 (''1994 Approval Order''). On April 21, 1995, the Commission granted a three month extension to the pilot program, ending on July 21, 1995. Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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. 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 also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–16 and should be submitted by July 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15112 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37294; File No. SR–MBSCC–96–01]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify Participants Fund Deposit Requirements

June 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 8, 1996, MBS Clearing

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MBSCC–96–01) and amended such filing on March 25, and May 30, 1996,[2] as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. 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 will revise MBSCC's rules to modify MBSCC participants' deposit requirements to the participants fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In Its filing with the Commission, MBSCC included statements concerning the purpose of and basic 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MBSCC participant fund is composed of a basic deposit, a minimum market margin deposit, and a daily margin requirement.[4] The basic deposit component is intended to ensure that a participant's obligations to MBSCC for services will be satisfied if the participant is unable to meet such obligations.[5] Currently, the basic deposit component is $10,000, which must be in cash for each account maintained by a participant. The proposed rule change will require a minimum deposit of $1,000 for each participant regardless of the number of accounts maintained.[6] If a participant's average monthly services bill, as determined by MBSCC on a semiannual basis, exceeds $1,000, the participant's minimum deposit amount will be the amount of such average monthly services bill up to a maximum amount of $10,000 per account maintained by such participant. MBSCC believes that as a result of the proposed rule change, participants fund deposits will reflect more accurately each participant's actual services billing.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number SR–MBSCC–96–01 and should be submitted by July 5, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15180 Filed 6–13–96; 8:45 am]

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[2] Letters from Anthony H. Davidson, MBSCC, to Christine Sibille, Division of Market Regulation (''Division''), Commission (March 18, 1996) and to Mark Steffensen, Division, Commission (May 30, 1996).

[3] The Commission has modified the text of the summaries prepared by MBSCC.

[4] The purpose of the daily margin requirement (''MMD'') is to ensure that a participant's open obligations to MBSCC will be satisfied in the event the participant is unable to meet such obligations. MMD is derived from a formula which assesses various factors including the type of position held and marked-to-market value fluctuations. The purpose of the minimum market margin deposit (''3MD'') is to provide additional assurances that each participant's fund contributions will be adequate to satisfy all open commitments recorded with MBSCC. Currently, the deposit required to satisfy this component of the participant fund is $250,000 per participant. The proposed rule change will not affect the requirements of MBSCC participants with regard to the MMD and 3MD components of the participant's fund.

[5] Notwithstanding the purposes of the basic deposit, MMD, and 3MD components of the participants fund, MBSCC is not limited in its application of participant fund proceeds. Rather, MBSCC can utilize the total participants fund to satisfy a participant's obligations irrespective of the type of default.

[6] MBSCC determined that its participants on average maintain two accounts at MBSCC. Presently, the monthly maintenance fee per account is $350 or $700 for two accounts. MBSCC based the minimum deposit amount of $1,000 upon these averages and other participant usage data.

[7] 15 U.S.C. § 78q–1 (1988).

[8] 17 CFR 200.30–3(a)(12) (1995)

[Release No. 34–37291; File No. SR–NASD–96–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Mandatory Electronic Filing of Forms U–4, U–5 and BD

June 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'')

the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to the NASD By-Laws and Membership and Registration Rules. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

By-Laws

Ineligibility of Certain Persons for Membership or Association

Article II Sec. 3(a)

No registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or dealer, or government securities broker or dealer, or member * * * *or if such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process the Corporation may prescribe.*

Application for Membership

Article III Sec. 1(a)

Application for membership in the Corporation, properly signed by the applicant, shall be made to the Corporation *via electronic process or such other process the Corporation may prescribe,* on the form to be prescribed by the corporation, and shall contain: * * *

Article III Sec.1 (d)

Each member shall ensure that its membership application with the Corporation is kept current at all times by supplementary amendments *via electronic process or such other process the Corporation may prescribe* to the original application. *Such amendments to the application shall be filed with the Corporation not later than thirty (30) calendar days after learning of the facts or circumstances giving rise to the amendment.*

Executive Representative

Article III Sec. 3

Each member shall appoint and certify to the Secretary of the Corporation one ''executive representative'' who shall represent, vote and act for the member in all the affairs of the Corporation, except that other executives of a member may also hold office in the Corporation, serve on the Board of Governors or committees of the Corporation, or otherwise take part in the affairs of the Corporation. A member may change its executive representative upon giving [written] notice thereof *via electronic process or such other process the Corporation may prescribe* to the Secretary, or may, when necessary, appoint, by [written] notice *via electronic process* to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member.

Resignation of Members

Article III Sec. 5

Membership in the Association may be voluntarily terminated only by formal resignation. Resignations of members must be *filed via electronic process or such other process the Corporation may prescribe* [in writing] and addressed to the Corporation which shall immediately notify the appropriate District Committee. Any member may resign from the Corporation at any time. Such resignation shall not take effect until thirty (30) *calendar* days after the receipt thereof by the Corporation and until all indebtedness due the Corporation from such member shall have been paid in full and so long as any complaint or action is pending against the member under the Code of Procedure. The Corporation, however, may in its discretion declare a resignation effective at any time.

Registration of Branch Offices

Article III Sec.8(b)

Each member of the Corporation shall promptly advise the Corporation *via electronic process or such other process the Corporation may prescribe* of the opening, [or] closing, *relocation, change in designated supervisor or change in designated activities* of any branch office of such member *not later than thirty (30) calendar days after the effective date of such change.*

Application for Registration

Article IV Sec.2(a)

Application by any person for registration with the Corporation, properly signed by the applicant, shall be made to the Corporation *via electronic process or such other process the Corporation may prescribe,* on the form to be prescribed by the *Corporation* [Board of Governors] and shall contain: * * *.

Article IV Sec.2(c)

Every application for registration filed with the Corporation shall be kept current at all times by supplementary amendments *via electronic process or such other process the Corporation may prescribe* to the original application. *Such amendments to the application shall be filed with the Corporation not later than thirty (30) calendar days within learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten (10) calendar days after such disqualification occurs.*

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification

Article IV Sec.3(a)

Following the termination of the association with a member of a person who is registered with it, such member shall [promptly, but] *not* [in no event] later than thirty (30) calendar days after such termination, give [written] notice of the termination of such association to the *Corporation* [Association] *via electronic process or such other process the Corporation may prescribe* on a form designated by the *Corporation* [Board of Governors], and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the *Corporation* [Association]. A member which does not submit such notification [in writing], and provide a copy to the person whose association has been terminated, within the time period prescribed shall be assessed a late filing fee as specified by the *Corporation* [Board of Governors]. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action *under the Code of Procedure* is pending against a member and to which complaint or action such person associated with

a member is also a respondent, or so long as any complaint or action is pending against such person individually under the Code of Procedure. The Corporation, however, may in its discretion declare the termination effective at any time.

Article IV Sec.3(b)

The member shall notify the *Corporation* [Association] *via electronic process or such other process the Corporation may prescribe* [in writing] by means of an amendment to the notice filed pursuant to paragraph (a) above in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the *Corporation* [Association] and *a copy* provided to the person whose association with the member has been terminated not later than thirty (30) calendar days after the member learns of facts or circumstances giving rise to the amendment.

Membership and Registration Rules

Electronic Filing Rules

Registration—Electronic Filing

This Part has been prepared pursuant to the provisions of Article II Section 2, Article III Section 1, and Article IV Sections 2 and 3 of the NASD By-Laws and contains the requirements of filing the appropriate forms for members and persons associated with members.

(1) Filing Requirement:

All forms required to be filed by these By-Laws shall be filed through an electronic process or such other process the Corporation may prescribe to the Central Registration Depository.

(2) Supervisory Requirements:

(a) In order to comply with the supervisory procedures requirement in Rule 3010 of the Conduct Rules, each member must identify a Registered Principal(s) or corporate officer(s) who has a position of authority over registration functions, to be responsible for supervising the electronic filing of appropriate forms pursuant to this Part.

(b) The Registered Principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to this Part will be required to acknowledge, electronically, that he is filing this information on behalf of the firm and the member firm's associated persons.

(3) Form U–4 Filing Requirements:

(a) Initial and transfer electronic application filings will be based on a signed Form U–4 provided to the firm by the applicant. As part of the member firm's recordkeeping requirements, it must retain the applicant's signed Form U–4 and make it available upon regulatory request.

(b) Amendments to the disclosure information in Item 22 can be filed electronically without obtaining the associated person's signature on Form U–4. The member will be required to provide the associated person with a copy of the amended disclosure information that was filed. In providing this material to the associated person, the firm must obtain the written acknowledgement that the information has been received and reviewed. The member must maintain this acknowledgement in its books and records and must make it available upon regulatory request.

(4) Form U–5 Filing Requirements:

(a) Initial filings and amendments of Form U–5 will be done electronically. As part of the member firm's recordkeeping requirements, it must make them available upon regulatory request.

(5) A Member may employ a third party to file the required forms electronically on its behalf, if the member and the third party have executed NASD's Broker-Dealer Agent—Filing Addendum To CRD Subscribe Agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1992, the NASD has undertaken an extensive redesign effort to improve the Central Registration Depository (''CRD'') with the goal of requiring total electronic filing of registration-related forms. The central focus of the redesign effort is to provide efficient, reliable, effective, state-of-the-art systems and procedures at reasonable cost to support licensing and regulation of the securities industry. Implementation of mandatory electronic filing will eliminate delays in processing information in hard copy. The redesigned CRD will offer efficient processing of registration-related filings and user friendly access to information contained in those filings for all industry and regulatory participants. A detailed discussion of the CRD implementation plan appeared in the December 1995 issue of Membership On Your Side.

The revisions to the By-Laws include amendments that require filers to submit information on Forms U–4, U–5, and BD via electronic means.[1] The impact of this requirement on small member firms with limited access and form filing needs was considered by the Board of Governors. The Board addressed this concern, by providing all firms with the option to contract with third party vendors to handle the filings with the CRD. The Board also determined to give firms who have less than fifty registered persons the option to file electronically, utilize a third-party service bureau or file with the NASD's internal processing unit. Member firms can choose for themselves based upon their needs whether to access the system directly by acquiring the necessary hardware and software and training their registration staff or to access the system indirectly via a third party agent or service bureau. NASD Membership staff are working with the vendors and service bureaus to make sure they are prepared to provide this service to members.

Specific By-Law provisions which currently require filers to use ''forms'' or provide ''written notification'' are changed to require filing by electronic process or such other process as the NASD may prescribe. The provisions which refer to the filer obligations to keep applications ''current'' have been revised to set out more specific requirements including specific time frames (usually 30 days) for the filing of information. In addition, the NASD's membership eligibility criteria are amended to require firms to file via the electronic process. Firms who fail to comply with the electronic filing requirement may be subject to suspension or cancellation of membership.

[1] The Commission is simultaneously publishing notice of NASD's proposed rule changes amending Forms U–4 and U–5. File No. SR–NASD–96–19; Securities Exchange Act Release No. 37289 (June 7, 1996).

The NASD has established a rollout schedule which began in May 1996 with approximately eleven member firms and one service bureau being involved in a pilot test. It is anticipated that the pilot firms will file all forms electronically in the new CRD system on approximately July 29, 1996.

The NASD Board in assessing the impact of mandatory electronic filing on smaller members decided to divide the membership into two groups. This was done by analyzing the average number of filings a firm makes in conjunction with the number of registered persons employed at the firm. The analysis revealed that firm which employ 50 or more registered persons are responsible for an overwhelming majority of the filings. Therefore, the Board used this criteria as the dividing point for the two groups. The NASD used April 26, 1996 as the date to divide the members. On that date, there were 813 members who employed 50 or more registered persons (''Group I'') and approximately 4,600 members with less than 50 registered persons (''Group II'').

The rollout schedule for all NASD members is as follows. These firms have been divided among the five NASD Service and Quality teams. Team 1 goes into production on approximately September 9, 1996, Teams 2 and 3 on approximately October 7, 1996, and Teams 4 and 5 on approximately November 4, 1996.

Firms in Group II may comply with the electronic filing requirement through any of three methods: (1) they may file electronically on their own; (2) they may utilize a third-party vendor to file on their behalf; or (3) for a period of one year commencing on September 9, 1996 and ending on September 9, 1997, for a prescribed fee, these firms may file paper forms with the NASD which through its own internal processing unit will file the forms with the new CRD system.

The NASD is also amending its Membership and Registration Rules to establish electronic filing protocols. Under these protocols the member will:

(1) Designate a Registered Principal(s) or corporate officer(s) to be responsible for supervising the electronic filing of appropriate filings with such responsibility to acknowledge, electronically, that the filing is on behalf of the firm and the member firm's associated persons.

(2) Retain and provide upon regulatory request original, signed Form U–4s which were electronically processed as initial or transfer applications as part of the recordkeeping requirements.

(3) File amendments to administration data without the signature of the subject individual. Such information includes the addition of state or SRO registration, exam scheduling and updates to residential, business and personal history.

(4) File amendments to disclosure data electronically provided that the subject person has acknowledged that the information has been received and reviewed. This acknowledgement must be retained and provided upon regulatory request.

(5) File initial and amended Form U–5 Notice of Terminations electronically. The filing firm must make the filings available upon regulatory request.

The NASD believes that the proposed rule changes are consistent with the provisions of Section 15A(b)(6) of the Act in that mandatory electronic filing with the new CRD system will provide efficient processing of registration-related filings and will allow for easy access to information in these filings by all industry and regulatory participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15181 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37289; File No. SR–NASD–96–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating of Proposed Amendments to Forms U–4 and U–5

June 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 16, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the Uniform Application for Securities

[1] On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change to clarify that rather than submitting entirely new forms for the Commission's approval, the filing seeks to amend currently existing Forms U–4 and U–5. Amendment No. 1 was submitted along with a redlined version of the signature page (page 4) for Form U–4 to highlight the revisions to that part of the Form. Letter from Craig 1. Landauer, Associate General Counsel, NASD to Mark P. Barracca, Special Counsel, SEC, dated June 5, 1996.

Industry Registration or Transfer, Form U–4, and the Uniform Termination Notice for Securities Industry Registration, Form U–5.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend the Uniform Application for Securities Industry Registration or Transfer, Form U–4 and the Uniform Termination Notice for Securities Industry Registration, Form U–5.

Since November 1993, in support of efforts to redesign the Central Registration Depository (CRD), a task force comprising the North American Securities Administrators Association (NASAA), industry representatives, the SEC, NASD and other SROs has worked to revise the uniform registration forms (Form U–4 and Form U–5). The NASD has undertaken an extensive redesign effort to improve the CRD which will require electronic filing of registration-related forms.[3] Currently scheduled for pilot phase during the second quarter of 1996, the redesigned CRD will offer efficient processing of registration-related filings and user friendly access to information contained in those filings for all industry and regulatory participants.

The revised forms define how the information will be collected and stored in the revised CRD. Implementation of the amended forms will coincide with implementation of the redesigned CRD. The forms revision effort has dealt with bringing better clarify and fairness into the reporting of disclosable information. The most significant changes relate to the disclosure questions on Forms U–4 and U–5. The revisions will provide for more detailed reporting to support new functionality created by CRD's redesign. The forms have been revised to include:

- Expansion of Page 1 of Form U–4 and the parallel items on Form U–5 to handle the registration of non-members and to accommodate multiple types of registration or notices of termination for Investment Adviser Representative and Agent of Issuer registrations. (In the long term, the new CRD will ultimately contain licensing data bases for non-members.)
- Addition of a statement on Page 4 of Form U–4 that will be executed by the applicant and retained by the member firm, that authorizes the member firm to make electronic filings on behalf of the applicant.
- An option for the applicant and member firm to request on the Form U–4 processing under a Relicensing Program. This program is intended to replace the existing Temporary Agent Transfer (TAT) Program. The new program will result in expedited handling for eligible persons including most individuals who previously have reported an affirmative answer to disclosure questions on their Forms U–4, but who have no new disclosure upon transfer. Even if there is new disclosure, the applicant may have an opportunity to gain a Temporary Registration while that disclosure is reviewed.
- An opportunity for an individual to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U–5. Individuals already have the opportunity to provide responses to other Form U–5 disclosures on their next U–4 filing upon transfer to a new employer.
- Item 22, the disclosure question on the Form U–4 and the parallel disclosure items on the Form U–5 have been made consistent with each other to the extent possible.
- The questions relating to disclosure have been categorized to provide a uniform format to collect, display and sort disclosure detail.
- Each category of disclosure has its own custom Disclosure Reporting Page (DRP) soliciting detail unique to that category.
- Each custom DRP solicits detail to provide the information that regulators have indicated they need in order to make informed registration decisions. The revised DRPs require more detail than the current DRPs, which will reduce the number of requests for additional disclosures that prolong the review and registration process.

The forms also contain a new customer complaint question. The question was developed after much discussion between representatives from the NASD, NASAA and the securities industry. The NASD believes the new question will greatly simplify and clarify what types of complaints have to be reported on the Forms U–4 and U–5. The question will require the reporting of all written customer complaints which allege sales practice rule violations and compensatory damages of $5,000 or more. The definition of sales practice violations will be included in the explanation of terms section of the forms. The NASD intends to issue a Notice to Members which will include a list of examples of sales practice violations under this section and the instructional software in the new CRD system will have this list as well. The NASD will periodically revise this list as warranted. Written complaints, which do not evolve into arbitration, civil litigation or a settlement over the jurisdictional amount, would be deleted from the CRD system two years from the date of the complaint. All arbitration and civil litigation proceedings involving securities transaction matters will be reported regardless of the dollar amount of compensatory damages. All settlements of $10,000 or more will be reported as well.

The NASD began a test pilot phase of the new CRD system on approximately May 20, 1996 with eleven firms and one service bureau who agreed to participate. The pilot participants will go into actual production on the new system on approximately July 29, 1996 using the revised Forms U–4 and U–5. The NASD intends to phase-in the use of the amended Forms with the remaining NASD members commencing on approximately September 9, 1996 and concluding on approximately November 7, 1996.[4]

The NASD believes that the amended Forms U–4 and U–5 are consistent with the provisions of Section 15A(b)(6) of the Act in that the NASD is required to adopt appropriate qualification and registration requirements for persons associated with NASD members or

[2] Copies of the revised Forms U–4 and U–5 were attached as Exhibit 2 to the NASD's rule proposal and are available for inspection and copying in the Commission's Public Reference Room and are available from the NASD.

[3] The Commission is simultaneously publishing notice of NASD's proposed rule changes to its By-Laws and Membership and Registration Rules that will require member firms to submit information on Forms U–4, U–5, and BD via electronic means and to establish electronic filing protocols. File No. SR–NASD–96–21; Securities Exchange Act Release No. 37291 (June 7, 1996).

[4] Registered representatives will not be required to refile Form U–4 with the NASD as a result of the changes to the form. Registered representatives, however, will continue to be subject to the requirement to update their forms when any information becomes inaccurate or incomplete. When updating a particular item, all information relating to that item must be completed, including DRP pages, if applicable.

applicants for NASD membership. Article IV, Section 2 of the NASD By-Laws authorizes the Board to prescribe the form used by any person who wishes to make application for registration with the NASD. The NASD believes the amended forms will make the filing of disclosable information easier and more efficient and will provide more complete information for use by securities regulators.

(B) Self-Regulatory Organization's Statement on Burden on competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–15183 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37293; File No. SR–NSCC–96–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Service Fees

June 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 23, 1996, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. 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 purpose of the proposed rule change is to revise NSCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In it filing with the Commission, NSCC 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. Set forth in sections (A), (B), and (C) below, are the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to reduce five existing service fees. The revisions to the fee schedule are being made as a result of increased trading volumes and the related reduction in costs with respect to these services. Fees relating to equity trade recording, certain clearance services, Automated Customer Account Transfer Service/ Transfer Initiation Form submissions, Networking accounts, and Fund/Serv transactions are being reduced.[3] The new fees will be effective as of May 1, 1996.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act,[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The exact changes to NSCC's fee schedule are attached as Exhibit A.

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(2) (1995).

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 that are filed with Commission, and all written communications relating to the propose rule change between the Commission and any person, other than those than may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to file number SR–NSCC–96–12 and should be submitted by July 5, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Italicized text indicates additions.

[Bracketed] text indicates deletions.

Modify Addendum A to NSCC's Rules and Procedures as follows:

Fee Structure

* * * * *

I. *TRADE COMPARISON AND RECORDING SERVICE FEES*—represents the fees to enter and correct original trade data.

* * * * *

C. Trade recording fees will be charged as follows on those items originally compared by other parties, but cleared through the Corporation:[2]

1. Each side of each stock, warrant or right item entered for settlement, but not compared by the Corporation—[$.015] *$.012* per 100 shares, with a minimum fee of [$.06] *$.048* and a maximum fee of [$1.125] *$.90* being applicable.

* * * * *

II. *TRADE CLEARANCE FEES*—represents the fees for netting, issuance of instructions to receive or deliver, effecting book-entry deliveries, and related activity.

* * * * *

F. Designated valued deliveries[4] (transaction processing) entered into the clearance system through special representative procedures—[$.15] *$.10* per side.

* * * * *

IV. *OTHER SERVICE FEES.*

* * * * *

M. Automated Customer Account Transfer Service.

1. Transfer Initiation Form—[$1.50] *$1.00* per submission.

* * * * *

N. Fund/Serv—[$.40] *$.35* per side per order.

O. NETWORKING.

* * * * *

2. Monthly Account Base Fee:

a. For accounts with Funds paying dividends monthly—[$.035] *$.025* per NETWORKING sub account.

b. For accounts with Funds paying dividends less frequently than monthly—[$.023] *$.015* per NETWORKING subaccount.

* * * * *

[FR Doc. 96–15179 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1995).

[2] Trade Recording Fees will be charged for all OCS and IDC input except for sides originally submitted correctly to the Corporation's comparison system.

[4] A designated valued delivery is an instruction from a Special Representative to CNS to transfer a valued position from one participant to a non-participant through a clearing interface.

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the Federal Register on May 31, 1996, the information collection listed below will require extension of the current OMB approval. (Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collection(s).)

1. Customer Satisfaction Survey Questionnaires—0960–0521. The Social Security Administration will conduct surveys to measure the public's perception of the quality of SSA's service, to determine public expectations and preferences for service delivery. The information collected on the survey forms (SSA–3299, SSA–4000, SSA–4298 and SSA–4299) will be used to identify areas of needed improvement and initiate corrective action. The respondents are beneficiaries entitled to old age, survivors or disability benefits (title II) and supplement security income (title XVI) recipients; individuals whose applications under either title were denied; and applicants for Social Security number cards.

	SSA–4000 SSA–4298/4299	SSA–3299
Number of Respondents	9,000 (total)	1,500.
Frequency of Response	1	1.
Average Burden Per Response	15 minutes	10 minutes.
Estimated Annual Burden:	2,250 hours	250 hours.

Written comments and recommendations regarding this information collection should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The information collections listed below, which were published in the Federal Register on April 19, 1996, have been submitted to OMB.

1. State Report of Incorrect BENDEX Information—0960–0517. The information collected on form SSA–1086 is used by the Social Security Administration to correct its master database and to facilitate the electronic exchange of data. The respondents are state agencies who provide or receive incorrect information from SSA during the beneficiary data exchange operation.

Number of Respondents: 155.

Frequency of Response: 2 times annually.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 52 hours.

2. Government Pension Questionnaire—0960–0160. The information collected by form SSA–3885 is used by the Social Security Administration to determine if an individual's Social Security benefit should be reduced because of his or her receipt of a Government pension. The respondents are claimants for Social Security benefits who receive, or are qualified to receive, a Government pension.

Number of Respondents: 76,000.

Frequency of Response: 1.

Average Burden per Response: 12.5 minutes.

Estimated Annual Burden: 15,833 hours.

3. Final Regulation Regarding Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516. The information collected by the Social Security Administration will be used to determine if a recipient of Supplemental Security Income benefits who is temporarily institutionalized is eligible to receive a full benefit. The respondents are such recipients and their physicians.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Date: June 7, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–15154 Filed 6–13–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–96–1019 and OST–96–1020]

Applications of Panagra Airways, Inc., for Certificate Authority; Notice of Order To Show Cause (Order 96–6–23)

AGENCY: Department of Transportation.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Panagra Airways, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 25, 1996.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–96–1019 and OST–96–1020 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2340.

Dated: June 10, 1996

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–15162 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–62–P

[Docket Number: OST–96–1447]

ISTEA Reauthorization Policy Statement and Principles

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of policy statement and principles that will be used to guide the development of a legislative proposal for the reauthorization of the Federal surface transportation programs.

SUMMARY: The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) authorized funding for surface transportation programs through September 30, 1997. Those programs and the implementing statutory authority which are contained in ISTEA are core elements of the Federal surface transportation policy and programs administered by the Department of Transportation.

Transportation is vital to our economic prosperity and quality of life. The United States is facing major challenges in providing safe and convenient travel, serving new patterns of freight shipments and changing regional populations, and taking advantage of the explosion of information technology that holds the promise of better transportation at lower cost. If we are to remain competitive in the global marketplace and maintain our quality of life, we must meet those challenges. As America increasingly becomes part of a larger global economy, transportation will only become more important to our standard of living.

To that end, the Department of Transportation has begun a process which will lead to a proposal for reauthorizing the major surface transportation programs. As a first step, the Department has developed a policy statement that identifies national challenges to global marketplace competitiveness and quality of life and outlines a set of reauthorization policy principles. The principles set out the broad objectives that the Administration hopes to achieve or strengthen through the reauthorization proposal.

An essential and important part of the development of the Department's reauthorization proposal will be consultation with the transportation community and other interested parties. It is hoped that the policy statement and principles will provide a starting point for those discussions. The Department recently initiated a series of regional forums which will continue over the next several months to determine how our programs and policies should be shaped to meet the challenges we face. Hopefully, these efforts will help us to design Federal surface transportation programs that responds quickly and effectively to the changing demands this Nation will face in the 21st century.

DATES: Comments on the policy statement and principles are welcomed. To be most useful, comments on these issues should be submitted no later than August 30, 1996.

ADDRESSES: Three copies of comments for the public docket on the ISTEA Reauthorization Policy Statement and Principles should be sent to: Office of the Secretary, Documentary Services Division, C–55, Attn: ISTEA Public Docket OST–96–1447, Room PL 401, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Questions on the ISTEA Reauthorization

Policy Statement and Principles also can be directed to:

Mr. Frank Kruesi, Assistant Secretary for Transportation Policy, Room 10228, 400 Seventh Street, S.W., Washington, D.C. 20590, Phone: (202) 366–4544.

Mr. Stephen Palmer, Assistant Secretary for Governmental Affairs, Room 10408, 400 Seventh Street, S.W., Washington, D.C. 20590, Phone: (202) 366–4573.

SUPPLEMENTARY INFORMATION:

ISTEA Reauthorization Policy Statement and Principles

Transportation has been vital to America's economic prosperity and quality of life since the Nation's founding. From the colonial post roads and canals that expanded our frontiers, to the railroads and Interstate highways that linked a growing country, and to the mass transit systems that made possible the development of our great cities, transportation has opened up new markets and enabled the quick, economical movement of people and goods that powered our economy's growth.

More than $700 billion dollars annually—an eighth of America's economy—is devoted to transportation products and services: Everything from auto manufacturing to air travel to freight shipping. One in ten Americans is employed in the industries which provide these goods and services, and all of us depend upon them.

As the national economy becomes more fully integrated and as America increasingly becomes part of a larger global economy, transportation's role will only become more important. In recent years, transportation has dramatically increased productivity, with major benefits for business and consumers. We need to continue—and accelerate—this trend. In the face of growing competition at home and around the world, businesses simply cannot afford the costs imposed by an inefficient transportation system. This is especially true as they rely on effective transport to make logistical innovations such as ''just-in-time'' delivery systems work properly.

However, our national and regional transportation systems face growing travel demand, inadequate capacity, and bottlenecks and poor connections between different forms of transportation. These conditions pose challenges that, if unmet, could slow economic growth and reduce our international competitiveness. Nor should Americans have to endure the costs and disruptions that an inefficient system imposes on their own lives. Americans depend upon smooth-flowing, seamless transportation to get to work or school, to shop, and to provide the products they buy in stores. When these systems do not work as intended, Americans pay the price in lost time, higher prices, or diminished opportunity.

Challenges

If we are to remain competitive in the global marketplace and maintain our quality of life, we must aggressively meet at least four national challenges: (1) Safety, (2) continued growth of traffic and travel and its attendant congestion, (3) environmental concerns, and (4) demographic changes.

1. Safety

We have made great progress in the face of increasing travel. Even so, motor vehicle crashes are the leading killer of America's youth. After years of steady decline, total highway deaths are increasing. These increases came prior to the repeal of speed limit and motorcycle helmet provisions. Transportation deaths and injuries place a huge burden on our economy—an estimated $140 billion annually. Through Medicare and Medicaid, much of this burden falls directly on the American taxpayer. Reversing this trend will be a challenge requiring Federal leadership.

2. Travel Growth

Traffic congestion in the Nation's 50 largest cities costs travelers more than $40 billion annually. Delays are likely to increase over the next two decades as travel nationwide increases by some 60 percent—delays that translate directly into costs to businesses which ultimately are passed to consumers and that also rob Americans of precious personal time.

3. Environment

Nearly one-quarter of the areas that failed to meet ozone standards in 1990 have been reclassified as ''attainment'' areas by the Environmental Protection Agency. But many of our largest cities are still having problems meeting air quality standards. We must maintain our efforts to reduce air pollutant emissions in light of the continued rise in vehicle miles and the threat posed by global climate change.

4. Demographic Changes

Mobility for older Americans as well as those with disabilities is a critical need. The elderly are the fastest growing component of the U.S. population. More than six million Americans are over 85; that will increase 400 percent by 2050. The majority of this population is accustomed to relying on self-operated automobiles, and as they grow older, their special transportation needs will require national attention.

Transportation also affects, and is affected by, the increasing dispersion of land use patterns and cultural and demographic change. Although the shift to the Sun Belt has slowed, immigration is expected to continue, as is domestic migration from urban areas to smaller towns and the new ''edge cities.'' Among the effects of this shift from central cities to the surrounding areas are more, and longer, vehicle trips as people choose to live farther from the places where they work or shop.

America's transportation needs are being addressed aggressively by the private sector but the efforts of all levels of government are also required. As President Clinton recently pointed out, the Interstate Highway System brought Americans closer together, connecting region to region, city to city, and family to family in ways that were undreamed of a half-century ago. That same spirit has always been a driving force for government investment in transportation.

From the Nation's earliest days, government has supported transportation development: Building roads and canals, providing land for railroads, and financing airports, water ports and mass transit systems. Government at all levels now invests more than $40 billion annually in surface transportation infrastructure alone, with additional billions spent on operating and managing those systems.

Much of this support has been authorized through a series of legislative initiatives setting policy guidance and providing funding for highway, transit, and safety programs. The most recent of these, the Intermodal Surface Transportation Efficiency Act of 1991 (known as ISTEA), authorizes Federal programs in these areas for fiscal years 1992–1997.

Through ISTEA, not only have we invested more, we have worked with state and local government to invest better. Americans are getting more for transportation dollars because ISTEA provided a strategic investment framework. It did so through stronger planning requirements and through programs such as the National Highway System, completion of the Interstate System, and transit capital investment that focused resources on national priorities. ISTEA's authors also had the vision to create programs, such as the Surface Transportation Program, that provided unprecedented flexibility to

state and local officials and helped assure that transportation investments would meet the unique needs of their communities.

ISTEA's authority expires in October 1997, and the Department of Transportation has begun to consider what form the successor to ISTEA should take. This statement outlines some of the major principles that the Department believes should be the basis for this next authorizing bill.

Policy Principles

ISTEA's successor should be based upon principles that will sustain a strong, globally-competitive economy and ensure the mobility, safety and well-being of our people. The following are several key principles that serve as a framework for the deliberations on this legislation.

1. Promote Economic Prosperity

America needs a well-connected transportation system that is economically efficient and that provides the foundation for us to compete in the global economy. Moving people to jobs, transporting raw materials to manufacturers, and distributing products to market in ways that are timely and economical are fundamental to our prosperity and to Americans' well-being. Post-ISTEA legislation should continue the emphasis on ISTEA's ''E'': efficiency.

2. Improve Quality of Life

Transportation directly affects our access to activities, goods, and services which we value, defines the very shape of our communities, and determines our ability to take advantage of social, economic, and cultural opportunities. Post-ISTEA legislation should facilitate the transportation improvements Americans need to improve their daily lives.

3. Improve Safety

Travel inevitably places us at some risk. Given the high economic, social, and personal costs of crashes and other incidents, safety must be government's highest priority in transportation. ISTEA made great progress in improving the public's safety, and its successor must continue to improve safety and set standards that are reasonable.

4. Enhance the Environment

The air we breathe and the water we drink are affected by transportation, as are the cultural, historic, and natural resources that define us as a Nation. ISTEA was a major step forward in preserving and protecting them, and its successor must ensure that we continue to protect the environment and account for the full costs of transportation decisions that affect air, water, and such nonrenewable resources as wetlands and energy.

5. Ensure National Security

A sound transportation system is necessary to ensure America's national security. Both national defense and our ability to respond to disasters and other emergencies depend upon our system of highways, railroads, airports, and ports for the movement of essential equipment, supplies, and personnel. Post-ISTEA legislation must strengthen this vital aspect of our preparedness.

Building Blocks

As planning begins for ISTEA reauthorization, we need to identify aspects of ISTEA that will continue to help us shape a transportation system for the 21st century. These basic building blocks will help us identify the specific steps we must take to move in the directions laid out in the policy principles described above.

1. Promote Intermodalism

Better modal choices and improved connections between modes can provide a unified, interconnected transportation system that meets the demands of travelers and shippers by making the parts of the system work better together to provide alternatives suited to a variety of transportation needs. Reauthorization must continue the progress toward intermodalism—so modal categories of the early 20th century do not dictate the transportation system of the future. Post-ISTEA legislation should ensure that ISTEA's ''I''—intermodal—remains a focus of Federal policy.

2. Improve Planning and Public Participation

ISTEA also brought new players to the table. And a more inclusive process does yield real results—in the form of better, more feasible and publicly acceptable plans. The fiscal constraints ISTEA applied to transportation plans means they reflect the reality that real planning requires hard choices based on realistically available funding. There should be no question of turning back. We must continue to guarantee that investment decisions are the product of an inclusive planning process—an *informed* political decision.

3. Empower State and Local Officials

ISTEA created flexible programs, such as the Surface Transportation Program and the Congestion Mitigation and Air Quality Program, and increased state and local officials' ability to target funds to projects that made sense for their communities. They responded enthusiastically to increased flexibility; more than $2 billion has been flexed. And by their own actions, these officials have demonstrated a commitment to even greater flexibility. ISTEA's successor should further empower these officials to invest Federal funds in the projects that best meet their needs, possibly including areas in which their investment is currently limited, including perhaps rail and intermodal projects.

4. Strengthen Partnerships

Drawing upon the strengths and perspectives found at all levels of government and in the private sector, from both passenger and freight transport, can enhance the decision-making process and assure that transportation meets present and future needs. ISTEA strengthened the traditional Federal-state partnership and expanded it to include local governments, metropolitan planning organizations, and the private sector. Partnerships must be forged with other countries as well. As we compete in a global economy, it is essential that we work to improve transportation that facilitates the effective movement of our Nation's goods and its people. Post-ISTEA legislation should build upon these partnerships.

5. Encourage Performance Management

Performance management is a way of getting at the question raised by the National Performance Review: ''How can we get government to work better and cost less?'' Performance management, with its outcome-oriented goals and clear measures, is a positive and flexible way to manage transportation. Greater reliance on performance management will allow us to maintain accountability for use of public resources while reducing cumbersome rules that delay improvements and add to costs. It will encourage strategies—such as preventive maintenance and Intelligent Vehicle Systems technologies—that, in some cases, improve the performance of the existing system more efficiently than new construction alone.

6. Promote Innovative Financing

Competition for scarce public resources continues to intensify. ISTEA offered new opportunities for cutting red tape that delays projects, for involving the private sector, and for financing transportation improvements through tolls and other innovative means. Our Partnership for

Transportation Investment program jump-started innovative financing suggested by ISTEA. The establishment of transportation infrastructure banks builds upon this progress. ISTEA's successor should continue these efforts to create new ways of paying for the transportation systems America needs.

7. Encourage New Technologies

Cleaner, safer, and more efficient transportation has often come because of new technologies—some entirely new, such as the automobile, and some that have made previous advances safer or more efficient, such as seat belts. Continued development and use of advanced technology is vital if such progress is to continue. Under ISTEA, the Federal Government renewed its emphasis on applying technology to improve safety, system capacity, and travel times. Investment in research and development has been expanded, both through increased funding and through new partnerships with the private sector. The successful Intelligent Transportation Systems and Global Positioning Satellite systems deployments are products of such initiatives. Post-ISTEA transportation legislation should continue this commitment.

8. Encourage Better Infrastructure Investment and Management

Continually improving the performance of infrastructure investment programs is always essential, but especially so in an era of limited public funding. ISTEA's successor should encourage state and local officials to base investment decisions on systematic cost-benefit analysis, and to adopt operational, maintenance, and pricing practices, that maximize the efficiency of, and return on, investment, as described in the Executive Order, Principles for Federal Infrastructure Investments.

Meeting the Challenge

ISTEA is visionary legislation. Its central elements—strategic infrastructure investments, intermodalism, flexibility, intergovernmental partnership, a strong commitment to safety, enhanced planning and strategic investment—should be preserved.

The forces shaping the debate over the role of government in our society will influence the reauthorization debate. What is the Federal role in surface transportation infrastructure? What has worked under ISTEA—what has not? What can we do to improve our safety record? How can we increase our resources? How can we benefit more from the fiscal resources we have? Should we expand eligibility for Federal funds, for example to rail and intermodal projects?

Most of these questions require further study and discussion. But in one case—the Federal role—the answer is clear. We need strong Federal leadership. Efficient national cargo movement is key to our ability to benefit from expanding trade opportunities. Truckers and other freight operators need national uniformity in facilities and regulatory standards. We also need national consistency if we are going to move forward with deployment of new technology. We cannot achieve other key national priorities—linking Americans to jobs, health care and education—without efficient and accessible transportation. And the challenges we face in the areas of safety and the environment do not stop at state borders.

As we tackle these difficult questions, the policy principles and building blocks outlined in this statement should guide us. Our goal for reauthorization is to develop a proposal for the next century that allows our Nation to preserve our competitive advantage throughout the world and maintain the well being of our citizens.

Issued this 10th day of June 1996, in Washington, DC.

Frank Kruesi,

Assistant Secretary for Transportation Policy.

[FR Doc. 96–15163 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Westchester County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Town of North Castle, Westchester County, New York. A portion of the project is situated within the Town of Greenwich, Connecticut.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York, 12207, Telephone (518) 472–3616, or A.J. Bauman, Regional Director, New York State Department of Transportation, Region 8, 4 Burnett Boulevard, Poughkeepsie, New York 12601, Telephone (914) 431–5750.

SUPPLEMENTARY INFORMATION: The FHWA and the New York State Department of Transportation (NYSDOT), in cooperation with the Town of North Castle will prepare an environmental impact (EIS) on a proposal to improve New York State Route 120 and interchanges 2 and 3 on I–684. The proposed improvements will include the widening of existing State Route 120 from the intersection with County Route 135, northwest to the intersection with State Route 22, a distance of approximately 2.6 miles. The project also includes improvements to Exits 2 and 3 on I–684.

Improvements to Route 120 are necessary to provide for the existing and projected traffic demand. Alternatives under consideration include: (1) Taking no action; (2) widening existing State Route 120 from two to four lanes for a length of approximately 2.6 miles and ramp relocations and/or additions at Interchanges 2 and 3 on I–684. Incorporated into and studied with the build alternative will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A scoping meeting for Federal, State, local agencies and the general public will be held in early summer 1996 in Armonk, New York. This meeting will be conducted in two sessions, an afternoon session for Federal, State, and local agencies, and an evening session for the general public. A public meeting will be held in Armonk, New York in the fall of 1996. In addition, a public hearing will be held in early 1997. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 6, 1996.

Robert Arnold,

District Engineer, Albany.

[FR Doc. 96–15086 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Docket Number H–95–1]

Addendum to a Test Program for a Conditional Waiver; National Railroad Passenger Corporation (Amtrak)

In accordance with 49 CFR Part 211, notice is hereby given that Amtrak has requested an addendum to the previously granted temporary waiver of compliance with specific requirements of certain parts of Title 49 of the Code of Federal Regulations in order to conduct a limited demonstration of a passenger trainset, the IC3 ''Flexiliner''.

Amtrak was granted conditional waivers from sections of Railroad Safety Appliance Standards (49 CFR Part 231), Railroad Safety Glazing Standards (49 CFR Part 223) and Railroad Track Safety Standards (49 CFR Part 213) (see FR 28011, May 26, 1995, for complete description). The waivers permit Amtrak, and a number of potential sponsors, including state departments of transportation and commuter agencies, to demonstrate and operate in revenue service the Flexiliner trainset, a three-car, articulated, diesel hydraulic, multiple unit trainset built by ABA Scandia A/S for the Danish State Railway (DSB).

The conditional waiver pertained to one 3-unit IC3 Flexiliner trainset, and since that time a second trainset has been added. Amtrak says this is necessary because of the limited amount of seating available on one trainset, and the expected passenger loads on the proposed routes require more seating.

Amtrak requested relief from the Railroad Locomotive Safety Standard, 49 CFR 229.131, Sanders, which requires that each locomotive shall be equipped with operable sanders that deposit sand on each rail in front of the first powered operated wheel set in the direction of movement. The IC3 Flexiliner trainsets are not equipped with sanders. They are equipped with magnetic track brakes which are activated when the train brakes are applied in emergency. Air pressure forces the brakes to the rail and battery voltage causes a strong magnetic field to develop a significant retardation force. Magnetic track brakes are common in Europe and were used in this country on the X2000 and ICE trainsets during their recent demonstration trials.

Due to the impending arrival of the IC3 Flexiliner trainsets at the Port of Baltimore, Maryland, FRA has, on a temporary basis, conditionally waived compliance with the relevant portions of the rail safety regulations. FRA has, however, reserved the right to withdraw such approval upon receipt by FRA of public comment raising substantial issues of safety.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of publication of this notice will be considered before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on June 10, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–15116 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3396

Applicant: Soo Line Railroad Company, Mr. J. C. Thomas, S&C District Manager, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the Conley frog locks, on the two main track Kinnickinnic River movable bridge, at Milwaukee, Wisconsin, Gateway Division, C&M Subdivision.

The reason given for the proposed changes is to reduce maintenance costs associated with maintaining the frog locks, which are not required to be in compliance with applicable rule Part 236.312.

BS–AP–No. 3397

Applicant: Soo Line Railroad Company, Mr. J. C. Thomas, S&C District Manager, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the Conley frog locks, on the two main track Menomonee River movable bridge, at Milwaukee, Wisconsin, Gateway Division, C&M Subdivision.

The reason given for the proposed changes is to reduce maintenance costs associated with maintaining the frog locks, which are not required to be in compliance with applicable rule Part 236.312.

BS–AP–No. 3398

Applicant: Wisconsin Central Limited, Mr. Glenn J. Kerbs, Vice President Engineering, P.O. Box 5062, Rosemont, Illinois 60017–5062.

The Wisconsin Central Limited (WC) seeks approval of the proposed discontinuance and removal of the interlocking plant, at Menasha, Wisconsin, milepost MA 1.20, Manitowoc Subdivision, where a single main track of the WC crosses at grade a single yard track of the WC. The proposal includes installation of a swing gate with a stop sign, in the southwest quadrant, normally lined to foul the yard track.

The reason given for the proposed changes is that both tracks are owned by the WC, and the only through train movements are on the single main track at timetable speed of 10 mph.

BS–AP–No. 3399

Applicants:

National Railroad Passenger Corporation, Ms. Alison Conway-

Smith, Vice President / Chief Engineer, 30th Street Station, 4th Floor South, Philadelphia, Pennsylvania 19104.

New Jersey Rail Transit Rail Operations, Mr. R. A. Randall, Vice President-General Manager, One Penn Plaza East, Newark, New Jersey 07150–2246.

The National Railroad Passenger Corporation (Amtrak) and New Jersey Rail Transit Rail Operations jointly seek approval of the proposed modification of Hudson Interlocking, milepost 7.2, near Harrison, New Jersey, Metropolitan Division; consisting of the proposed discontinuance and removal of controlled signals 10L, 10RA, 10RB, 30R, 30LA, and 30LB, and conversion of associated power-operated switches 43 and 29 to hand operation.

The reason given for the proposed changes is that the proposed configuration is part of the Penn Station, New York Access Project, High Density Interlocking System.

BS–AP–No. 3400

Applicants:

Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer-Signals/ Quality 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001.

Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102–5304.

The Union Pacific Railroad Company and Burlington Northern Railroad Company (BN) jointly seek approval of the proposed discontinuance and removal of the traffic control signal system, on the single branch track, between Zangar Junction, C.P. W3 to Wallulla, Washington, on the Wallulla Branch; consisting of the discontinuance and removal of signals 55, L6, RA6, 27, and 28, and installation of an operative approach signal.

The reason given for the proposed changes is that the signals are no longer needed, the switch formerly located at C.P. W3 has been removed and BN no longer operates on the trackage.

BS–AP–No. 3401

Applicants:

Southern California Regional Rail Authority, Mr. H. L. Watson, 818 West Seventh Street, 7th Floor, Los Angeles, California 90017.

National Railroad Passenger Corporation, Mr. John D. Skinner, General Manager, 800 North Alameda Street, Los Angeles, California 90012.

Southern California Regional Rail Authority and National Railroad Passenger Corporation (Amtrak) jointly seek approval of the proposed reconfiguration and conversion of Los Angeles Union Passenger Terminal Interlocking, in Los Angeles, California, to a centralized traffic control system, including the temporary discontinuance of the signal system during construction of new tracks and installation of new switch machines, new color light signals, and a new relay based signal control system. During the proposed temporary discontinuance: switch tenders will be on duty to align proper routes, all train movements will be authorized by the Riverside Subdivision SCO, all train movements will be controlled by the Terminal Tower Train Director, all train movements will be governed by Rule 6.28 of the General Code of Operating Rules, and train movements will not exceed 10 mph.

The reasons given for the proposed changes are the limited existing track capacity and the significant time and cost reduction in construction effort.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on June 10, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–15117 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Foreign Currency Forms FC–1 (OMB NO. 1505–0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, FC–2 (OMB No. 1505–0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and FC–3 (OMB No. 1505–0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before August 12, 1996 to be assured of consideration.

ADDRESS: Direct all written comments to T. Ashby McCown, Director, Office of International Financial Analysis, Department of the Treasury 1500 Pennsylvania Avenue, N.W., Room 5124, Washington, D.C. 20220, Telephone (202) 622–2250.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to T. Ashby McCown, Director, Office of International Financial Analysis, Department of the Treasury, Washington, D.C. 20220, Telephone (202) 622–2250, FAX (202) 622–0607.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–1.

OMB Number: 1505–0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Number: 1505–0010.

Title: Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Number: 1505–0014.

Abstract: Foreign Currency Forms FC–1, FC–2, and FC–3 are required by law, Public Law 93–110 (31 U.S.C. 5315 and 5321(a)(3)), which directs the Secretary of the Treasury to prescribe regulations requiring reports on foreign currency transactions conducted by a United States person or foreign person controlled by a United States person. The regulations governing forms FC–1, FC–2, and F–3 are contained in Title 31 Part 128 of the Code of Federal Regulations (31 C.F.R. 128) which were published in the Federal Register on

November 2, 1993 (58 F.R. 58494–58497).

Current Actions: Minor changes made to instructions for FC–1, FC–2, and FC–3.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents:

Foreign Currency Form FC–1: 37 respondents

Foreign Currency Form FC–2: 7 respondents

Foreign Currency Form FC–3: 60 respondents

Estimated Time Per Respondent:

Foreign Currency Form FC–1: One (1) hour per respondent per response

Foreign Currency Form FC–2: Four (4) hours per respondent per response

Foreign Currency Form FC–3: Eight (8) hours per respondent per response

Estimated Total Annual Burden Hours:

Foreign Currency Form FC–1: 1,924 hours, based on 52 reporting periods per year.

Foreign Currency Form FC–2: 336 hours, based on 12 reporting periods per year.

Foreign Currency Form FC–3: 1,920 hours, based on 4 reporting periods per year.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether Foreign Currency Forms FC–1, FC–2, FC–3 are necessary for the proper performance of the functions of the Office, including whether the information has practical uses; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: June 10, 1996.

T. Ashby McCown,

Director, Office of International Financial Analysis.

[FR Doc. 96–15101 Filed 6–13–96; 8:45 am]

BILLING CODE 4810–25–M

Submission for OMB Review; Comment Request

June 4, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the focus group interviews described below in early July 1996, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 17, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432

Project Number: M:SP:V 96–014–G

Type of Review: Revision

Title:

1. Tax Settlement Reengineering Project Enable Taxpayers to File and Provide Assistance Focus Group Interviews; and
2. Tax Settlement Reengineering Project Methods of Filing and Paying Focus Group Interviews

Description: These collections of this information will assist the reengineering team in implementing changes to IRS processes that will lead to increased compliance and quality service to the public.

Respondents: Individuals or households, Business or other for-profit

Estimated Number of Respondents: 180.

Estimated Burden Hours Per Respondent:

Screening participants—54 hours each

Interview sessions plus travel—270 hours each

Frequency of Response: Other.

Estimated Total Reporting Burden: 648 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–15102 Filed 6–13–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

June 5, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0987.

Regulation ID Number: IA–62–91 Final and Temporary (formerly LR–168–86 NPRM and LR–129–86 Temporary).

Type of Review: Extension.

Title: Capitalization and Inclusion in Inventory of Certain Costs.

Description: The paperwork requirements are necessary to determine whether taxpayers comply with the cost of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods of accounting.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.

Frequency of Response: Other (in the year of change).

Estimated Total Reporting/ Recordkeeping Burden: 100,000 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) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–15103 Filed 6–13–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

June 5, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0001.
Form Number: ATF F 1600.1 and ATF F 1600.8.
Type of Review: Extension.
Title: Requisition For Forms or Publications (1600.1); and Requisition For Firearms Explosives Forms (1600.8).
Description: Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 30,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,725 hours.

OMB Number: 1512–0057.
Form Number: ATF F 487–B (5170.7).
Type of Review: Extension.
Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid.
Description: ATF F 487–B is used to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury Officials to certify that products are either taxpaid or deferred under appropriate bond. Serves as method of protection of the revenue.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion
Estimated Total Reporting Burden: 100 hours.

OMB Number: 1512–0167.
Form Number: ATF F 3072 (5210.14).
Type of Review: Extension.
Title: Transportation in Bond and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers and Tubes.
Description: ATF F 3071 (5210.14) is used to document the shipment of taxable tobacco products brought into the United States in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of licensee who received the products.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 200 hours.

OMB Number: 1512–0171.
Form Number: ATF F 5220.3.
Type of Review: Extension.
Title: Inventory—Export Warehouse Proprietor.
Description: ATF F 5220.3 is used by export warehouse proprietors to record inventories that are required by law and regulations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 50 hours .

OMB Number: 1512–0472.
Form Number: ATF F 5630.5 and ATF F 5630.7.
Type of Review: Extension.
Title: Special Tax Registration and Return Alcohol and Tobacco (5630.5); and Special Tax Registration and Return National Firearms Act (NFA) (5630.7).
Description: Excise taxes, alcohol, tobacco and firearms taxes, 26 U.S.C. Chapters 51, 52, and 53 authorize the collection of an occupational tax from persons engaging in certain alcohol, tobacco or firearms businesses. ATF F 5630.5 and/or ATF F 5630.7 is used to both compute and report the tax, as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 90,700.
Estimated Burden Hours Per Respondent: 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 72,778 hours.

OMB Number: 1512–0493.
Form Number: ATF F 5300.3.
Type of Review: Extension.
Title: Letterhead Request for Information in Regard to Federal Firearms Dealer's Records (Dealers Records of Acquisition, Disposition and Supporting Data).
Description: This letter gives the user a simplified format to list the required information ATF needs to perform its functions in regard to the law. The respondent saves time because the questions are simple and a return address is supplied. The form is used to maintain a current status of firearms licensees.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 28,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,380 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 96–15104 Filed 6–13–96; 8:45 am]
BILLING CODE 4810–31–P

Submission to OMB for Review; Comment Request

June 7, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0988.
Form Number: IRS Form 8609 and Schedule A (8609).
Type of Review: Extension.
Title: Low-Income Housing Credit Allocation Certification (8609); and Annual Statement (Schedule A).

Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation from the housing credit agency. The form, along with Schedule A, is used by the owner to certify necessary information required by the law. Respondents: Business or other for-profit, Individuals or households, State, Local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 120,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8609	Schedule A
Recordkeeping	8 hr., 37 min.	6 hr., 41 min.
Learning about the law or the form	2 hr., 17 min.	47 min.
Preparing and sending the form to the IRS	2 hr., 31 min.	56 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 2,447,400 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) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–15105 Filed 6–13–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

June 7, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1186.

Form Number: IRS Form 8825.

Type of Review: Extension.

Title: Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

Description: Form 8825 is used to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property. The form is filed with either Form 1065 or Form 1120S.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/ Recordkeepers: 705,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 28 min.

Learning about the law or the form—28 min.

Preparing the form—1 hr., 31 min.

Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 6,147,600 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) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–15106 Filed 6–13–96; 8:45 am]

BILLING CODE 4830–01–P

Fiscal Service

[Dept. Circ. 570, 1995 Rev., Supp. No. 18]

Survey Companies Acceptable on Federal Bonds, American Alliance Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, on page 34437 to reflect this addition:

American Alliance Insurance Company. Business Address: 580 Walnut Street, Cincinnati, Ohio, 45202. Phone: (513) 369–5000. Underwriting Limitation *b*/: $685,000. Surety Licenses *c*/: AL, AK, AS,AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. Incorporated in: Arizona.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/ 6953/6872. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–7116.

Dated: May 30, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–15073 Filed 6–13–96; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040PC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104- 13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040PC, U.S. Individual Income Tax Return 1040PC Format.

DATES: Written comments should be received on or before August 13, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return 1040PC Format.

OMB Number: 1545–1309.

Form Number: Form 1040PC.

Abstract: Form 1040PC is a computer-generated tax return answer sheet format prepared by tax preparation software. The 1040PC is an alternative method of filing Form 1040. It offers direct deposit for taxpayers to have their refunds deposited into their personal savings or checking accounts by electronic funds transfer. It also generates a pre-printed payment voucher for use when payment is due to the IRS.

Current Actions: The only change to Form 1040PC is the elimination of the separate Direct Deposit Section and the relocation of this information to line 60 of the Form 1040 Page 2 Section.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,500,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,625,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15205 Filed 6–13–96; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Friday
June 14, 1996

Part II

Department of Commerce

International Trade Administration

Final Affirmative Countervailing Duty Determination and Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy and Turkey; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske, Vincent Kane, Todd Hansen, or Cynthia Thirumalai, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189, 482–2815, 482–1276, or 482–4087, respectively.

FINAL DETERMINATION: The Department of Commerce (''the Department'') determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Italy. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of our preliminary determination in this investigation on October 17, 1995 (60 FR 53739), the following events have occurred:

On October 21, 1995, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of certain pasta from Italy (60 FR 54847, October 26, 1995). Subsequently, the final determinations in the antidumping and countervailing duty investigations were postponed until June 3, 1996 (61 FR 1346, January 13, 1996).

We conducted verification of the countervailing duty questionnaire responses from October 26 through November 11, 1995.

Three parties, Liguori Pastificio dal 1820, S.p.A, F.lli De Cecco di Filippo Fara S. Martino S.p.A. (''De Cecco''), and Pastificio Fratelli Pagani S.p.A (''Pagani''), made untimely submissions containing factual information. These submissions were returned on January 29, 1996, March 22, 1996, and April 12, 1996, respectively.

On February 14, 1996, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that date (61 FR 3672, February 1, 1996) (*see, Suspension of Liquidation* section, below).

Petitioners and respondents filed case briefs on April 2–4 and rebuttal briefs on April 10–11, 1996. A public hearing was held on April 15, 1996.

Scope of Investigation

The merchandise under investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (''AMAB'').

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion for Certain Organic Pasta

On October 2, 1995, a U.S. importer of Italian pasta requested that the Department exclude from the scope of this investigation and the companion antidumping duty investigation pasta certified to be ''organic pasta'' in compliance with European Economic Community (''EC'') Regulation No. 2092/91. This regulation sets forth a regime of standards for the cultivation, processing, storage, and transportation of organic foodstuffs with inspections of farms and processing plants by EC-approved national certification authorities. In addition to the description of the EC regime, the request included a copy of a sample certificate issued by the AMAB and a description, in English, of the AMAB organization.

On November 9, 1995, petitioners stated that they were willing to modify the scope of the petition and the investigation to exclude certified organic pasta of Italian origin if U.S. imports of such pasta were accompanied by certificates issued pursuant to EC Regulation No. 2092/91.

On November 21, we requested additional data on the EC regulation from the Section of Agriculture of the Delegation of the European Commission of the European Union. On December 8, 1995, the European Commission submitted responses to our inquiries. The information included a list of seven Italian inspection and certification authorities (of which AMAB was one) and the statement that EC Regulation No. 2092/91 ''* * * does not provide for certification of products intended for export to third countries.'' Although the Department was not able to fashion an exclusion of organic pasta from the scope of these investigations in the preliminary determination of the companion antidumping duty investigation, the Department stated that if certification procedures similar to those under the EC regulation were established for exports to the United States, we would consider an exclusion for organic pasta at that time.

On April 2, 1996, the importer that had originally requested the exclusion submitted a letter attaching a copy of a decree, with a translation into English, of the Italian Ministry of Agriculture and Forestry authorizing AMAB to certify foodstuffs as organic for the implementation of EC Regulation 2092/91. On April 30, 1996, this importer forwarded letters (with accompanying translations into English) from the Director General of the Italian Ministry of Agriculture and Forestry and from the Director of AMAB. The letter from the Ministry states that it has authorized AMAB to insure compliance with organic farming methods and to issue organic certificates since December of 1992. The letter from the Director of AMAB states that this organization will take responsibility for its organic pasta certificates and will supply any necessary documentation to U.S. authorities. On this basis, we are able to exclude—and do exclude—imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by AMAB from the scope of these investigations.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act''). References to *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* (54 FR 23366, May

31, 1989) (''Proposed Regulations''), which have been withdrawn, are provided solely for further explanation of the Department's countervailing duty practice.

Petitioners

The petition in this investigation was filed by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc.

Respondents

Respondent companies in this investigation are Agritalia, S.r.l. (''Agritalia''); Arrighi S.p.A. Industrie Alimentari (''Arrighi''); Barilla G. e R. F.lli S.p.A. (''Barilla''); Pastificio Campano, S.p.A. (''Campano''); F.lli De Cecco di Filippo Fara S. Martino S.p.A.; Molino e Pastificio De Cecco S.p.A. Pescara (''Pescara''); De Matteis Agroalimentare S.p.A. (''De Matteis''); La Molisana Alimentari S.p.A. (''La Molisana''); Delverde, S.r.l. (''Delverde''); Gruppo Agricoltura Sana S.r.L. (''Gruppo''); Pastificio Guido Ferrara (''Guido Ferrara''); Industria Alimentare Colavita, S.p.A. (''Indalco''); Isola del Grano S.r.L. (''Isola''); Italpast S.p.A. (''Italpast''); Italpasta S.r.L. (''Italpasta''); Labor S.r.l. (''Labor''); Pastificio Riscossa F.lli Mastromauro S.r.l. (''Riscossa''); and Tamma Industrie Alimentari di Capitanata (''Tamma'') .

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is calendar year 1994.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: With the exception of Barilla, the companies under investigation did not take out any long-term, fixed-rate, lira-denominated loans or other debt obligations which could be used as benchmarks in any of the years in which grants were received or government loans under investigation were given. Therefore, we used the Bank of Italy reference rate, adjusted upward to reflect the mark-up an Italian bank would charge a corporate customer, as the benchmark interest rate for long-term loans and as the discount rate. The methodology used to adjust the reference rate was described in our preliminary determination.

In the case of Barilla, the company reported and we verified that it had secured fixed-rate obligations during two years of the relevant period. Therefore, in accordance with section 355.49(b)(2) of the Proposed Regulations, we used this company-specific benchmark as the discount rate for Barilla in those years.

Allocation Period: Non-recurring benefits are being allocated over a 12-year period, the average useful life of physically renewable assets in the food processing industry (as reported in the Internal Revenue Service Asset Depreciation Range System).

Benefits to Mills: Several companies under investigation produce pasta using semolina sourced either internally or from affiliated mills. In our preliminary determination, we concluded that subsidies to the production of semolina, a primary input in the manufacture of pasta, were properly analyzed under the upstream subsidy provision of the Act (Section 771A).

Petitioners claim that the upstream subsidy provision is applicable only when the producer of the subject merchandise purchases the input product from an unrelated company. Petitioners assert that where the input producer is affiliated with the producer of the subject merchandise, production is sufficiently integrated that benefits bestowed upon the manufacture of the input product will necessarily flow down to the production of the subject merchandise. Petitioners have not made an upstream subsidy allegation.

Respondents argue that because semolina is an ''input product,'' subsidies to the production of semolina are correctly examined under the upstream subsidy provision of the statute. Respondents contend that the language in the upstream subsidy provision of the statute expressly defines ''upstream subsidies'' in terms of input products and makes no distinction between purchases from related or unrelated suppliers.

A thorough examination of the Department's past practice reveals a clear precedent for applying the upstream subsidy provision for subsidies to the input product where the producer of the input product is separately incorporated from the producer of the subject merchandise, regardless of whether the two companies are affiliated (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Oil Country Tubular Goods from Austria* (60 FR 33534) and *Initiation of Countervailing Duty Investigation; Converted Paper-related School and Office Supplies from Mexico* (49 FR 58347, 58348)). However, in two cases where the input product and the subject merchandise are produced within a single corporate entity, the Department has found that subsidies to the input product benefit total sales of the corporation, including sales of the subject merchandise, without conducting an upstream subsidy analysis (*see, e.g., Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* (''*Lumber*'') (57 FR 22570) and *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel* (52 FR 25447)).

Therefore, in accordance with our past practice, where the companies under investigation purchase their semolina from a separately incorporated company, whether or not they are affiliated, we have not included subsidies to the mill in our calculations. However, for those companies where the mill is not incorporated separately from the producer of the subject merchandise, we have included subsidies for the milling operations in our calculations. Where appropriate, we have also included sales of semolina in calculating the *ad valorem* rate.

Changes in Ownership

We noted in our preliminary determination that one of the companies under investigation, Delverde, purchased an existing pasta factory from an unrelated party. Additionally, Indalco and De Matteis experienced changes in ownership, and Barilla purchased an existing pasta producer. With the exception of De Matteis, the previous owners of the purchased enterprises or factories had received non-recurring countervailable subsidies prior to the transfer of ownership and during the period 1983–1994.

For our preliminary determination, we calculated the amount of those prior subsidies that passed through to Delverde with the acquisition of the factory, following the methodology described in the *Restructuring* section of the General Issues Appendix in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69) (''General Issues Appendix''). At the time of our preliminary determination, we did not have the information needed to perform this calculation with respect to Indalco and Barilla.

We noted in our preliminary determination that aspects of the General Issues Appendix methodology were being reviewed by the Court of Appeals for the Federal Circuit (''CAFC''), and that we would re-examine whether the General Issues Appendix methodology is appropriate for change of ownership transactions in light of facts developed in the final investigation, ongoing litigation, and section 771(5)(F) of the Act.

Since the time of our preliminary determination, the CAFC has issued a ruling supporting our determination in those cases that subsidies were not

necessarily extinguished as a result of the sale of an enterprise in an arm's length transaction. Litigation, however, continues with regard to certain aspects of our methodology.

For our final determination we have continued to follow the General Issues Appendix Methodology and applied it to each of the respondents involved in a change of ownership. We note that Barilla did not provide the information necessary to analyze Barilla's acquisition of an existing pasta producer. Without this information we cannot estimate the portion of the purchase price that can reasonably be attributed to prior subsidies. Therefore, we have treated all previously bestowed subsidies as having passed through to the purchaser.

Related Parties

In the present investigation, we have examined several affiliated companies (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also stated that companies may be considered sufficiently related where there are common directors or one company performs services for the other company. According to the questionnaire, such companies that produce the subject merchandise or that have engaged in certain financial transactions with the company under investigation are required to respond.

In accordance with this practice, we have determined that the following companies warrant treatment as a single company with a combined rate: Delverde and Tamma, Arrighi and Italpasta, De Cecco and Pescara, and De Matteis and Demaservice S.r.L. (''Demaservice'').

In our preliminary determination, we stated that Tamma held less than a 20 percent ownership interest in the Delverde group. However, upon reconsideration of the facts of their relationship, we have concluded that the relationship between Tamma and the Delverde group is substantially greater than 20 percent. We reach this conclusion by aggregating the ownership interests of Tamma and Tamma Service, S.r.L, which is appropriate given their relationship. In addition, the same individual is the president of Tamma, Delverde, and Delverde's parent company. Therefore, we have calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

In the cases of Arrighi and its affiliated producer, Italpasta, and De Cecco and its affiliated producer, Pescara, we have found that the respondents and their respective affiliates should be treated as a single company based on the extent of common ownership. Therefore, we have calculated a combined rate for Arrighi and Italpasta using the methodology described above. For De Cecco and Pescara, because De Cecco failed to provide subsidy information regarding Pescara, we have calculated a combined rate using facts available, as described in the *Facts Available* section of this notice.

As was noted in our preliminary determination, De Matteis is related to another company, Demaservice, through common ownership. Verification confirmed that while Demaservice does not produce the subject merchandise, it is deeply involved in the operations of De Matteis. Therefore, we have calculated a single countervailing duty rate for the two companies as described above.

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use facts available if ''an interested party or any other person * * * withholds information that has been requested by the administering authority or the Commission under this title.'' Two of the companies selected to provide responses in this investigation, Italpast and Labor, did not respond to our countervailing duty questionnaire. Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of the non-responding party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because the petition did not include subsidy rates, we were unable to use the petition as a source for facts available.

In the absence of verified data concerning benefits received by Italpast and Labor during the POI, we have determined that rates based on record data obtained from similarly situated firms constitute the most appropriate data available. Therefore, we have used the sum of the highest rates calculated for each program used by any of the companies as the facts available for Italpast and Labor.

In addition, we have determined that the final margin percentage for Isola and its affiliated producer, Alce Nero, should also be based on adverse facts available. At verification, Isola, a producer of organic pasta, was unable to support the completeness and accuracy of its response to our questionnaire. In particular, Isola did not demonstrate that all grants received during the period 1983–1991 were reported because it did not provide us with company records for that time. We also found unreported grants during 1992–1994, the period for which we were able to examine company records. In addition, Isola did not report receiving reduced-rate loans; however, at verification we found that during the POI it did have outstanding reduced-rate loans. Therefore, lacking verified data concerning benefits received by Isola, we have based its subsidy margin on adverse facts available, applying the sum of the highest rates calculated for each program for respondent companies.

Finally, De Cecco failed to include in the related parties section of its questionnaire response information concerning Pescara, a related producer of subject merchandise. We have determined that the relationship between Pescara and De Cecco warrants treating them as one company, as described in the *Related Parties* section of this notice. After verification, De Cecco attempted to submit information into the record of this investigation concerning Pescara. This information was returned, however, as it was not filed in a timely manner. We retained information on the record concerning the relationship of the companies and the value and volume of sales made by Pescara during the POI.

We have determined that De Cecco's failure to provide a complete response to the Department's countervailing duty questionnaire calls for the use of facts available under section 776(a)(2) and (b) of the Act. We have applied facts available with adverse inferences with respect to the sales of Pescara relative to the combined sales of Pescara and De Cecco, adjusted to eliminate intercompany transactions. Specifically, we calculated an amount of subsidies for each program by multiplying the highest calculated rate for any of the responding companies by Pescara's sales, and then adding this amount to De Cecco's subsidies under that program. This combined amount was

then divided by the companies' combined adjusted sales data to calculate the *ad valorem* rate for De Cecco and Pescara.

Based upon our analysis of the petition and the responses to our questionnaire, we determine the following:

Claims for ''Green Light'' Subsidy Treatment

Section 771(5B) of the Act describes subsidies that are non-countervailable, the so-called ''green light'' subsidies. Among these are subsidies to disadvantaged regions. The GOI and the EC have requested that certain of their regional subsidies be considered non-countervailable under the green light provisions of section 771(5B).

In its initial response, the EC requested green light treatment for the regional aspects of the Structural Funds it administers (*i.e.*, the European Regional Development Fund (''ERDF''), the European Social Fund (''ESF''), and the European Agricultural Guidance and Guarantee Fund (''EAGGF'')). However, the EC also claimed that no companies under investigation had received assistance under the ESF or the EAGGF programs, and for this reason, the EC only responded to the green light section of our questionnaire with respect to the ERDF program. We have since learned that two companies did, in fact, receive assistance under the ESF program.

Each of the Structural Funds was established with a different purpose. The ERDF is tasked with helping to redress the main regional imbalances in the Community by assisting in the development and structural adjustment of underdeveloped regions and to help in the conversion of declining industrial regions. The ESF was set up to improve the employment opportunities for workers and to help raise their living standards. The EAGGF assists in financing national agricultural aid schemes and in developing and diversifying the EC's rural areas.

The EC has established five priority objectives which govern the operation of the Structural Funds:

Objective 1: To promote the development and structural adjustment of the regions whose development is lagging behind;

Objective 2: To convert regions seriously affected by industrial decline;

Objective 3: To combat long-term unemployment;

Objective 4: To facilitate the occupational integration of young people;

Objective 5(a): To speed up the adjustment of agricultural structures; and

Objective 5(b): To promote the development of rural areas.

In a submission made in connection with consultations held on March 11, 1996, the EC restated its claim that all regional aspects of the Structural Funds merit green light treatment. In this submission, the EC argued that green light status should not be analyzed separately for each of the Structural Funds. Instead, the EC argued that each Structural Fund ''objective'' should be treated as a program for green light purposes. In other words, the EC focuses on the three regional objectives under the Structural Funds, *i.e.*, Objective 1, Objective 2, and Objective 5(b). The EC considers the operation of Objective 1 under the ERDF, the ESF, and the EAGGF as a distinct and separate aid program, the operation of Objective 2 under the ERDF and the ESF as another distinct and separate aid program, and the operation of Objective 5 (b) under the ERDF, the ESF, and the EAGGF as yet another distinct and separate aid program.

With respect to the ESF grants bestowed on the companies under investigation, we do not have the information necessary to make a determination on whether this assistance is entitled to green light status. The EC opted not to provide a response to the green light questionnaire for the ESF. Moreover, there is no evidence on the record of this case regarding the particular objectives under which the ESF aid in question was granted.

The only ERDF assistance received by a company under investigation was granted under Objective 2 of the Structural Funds because the company was located in a declining industrial region. According to EC regulation, regions of a certain size which satisfy the following three criteria may be entitled to Objective 2 status:

(a) the average rate of unemployment recorded over a period of three years must be above the Community average;

(b) the percentage share of industrial employment to total employment must have equaled or exceeded the Community average; and

(c) there must have been an observable fall in industrial employment.

In addition, other types of regions may be accorded Objective 2 status in certain circumstances. These include smaller, adjacent areas that satisfy the above three criteria, areas defined by sectoral problems, and urban areas with serious unemployment or certain other problems.

According to section 771(5B)(C) of the Act, in order for a subsidy to be non-actionable it must have been provided pursuant to a general framework of regional development, within which regions must be considered disadvantaged on the basis of neutral and objective criteria. These neutral and objective criteria must contain a measure of economic development which is based on either a per capita income that does not exceed 85 percent of the national average (in this case the EC average) or an unemployment rate that is at least 110 percent of the national average (also the EC average).

Regardless of whether we treat the ERDF itself as the relevant program or adopt the EC's objective-by-objective approach, we find that the assistance is not entitled to green light treatment. The Objective 2 criteria, described above, do include the level of unemployment; however, by requiring unemployment only to exceed the Community average, the criteria do not satisfy the requirement in our statute (or the WTO Subsidies Agreement) that unemployment be at least 110 percent of the national average. Moreover, the information on the record is insufficient to indicate whether the region in which the sole recipient of ERDF assistance is located does meet the requirements laid out in section 771(5B)(C). Therefore, we need not decide whether such information would be relevant. Finally, several of the various other possible bases for according a region Objective 2 status do not include one of the requisite measures of economic development.

For the foregoing reasons, we determine that subsidies received by the Italian pasta producers under the ERDF and the ESF are countervailable. Our treatment of these subsidies is discussed further in the program specific section of this notice.

The GOI has requested that the Department find the following subsidies to disadvantaged regions to be non-countervailable under section 771(5B)(C):

- ILOR and IRPEG Tax Exemptions under Decree 218 of 1978;
- Industrial Development Grants under Law 64 of 1986;
- Industrial Development Loans under Law 64 of 1986; and
- VAT Reductions on Capital Goods under Law 675 of 1977.

The GOI has maintained a system of ''extraordinary intervention'' in southern Italy since the 1950's. Over time, various laws were passed relating to the extraordinary intervention in the

South. Included in these laws were Law 64/86 and its predecessors, which provided for capital grants and interest contributions to productive investments in southern Italy, as well as the other programs for which green light treatment has been requested. In 1986, Law 64/86 was passed in order to consolidate all laws relating to the extraordinary intervention in the south into one development policy. Each of the programs for which the GOI has requested green light treatment can be considered part of Law 64/86 for this reason.

There is no indication that the GOI performed any analysis, using neutral and objective criteria, in order to select the regions which would be eligible for assistance. GOI officials admitted at verification that the first time that a systematic review of the regions eligible for assistance was applied in Italy was when Law 64/86 was investigated by the EC.

Subsequent to passage of Law 64/86, the EC initiated an investigation as to whether this law was consistent with the EC's competition policy rules. The EC competition policy rules contain a general prohibition against member state aid schemes, with certain exceptions which include two specific exceptions relating to regional development. In particular, member states are allowed to provide one level of aid intensity to regions with a per capita GDP that is less than or equal to 75 percent of the EC average and another, lower level of aid intensity to regions with a per capita GDP equal to 85 percent of the member state average or an unemployment rate equal to 110 percent of the member state average.

In its decision, dated March 2, 1988, the EC found that the majority of the Italian provinces eligible for assistance under Law 64/86 met the criteria of the competition policy rules and were entitled to receive aid at the higher intensity level. However, the decision also called for a reduction of Law 64/86 benefits for one province and the elimination of assistance for four additional provinces. The EC allowed the GOI until 1992 for the complete reduction and elimination of assistance to these areas.

The EC, the GOI, and certain respondents have argued that the Department's analysis should recognize that Law 64/86 is part of a community-wide framework of regional development. We need not reach the issue of whether the nature of Law 64/86 as a green light subsidy is governed by a community-wide framework of regional development because we find that Law 64/86 does not meet the criteria established in the community-wide framework. First, the EC itself concluded in 1988 that several regions were ineligible to receive assistance under the competition policy rules. In fact, Law 64/86 was not fully in compliance with the competition policy rules until the close of 1992. All of the Law 64/86 benefits included in this investigation were received or approved prior to the close of 1992. In addition, the Abruzzo region has continually been eligible to receive Law 64/86 assistance even though it did not meet the EC criteria (or even the less stringent criteria in section 771(5B)(c)).

For the foregoing reasons, we determine that benefits provided under Law 64/86 do not qualify as non-countervailable subsidies. Our treatment of the individual benefits is discussed below in the program specific section of this notice.

I. Programs Determined to be Countervailable

A. Local Income Tax (''ILOR'') Exemptions

Companies located in the Mezzogiorno may receive a complete exemption for a period of 10 years from the ILOR on profits deriving from new plant and equipment or from plant expansion and improvement under Presidential Decree 218 of March 6, 1978. In addition, otherwise non-qualifying profits which are reinvested in plant or equipment may receive an exemption from the ILOR for the year of reinvestment. The provision for ILOR exemptions expired on December 31, 1993, but companies which were approved for the exemptions prior to this date may continue to benefit from the exemption until the expiration of the 10-year benefit period approved for each company.

We have determined that these tax exemptions are countervailable subsidies. They constitute subsidies within the meaning of section 771(5) of the Act, as the tax exemptions represent revenue foregone by the GOI and confer tax savings on the companies. Also, they are regionally specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno.

Barilla, De Cecco/Pescara, and Delverde/Tamma claimed ILOR tax exemptions on tax returns filed during the POI.

To calculate the countervailable subsidy for each company, we divided the tax savings during the POI by the company's sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.06 percent *ad valorem* for Barilla, 1.00 percent *ad valorem* for De Cecco/Pescara, and 0.05 percent *ad valorem* for Delverde/Tamma.

B. Industrial Development Grants Under Law 64/86

Law 64/86 provided assistance to promote industrial development in the Mezzogiorno. Grants were awarded to companies constructing new plants or expanding or modernizing existing plants. Pasta companies were eligible for grants to expand existing plants but not to establish new plants, because the market for pasta was deemed to be close to saturated. Grants were made only after a private credit institution chosen by the applicant made a positive assessment of the project.

In 1992, the Italian Parliament decided to abrogate Law 64/86. This decision became effective in 1993. Projects approved prior to 1993, however, were authorized to receive grant amounts after 1993.

Barilla, De Cecco/Pescara, La Molisana, Delverde/Tamma, Indalco, and Riscossa received industrial development grants.

We determine that these grants provide a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI providing a benefit in the amount of the grant. Also, these grants are regionally specific, within the meaning of section 771(5A).

We have treated these grants as ''non-recurring'' based on the analysis set forth in the *Allocation* section of the General Issues Appendix. In accordance with our past practice, we have allocated those grants, net of any taxes paid, which exceeded 0.5 percent of a company's sales in the year of receipt over time.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POI for each company by that company's sales in the POI. On this basis, we determine the countervailable subsidy for this program to be 0.00 percent *ad valorem* for Barilla, 0.56 percent *ad valorem* for De Cecco/Pescara, 0.36 percent *ad valorem* for La Molisana, 1.86 percent *ad valorem* for Delverde/Tamma, 0.58 percent *ad valorem* for Indalco, and 2.51 percent *ad valorem* for Riscossa.

C. Industrial Development Loans Under Law 64/86

Law 64/86 also provided reduced rate industrial development loans with interest contributions to companies constructing new plants or expanding or modernizing existing plants in the

Mezzogiorno. The interest rate on these loans was set at the reference rate, with the GOI's interest contributions serving to reduce this rate. For the reasons discussed above, pasta companies were eligible for interest contributions to expand existing plants but not to establish new plants.

Barilla, De Cecco/Pescara, Delverde/Tamma, Indalco and La Molisana received industrial development loans with interest contributions from the GOI.

We determine that these loans are countervailable subsidies within the meaning of section 771(5). They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies after accounting for the GOI's interest contributions. Also, they are regionally specific within the meaning of section 771(5A).

It is the Department's practice to measure the benefit conferred by interest rebates using our loan methodology if the company knew in advance that the government was likely to pay or rebate interest on the loan at the time the loan was taken out. (*See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* (58 FR 37327) (''*Certain Steel from Italy*'').) Because, in this case, the recipients of the interest contributions knew, prior to taking out the loans, that the GOI likely would provide the interest contributions, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to the POI for each company by that company's sales. On this basis, we determine the countervailable subsidy for this program to be 0.09 percent *ad valorem* for Barilla, 0.42 percent *ad valorem* for De Cecco/Pescara, 0.80 percent *ad valorem* for Delverde/Tamma, 0.09 percent *ad valorem* for Indalco, and 0.42 percent *ad valorem* for La Molisana.

D. Export Marketing Grants Under Law 304/90

To increase market share in non-EU markets, Law 304/90 provides grants to encourage enterprises operating in the food and agricultural sectors to carry out pilot projects aimed at developing links between Italian producers and foreign distributors and improving the quality of services in those markets. Emphasis is placed on assisting small- and medium-sized producers.

We have determined that the export marketing grants under Law 304 provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOI providing a benefit in the amount of the grant. The grants are also specific because their receipt is contingent upon anticipated exportation.

Delverde/Tamma received a grant under this program for a market development project in the United States.

Each project funded by a grant requires a separate application and approval, and the projects represent one-time events in that they involve an effort to establish warehouses, sales offices, and a selling network in new overseas markets. Therefore, we have treated the grant received under this program as ''non-recurring'' based on the analysis set forth in the *Allocation* section of the General Issues Appendix. Further, we have determined that the grant exceeded 0.5 percent of Delverde/Tamma's exports to the United States in the year it was received. Therefore, in accordance our past practice, we allocated the benefits of this grant over time.

To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefits attributable to the POI by the total value of Delverde/Tamma's exports to the United States. On this basis, we determine the countervailable subsidy to be 0.18 percent *ad valorem* for Delverde/Tamma and 0.00 percent *ad valorem* for De Cecco/Pescara.

E. Social Security Reductions and Exemptions

1. Sgravi Benefits

Pursuant to Law 1089 of October 25, 1968, companies located in the Mezzogiorno were granted a 10 percent reduction in social security contributions for all employees on the payroll as of September 1, 1968, as well as those hired thereafter. Subsequent laws authorized companies located in the Mezzogiorno to take additional reductions in social security contributions for employees hired during later periods, provided that the new hires represented a net increase in the employment level of the company. The additional reductions ranged from 10 to 20 percentage points. Further, for employees hired during the period July 1, 1976 to November 30, 1991, companies located in the Mezzogiorno were granted a full exemption from social security contributions for a period of 10 years, provided that employment levels showed an increase over a base period.

We determine that the social security reductions and exemptions are countervailable subsidies within the meaning of section 771(5). They represent revenue foregone by the GOI and they confer a benefit in the amount of the savings received by the companies. Also, they are specific within the meaning of section 771(5A) because they are limited to companies located in the Mezzogiorno.

Barilla, De Cecco/Pescara, Delverde/Tamma, La Molisana, Guido Ferrara, Campano, De Matteis, Riscossa, and Indalco received social security reductions and exemptions during the POI.

To calculate the countervailable subsidy, we have divided the total savings in social security contributions realized by each company during the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.38 percent *ad valorem* for Barilla, 0.94 percent *ad valorem* for De Cecco/Pescara, 1.40 percent *ad valorem* for Delverde/Tamma, 2.57 percent *ad valorem* for La Molisana, 0.93 percent *ad valorem* for Guido Ferrara, 1.85 percent *ad valorem* for Campano, 2.03 percent *ad valorem* for De Matteis, 0.95 percent *ad valorem* for Riscossa, and 1.06 percent *ad valorem* for Indalco.

2. Fiscalizzazione Benefits

In addition to the sgravi deductions described above, the GOI provides Social Security benefits of another type, called ''fiscalizzazione.'' Fiscalizzazione is a nationwide measure which provides a deduction of certain social security payments related to health care or insurance. The program provides an equivalent level of deductions throughout Italy for contributions related to tuberculosis, orphans, and pensions. However, the program also provides a deduction from companies' contributions to the National Health Insurance system which is equal to 3.44 percent of salaries paid in northern Italy and 9.60 percent of salaries paid in southern Italy.

We determine that the fiscalizzazione reductions are countervailable subsidies within the meaning of section 771(5) for companies with operations in southern Italy. They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

Barilla, De Cecco/Pescara, Delverde/Tamma, La Molisana, Guido Ferrara, Campano, De Matteis, Riscossa, and Indalco received the higher levels of fiscalizzazione deductions available to

companies located in the Mezzogiorno during the POI.

To calculate the countervailable subsidy, we have divided the amount of the excessive fiscalizzazione deductions realized by each company in the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.11 percent *ad valorem* for Barilla, 0.53 percent *ad valorem* for Campano, 0.38 percent *ad valorem* for De Cecco/Pescara, 0.40 percent *ad valorem* for De Matteis, 0.32 percent *ad valorem* for Delverde/Tamma, 0.28 percent *ad valorem* for Guido Ferrara, 0.44 percent *ad valorem* for Indalco, 0.71 percent *ad valorem* for La Molisana, and 0.51 percent *ad valorem* for Riscossa.

3. Law 407/90 Benefits

Prior to verification, one of the respondent companies, Agritalia, informed the Department that it had received benefits under Law 407/90. Agritalia officials explained that this program grants a two-year exemption from social security taxes when a company hires a worker who has been previously unemployed for a period of two years. According to Agritalia, a 100 percent exemption was allowed for companies in southern Italy. However, companies located in northern Italy received only a 50 percent exemption. During verification, two other companies, Campano and De Matteis, also indicated that they had received benefits under this program, and a review of documents related to Indalco's social security payments indicated that Indalco had also received benefits under this program.

We determine that the 100 percent exemptions provided to companies with operations in southern Italy under Law 407 are countervailable subsidies within the meaning of section 771(5). They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

To calculate the countervailable subsidy, we have divided the amount of the Law 407 exemption which exceeds the amount available in northern Italy realized by each company during the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.03 percent *ad valorem* for Agritalia, 0.21 percent *ad valorem* for Campano, 0.02 percent *ad valorem* for De Cecco/Pescara, 0.04 percent *ad valorem* for De Matteis, and 0.01percent *ad valorem* for Indalco.

4. Law 863 Benefits

One of the respondents, Barilla, reported receiving Law 863 training benefits. According to Barilla, this law provides companies in northern Italy a 25 percent reduction in social security payments for employees who are participating in a training program. Companies in southern Italy receive a 100 percent reduction in social security payments for such employees.

None of the other responding companies reported receiving benefits under this program. Additionally, we reviewed the social security documentation for other responding companies and noted nothing to indicate that any of the other respondents had claimed benefits under this program.

We determine that the Law 863 reductions are countervailable subsidies within the meaning of section 771(5) for companies with operations in southern Italy. They represent revenue foregone by the GOI and confer a benefit in the amount of the greater savings accruing to the companies in southern Italy. In addition, they are regionally specific within the meaning of section 771(5A).

To calculate the countervailable subsidy, we have divided the amount of the Law 863 reductions which exceeds the amount available in northern Italy realized by Barilla during the POI by that company's sales during the same period. On this basis, we calculated the countervailable subsidy from this program to be 0.01 percent *ad valorem* for Barilla and 0.00 percent *ad valorem* for De Cecco/Pescara.

F. European Regional Development Fund

The ERDF is one of three Structural Funds operated by the EC. The ERDF was created pursuant to the authority in Article 130 of the Treaty of Rome in order to reduce regional disparities in socio-economic performance within the Community. The ERDF program provides grants to companies located within regions which meet the criteria of Objective 1 (underdeveloped regions), Objective 2 (declining industrial regions) or Objective 5(b) (declining agricultural regions) under the Structural Funds.

Arrighi/Italpasta received an ERDF grant.

We determine that the ERDF grant received by Arrighi/Italpasta constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The grant is a direct transfer of funds providing a benefit in the amount of the grant. Also, ERDF grants are regionally specific within the meaning of section 771(5A) of the Act.

We view this as a ''non-recurring'' grant based on the analysis set forth in the *Allocation* section of the General Issues Appendix. The grant was received in two disbursements. The first disbursement was received in 1993 and was less than 0.5 percent of Arrighi/Italpasta's total sales in that year. Accordingly, this disbursement was expensed in 1993. The second disbursement was received in 1994 (the POI) and was also less than 0.5 percent of Arrighi/Italpasta's total sales in that year. Therefore, in accordance with our past practice, we are allocating the full amount of this disbursement to the POI.

To calculate the countervailable subsidy, we divided the full amount of the grant by Arrighi/Italpasta's total sales. On this basis, we calculated the countervailable subsidy from this program to be 0.19 percent *ad valorem* for Arrighi/Italpasta and 0.02 percent *ad valorem* for De Cecco/Pescara.

G. European Social Fund

The ESF is also one of the Structural Funds operated by the EC. The ESF was created under Article 123 of the Treaty of Rome in order to improve employment opportunities for workers and to help raise their living standards. The ESF principally provides vocational training and employment aids. At the EC verification, we learned that ESF aid is generally provided directly to public institutions or non-commercial enterprises. However, it can also be provided directly to a company, provided that it is located in an Objective 1, Objective 2, or Objective 5(b) region. The ESF provides grants to such companies in order to train current employees for new jobs or to hire new employees.

Barilla and Delverde/Tamma received ESF grants.

As stated in section 355.44(j) of the Proposed Regulations, the Department considers worker assistance programs to be countervailable when a company is relieved of an obligation it would otherwise have incurred. We verified at the EC that in addition to providing funds for training programs which may or may not relieve companies of an obligation, ESF funds are available to aid companies in hiring new employees. Because a company is normally obligated to meet its hiring needs without assistance from the government, we determine that ESF funds relieve companies of an obligation. Therefore, we determine that ESF grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds providing a benefit in the amount of the grant. Also, because ESF assistance to

individual companies is limited to companies located in Objective 1, Objective 2, and Objective 5(b) regions, we have determined that ESF grants are regionally specific within the meaning of section 771(5A) of the Act.

In our preliminary determination, we treated ESF grants as ''recurring'' because worker training grants are among the types of benefits the Department normally expenses in the year of receipt. However, in light of the GOI verification and comments received by interested parties, we have determined that ESF grants are ''non-recurring'' (see Comment 20, below). We also have determined that the grants received by Barilla and Delverde/Tamma were less than 0.5 percent of each company's respective sales in the year of receipt. Therefore, in accordance with our past practice, we expensed these non-recurring grants in the year of receipt. On this basis, we calculated the countervailable subsidy from this program to be 0.00 percent *ad valorem* for Barilla, 0.00 percent *ad valorem* for Delverde/Tamma, and 0.00 percent *ad valorem* for De Cecco/Pescara.

H. Export Restitution Payments

Since 1962, the EC has operated a subsidy program which provides restitution payments to EU pasta exporters based on the durum wheat content of their exported pasta products.

Generally, under this program, a restitution payment is available to any EC exporter of pasta products, regardless of whether the pasta was made with imported wheat or wheat grown within the EC. The amount of the restitution payment is calculated by multiplying the prevailing restitution payment rate on the date of exportation by the weight of the unmilled durum wheat used to produce the exported pasta. The weight of the unmilled durum wheat is calculated by applying a conversion factor to the weight of the pasta. The EC calculates the restitution payment rate, on a monthly basis, by first computing the difference between the world market price of durum wheat and an internal EC price and then adding a monthly increment (in all months except June and July, which are harvest months). The EC normally will not allow the restitution payment rate to be higher than the levy that the EC imposes on imported durum wheat, as it would lead to circular trade.

Additionally, under this program, the EC permits a pasta exporter to purchase a certificate that locks in a restitution payment rate if the pasta exporter promises to export a certain amount of pasta by a certain date. The promised export date can be as much as six months later. Moreover, the pasta exporter is free to sell this certificate to another pasta exporter. The selling price is determined through negotiations between the seller and the purchaser and typically will be dependent on such factors as the amount of time left until the certificate expires, the purchaser's projected volume of exports, the restitution payment rate under the certificate, and the current and expected future restitution payment rates set by the EC. A pasta exporter that fails to use a certificate by the date set forth in the certificate must pay a penalty.

In 1987, the nature of this program changed with regard to exports to the United States as a result of a settlement reached by the United States and the EC. This settlement arose out of a GATT panel proceeding, brought by the United States, in which the panel ruled (in 1983) that the restitution program violated the EC's GATT obligations and did not fall within the exception under Item (d) of the Illustrative List of Export Subsidies.

Under the settlement, the EC agreed to allow the importation of durum wheat from any non-EU country free of any levy under a system described in the settlement as ''Inward Processing Relief'' (''IPR''). Under this system, the EC pasta exporter would not receive a restitution payment when exporting to the United States pasta products containing durum wheat imported with IPR. Essentially, a restitution payment no longer was necessary because no levy had been paid upon importation of durum wheat in the first place.

As to pasta products containing EC durum wheat or durum wheat that had been imported without IPR, a restitution payment remained available for exports to the United States, except that the restitution rate was reduced, originally by 27.5 percent and later by approximately 35 percent, from the normal level available for exports to all other countries.

As a further condition of the settlement, the EC agreed to attempt to balance its exports to the United States equally between pasta products containing durum wheat imported with IPR, on the one hand, and pasta products containing EC durum wheat or durum wheat imported without IPR, on the other hand. The goal was for 50 percent of the EC's pasta exports to the United States to contain durum wheat imported with IPR (for which the exporter had paid world market price, free of any levy, and had received no restitution payments), while the remaining 50 percent of the EC's pasta exports to the United States would contain EC durum wheat or durum wheat imported without IPR (for which the exporter could receive reduced restitution payments). In all other respects, the program remained unchanged.

We have concluded that the restitution payments made are countervailable subsidies within the meaning of section 771(5) of the Act. Each payment represents a direct transfer of funds from the EC providing a benefit in the amount of the payment. The restitution payments are specific because their receipt is contingent upon export performance.

In our preliminary determination, we calculated export restitution benefits on an earned basis, following the methodology set forth in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand* (52 FR 37196, 37197). Based on information available at the time of our preliminary determination, it appeared that the restitution rate was known at the time of export and the respondents were confident of receiving benefits.

In accordance with our normal practice of recognizing subsidy benefits when there is a cash-flow effect, we have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POI for purposes of our final determination. We learned during verification that export restitution benefits are not ''automatic'' in that their receipt is not certain until an application has been filed, at the earliest. Applying for restitution is voluntary, and not all parties eligible for restitution always apply for benefits (*see, e.g.*, verification report for the European Union). We also noted that the amounts received, while generally quite close to the amounts requested, did not always equal the amount indicated by the company on its request form. We have calculated the subsidy rate for export restitution benefits based on the amount actually received during the POI.

Agritalia, Arrighi/Italpasta, Delverde/Tamma, and Riscossa received export restitution payments during the POI on shipments to the United States.

To calculate the countervailable subsidy, we divided the export restitution payments received during the POI on shipments to the United States by the company's total export sales to the United States during the POI. We calculated a countervailable subsidy under this program of 0.42 percent *ad valorem* for Agritalia, 2.25 percent *ad valorem* for Arrighi/Italpasta, 0.02 percent *ad valorem* for De Cecco/Pescara, 0.94 percent *ad valorem* for

Delverde/Tamma, and 2.94 percent *ad valorem* for Riscossa.

I. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy

The Sabatini Law was enacted in 1965 to encourage the purchase of machine tools and production machinery. It provides for a deferral of up to five years of payments due on installment contracts for the purchase of such equipment and for a one-time, lump-sum interest contribution from Mediocredito Centrale toward the interest owed on these contracts. The amount of the interest contribution is equal to the present value of the difference between the payment stream over the life of the contract based on the reference rate and the payment stream over the life of the contract based on a concessionary rate. The concessionary rate for companies located in the Mezzogiorno is the reference rate less eight percentage points. The concessionary rate for companies located outside the Mezzogiorno is the reference rate less five percentage points.

Two companies in northern Italy received interest contributions under the Sabatini Law for loans which were outstanding during the POI. In addition, La Molisana received an interest contribution at the concessionary rate available in the Mezzogiorno for a loan which was still outstanding during the POI.

With respect to the benefits provided in northern Italy, we analyzed whether the program is specific ''in law or in fact,'' within the meaning of section 771(5A)(D)(i) and (iii). Section 771(5A)(D)(iii) of the Act provides the following four factors to be examined with respect to *de facto* specificity: 1) the number of enterprises, industries or groups thereof which use a subsidy; 2) predominant use of a subsidy by an enterprise, industry, or group; 3) the receipt of disproportionately large amounts of a subsidy by an enterprise, industry, or group; and 4) the manner in which the authority providing a subsidy has exercised discretion in its decision to grant the subsidy.

The Sabatini Law, which created the program, contains no limitations on the types of industries that can apply for assistance. Further, during the years 1988 through 1993, assistance under the program was distributed over 19 sectors, representing a wide cross-section of the economy. On this basis, we concluded that the subsidy recipients were not limited to a specific industry or group of industries. We also examined evidence regarding the usage of this program and found no predominant use by the pasta industry. We next examined whether a disproportionately large share of benefits was granted to the pasta industry. We found that on average, benefits to the food processing industry, which includes the pasta industry, amounted to 4.9 percent of all benefits granted. Considering the number and variety of sectors receiving benefits and the range of benefits over the various sectors, we do not consider the benefits received by the food processing sector to constitute a disproportionate share of the benefits distributed under this program. Given our findings that the number of users is large and that there is no dominant or disproportionate use of the program by the pasta producers, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Thus, for companies located outside the Mezzogiorno, we determine that interest contributions under the Sabatini Law are not specific, and not countervailable.

However, because the concessionary rate for companies in southern Italy is lower than the benchmark interest rate, we determine that the Sabatini Law interest contributions to companies in southern Italy are countervailable subsidies within the meaning of section 771(5). They are a direct transfer of funds from the GOI providing a benefit in the amount of the difference between the benchmark interest rate and the interest rate paid by the companies. In addition, they are regionally specific within the meaning of section 771(5A).

As stated earlier (*see, Industrial Development Loans* section, above), when a company knows in advance that the government is likely to pay or rebate interest on a loan, the Department will measure the benefit conferred by that rebate using our loan methodology. Because La Molisana knew, prior to taking out the loan, that it would receive the interest contribution, we have allocated the benefit over the life of the loan for which the contribution was received. We divided the benefit attributable to the POI by La Molisana's total sales in the POI. On this basis, we determine the countervailable subsidy for this program to be 0.06 percent *ad valorem* for La Molisana and 0.01 percent ad valorem for De Cecco/Pescara.

J. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77

The Special Section for Export Credit Insurance (''SACE'') was created under Article 2 of Law 227/77 as the branch of the GOI responsible for the administration of government export credit insurance and guarantee programs. Pursuant to Article 3 of Law 227/77, SACE insures and reinsures political, catastrophic, economic, commercial and exchange-rate risks which Italian operators are exposed to in their foreign activities.

During the POI, only one private insurance company, Societa Italiana Crediti S.p.A. (''SIAC''), had a reinsurance agreement with SACE. Under the reinsurance agreement, SIAC passed along a fixed percentage (*i.e.*, 45 percent) of its export credit insurance premia to SACE. In return, SACE assumed that same percentage of risk on export credit insurance policies sold by SIAC (*i.e.*, SACE would pay 45 percent of any claim for which SIAC would become liable).

Article 33 of Law 227/77 provides for the remission of insurance taxes on policies directly insured or reinsured with SACE. For reinsurance policies, this remission of insurance taxes applied not only to the portion of the risk covered by SACE, but also the remaining portion covered by the private insurance company. As a result, export credit insurance policies sold by SIAC during the POI were totally exempt from the insurance tax by virtue of its reinsurance agreement with SACE. Export credit insurance policies sold by other private insurance companies, however, were not exempt from the insurance tax. The insurance tax rate was 12.5 percent of premia paid.

We determine that the exemption from the insurance tax for policies directly insured or reinsured with SACE is a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOI and confer tax savings on the companies. Also, because export credit insurance is available only to exporters and is by its nature contingent upon export performance, we find the remission of taxes on export credit insurance to be specific within the meaning of section 771(5A) of the Act.

La Molisana obtained export credit insurance from SIAC for its exports to the United States. We saw no evidence at verification to indicate that other responding companies purchased export credit insurance from SIAC. To calculate the benefit received by La Molisana, we multiplied the amount of premia paid during the POI for exports to the United States by the insurance tax rate and divided the amount by total exports to the United States. We calculated a countervailable subsidy rate of 0.05 percent *ad valorem* for La

Molisana and 0.00 percent *ad valorem* for De Cecco/Pescara.

II. Program Found To Be Not Countervailable

A. Disaster Relief

Four respondent companies, Barilla, Campano, De Matteis, and Guido Ferrara, reported receiving disaster relief assistance between the period 1983–1994 under Law 219/81. Law 219 was enacted following one of the worst earthquakes to strike Italy in 50 years. Under Law 219, aid was granted for the repair and reconstruction of residential buildings, public locations, schools, churches and industries damaged in the earthquakes of November 1980 and February 1981. Aid to industries was provided to repair and rebuild facilities, such that the rebuilt facility would employ the same number of workers as prior to the disaster. The eligibility criteria for a facility to receive aid under Law 219 consisted of the following:

- It had to be a productive unit (*e.g.*, shopkeepers were ineligible);
- It had to be extant at the time of the earthquake;
- It had to have experienced actual damage (*i.e.*, being located in the applicable area was not sufficient);
- The damage had to be more than minor in nature.

The amount of assistance provided was capped by a formula based on the number of employees at the time of the earthquake and by a set percentage of project cost.

In the past, the Department has found that disaster relief does not confer countervailable subsidies where it constituted general assistance to anyone in affected areas. *In Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy* (47 FR 39360 (1982)), in reviewing a similar disaster relief program, we stated:

> Although not all areas would be eligible at any one time, disaster relief is not selective in the same manner as other regional programs since there is no predetermination of eligible areas and no part of the country, and no industry, is excluded in principle, from participation.

Accordingly, we have determined that, on a *de jure* basis, the disaster relief provided under Law 219 was general in nature and available to all who were affected. Moreover, at verification, we confirmed that aid under Law 219 was granted to numerous companies in a variety of industries. Therefore, we have determined this program to be not countervailable.

III. Programs Determined To Be Not Used

A. VAT Reductions

The responses indicated that certain companies received VAT reductions under Law 675/77. We have determined that any payments received under this program are ''recurring,'' as they are not exceptional and companies can expect to receive them on an ongoing basis. Moreover, receipt of the VAT reductions is automatic provided the company is eligible and the proper forms are filed. Such benefits are among the types of benefits the Department has identified as normally being expensed in the year of receipt. (*See, Allocation* section of the General Issues Appendix.)

Since no payments were received by any investigated companies under this program during the POI, we are treating the program as ''not used'' and, consequently, have not analyzed whether it confers a countervailable subsidy.

B. Export Credits Under Law 227/77

C. Capital Grants Under Law 675/77

D. Retraining Grants Under Law 675/77

E. Interest Contributions on Bank Loans Under Law 675/77

F. Interest Grants Financed by IRI Bonds

G. Preferential Financing for Export Promotion Under Law 394/81

H. Corporate Income Tax (''IRPEG'') Exemptions

I. European Agricultural Guidance and Guarantee Fund

J. Urban Redevelopment Under Law 181

Interested Party Comments

Comment 1: Subsidies bestowed under previous ownership: Respondents Barilla, Indalco and Delverde argue generally that grants received by the companies located in the Mezzogiorno (under Law 64/86) were used to invest in new plant and equipment, and that the investment in new plant and equipment increased the value of the enterprise. Respondents argue that this increase in value was fully reflected in the sales price of the acquired enterprise or its assets because, where a change of ownership occurred, the sale was a private transaction at arm's length. Thus, respondents argue, any competitive benefit would have been included in the sales price of the enterprise, benefiting the previous owner but not the new owner.

Barilla argues that neither Cagliari (a pasta producer acquired by Barilla) nor Barilla was a state-owned enterprise and, accordingly, Barilla's acquisition of Cagliari involved an arms-length transaction resulting from fair and open negotiations between two purely private parties. Barilla argues that it paid a market price for Cagliari, and that this price reflected any remaining economic benefit from any pre-acquisition grants that Cagliari received. Barilla further argues that the grants received by Cagliari were received many years ago, and can have no distortive impact on competition today.

Indalco argues that the assistance the company received under Law 64 was modest and that the company was not being rescued or bailed-out by the government. Indalco argues that while the language of section 771(5)(F) may indicate that the provision applies both to privatization of state-owned enterprises and to changes in ownership of private firms, the legislative history makes it clear that the Congress intended the provision to address privatization. In support of this argument, Indalco cites to the Statement of Administrative Action (''SAA'') at 258 where, referring to section 771(5)(F), the SAA reads: ''The issue of privatization of a state-owned firm can be extremely complex and multifaceted.''

Delverde cites to *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Canada* (51 FR 15037, 15042) (''*OCTG from Canada*'') where the assets of a responding company had been purchased in an arm's length transaction in bankruptcy liquidation and the Department stated: ''In an arm's length transaction, such as this one, subsidies, if there are any, are not passed through.'' Delverde also argues that newly added amendments to the Act clearly do not compel the Department to reach the conclusion that subsidies to MI.BA (the previous owner of the pasta factory purchased by Delverde) passed through to Delverde. Delverde cites section 771(5)(F) of the Act and emphasizes that the statute indicates that a change in ownership ''does not by itself require'' a determination by the Department that subsidies do not pass through. Delverde argues that the language in the statute indicates that it is possible for subsidies to not pass through to a new owner when there is an arm's length transaction.

Delverde further argues that MI.BA and Delverde are both private entities, and that there has never been any government ownership of the pasta factories. Delverde argues that, from an economic perspective, it paid a market price for MI.BA, purchasing the assets of MI.BA at a price determined by an

independent appraiser, so it should be irrelevant whether MI.BA had received any subsidies.

Petitioners first point out that in *Saarstahl AG* v. *United States* (Nos. 94–1457, –1475, Slip Op. (Fed. Cir. Mar. 12, 1996)) (''*Saarstahl*''), the CAFC sanctioned the Department's position that ''the subsidy survives unless there is evidence that it went elsewhere or was repaid.'' Petitioners then argue that there is no evidence on the record that would allow the Department to measure the precise amount of the benefit that passed through to the current owner or that remained with the previous owner, and as a result the Department must countervail the entire amount of the prior subsidies. Petitioners further argue that since the government was not involved in any of the transactions, no repayment to the government of any previously bestowed subsidies could have resulted from the changes in ownership. Finally, petitioners argue that the type of subsidies bestowed on pasta production under previous ownership is, for the most part, identical to the subsidies bestowed on the production of pasta under the current ownership. Therefore, it would be inconsistent and illogical to countervail only the subsidies that benefited pasta production received under current ownership while leaving the remaining portion of the subsidies received by a facility under its previous owner uncountervailed.

Petitioners argue that respondents are claiming that asset sales at arm's length and for fair-market value, by themselves, insulate previously bestowed subsidies from countervailability. Petitioners argue that current law clearly establishes that subsidies received under prior ownership are actionable. With regard to change of ownership, petitioners point to the SAA, at page 258, which reads:

> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct such an extreme interpretation.

Petitioners contend further that the Department has been careful to distinguish its findings in *OCTG from Canada* from other cases where there have been changes in ownership. Petitioners cite to the General Issues Appendix, at 37236, where the Department stated:

> *OCTG from Canada* involved a situation where a company had become defunct and non-operational. Its assets were disposed of through a bankruptcy proceeding. This is a unique situation not involving the sale of an ongoing operating company exporting subsidized merchandise to the United States.

Petitioners additionally argue that the respondent company in *OCTG from Canada* was engaged in the manufacture of a different product from the predecessor company.

Petitioners next argue that the Department's own grant allocation methodology recognizes that the value of a grant should be spread out over several years. Petitioners cite to the General Issues Appendix at 37261:

> The Department allocates non-recurring subsidies over time in recognition of the fact that the statutory goal of providing a remedy against subsidies would be defeated by allocating the subsidies to a single moment or year. The statutory presumption that subsidies benefit goods produced by their recipients must, in order to have the intended effect, be applied over a reasonable period of time * * *.

Petitioners contend that considering these subsides to be extinguished when there is a change of ownership is tantamount to circumscribing all of the subsidies to a single moment in time, a result that is inconsistent with the Department's practice of allocating non-recurring subsidies.

DOC Position: We have determined that a portion of the subsidies bestowed while the enterprise was under previous ownership pass through, as described in the *Change of Ownership* section of this notice.

In *Saarstahl,* the CAFC stated that ''the statute does not limit Commerce to countervailing only subsidies that confer a competitive advantage on merchandise exported to the United States. Nor does the legislative history say that Commerce was expected to perform any calculations of competitive advantage.'' (*Saarstahl* at 245.) The CAFC then cited to S. Rep. No. 1298, 93d Cong., 2d Sess. 184 (1974), which states, ''Whenever the Secretary * * * has sufficient evidence to determine the existence of a bounty or grant, he can and should make his final determination and impose countervailing duties.''

Respondents argue that a purchaser is indifferent between buying a previously subsidized enterprise and an enterprise that has not been subsidized. As noted above, the CAFC in *Saarstahl* specifically stated that the Department does not need to demonstrate competitive benefit. The Department calculates a subsidy rate based upon the countervailable subsidies to the merchandise. These subsidies do not necessarily lose their countervailable nature by simple virtue of an arm's length transaction, as the CAFC in *Saarstahl* and section 771(5)(F) confirm.

With *Saarstahl*, the CAFC upheld the Department's position that subsidies were not necessarily extinguished as a result of the privatization of a state-owned enterprise through an arm's length transaction. In so doing, the CAFC rejected the position of the Court of International Trade (''CIT'') that an arm's length sale automatically extinguished prior subsidies. It was the CIT's ''extreme position'' that led to the addition of section 771(5)(F) to the Act (*see*, SAA at 258).

Respondents attempt to distinguish the changes in ownership in the instant investigation from *Saarstahl* by arguing that in addition to an arm's length transaction at fair market value, the respondent parties are privately held entities and there was no government ownership, nor involvement in the sales of the companies'' shares or assets. Accordingly, respondents argue, this lack of involvement by the state in the transaction means that the previous owners retain the benefit from the subsidies.

Respondents' argument conflicts with section 771(5)(F), which reads:

> Change in ownership.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

If Congress had intended that this section apply only to privatizations of state-owned enterprises, the language would have been more explicit in that regard. It is apparent that Congress intended that this provision be applicable to all changes of ownership. Moreover, the language of this provision purposely leaves much discretion to the Department. As the SAA explains, ''Commerce must exercise its discretion carefully through its consideration of the facts of each case and its determination of the appropriate methodology to be applied.'' (SAA at 258.)

Finally, we have rejected petitioners' arguments for countervailing the entire amount of the prior subsidies, as these arguments are contrary to the methodology described in the General Issues Appendix.

Comment 2: Expensing of subsidies bestowed on companies under previous ownership: Barilla argues that in the

event the Department concludes it is appropriate to include in its calculations the non-recurring subsidies received by Cagliari prior to the company's purchase by Barilla, the amount of the grants is less than Barilla's sales in the years of receipt, so the subsidies should be allocated entirely to the years of receipt.

DOC Position: We disagree with respondent. To determine whether or not a grant should be allocated over several years or entirely to the year of receipt, the Department compares the amount of the grant to the revenues of the grant recipient (in this instance, Cagliari) in the year the grant is received. Barilla did not provide us with information concerning the revenues of Cagliari in the year of receipt of the grant. Lacking this information, we have assumed that the grant exceeded 0.5 percent of Cagliari's sales in that year and have allocated this grant using our standard allocation formula.

Comment 3: Expensing test for non-recurring subsidies: Respondents La Molisana and Barilla argue that the Department should raise the threshold used to decide whether a non-recurring countervailable subsidy should be allocated to future periods or allocated entirely to the year of receipt from 0.5 percent to one percent. Respondents cite to *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium* (47 FR 39304, 39317) where the Department established its current methodology for allocating grants over time and instituted the practice of expensing small grants which were recognized by the Department at the time to be generally less than one percent of the appropriate denominator in the year of receipt. Respondents state that the Department lowered this expensing threshold to 0.5 percent in *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18016, 18018) (''*Steel from Argentina*'') to accord with the then newly instituted *de minimis* level of 0.5 percent. Respondents contend that the Department aligned the expensing and *de minimis* rates because the application of an expensing rate different from the *de minimis* rate could lead to anomalous results. Respondents cite to the hypothetical example given in *Steel from Argentina* where a respondent receiving a single countervailable grant slightly above the *de minimis* rate, but below the expensing threshold, is subject to an order; whereas another firm receiving a larger grant that is above the expensing threshold and is, therefore, allocated over time receives a *de minimis* rate and is excluded from any order. Respondents argue that having an expense rate that is below the *de minimis* rate is equally undesirable because such a policy would require application of the allocation process for a subsidy the Department considers too small to be countervailed.

Petitioners assert that there is no statutory or regulatory requirement that compels the Department to align the expensing rate and the *de minimis* rate. Petitioners argue that in *Steel from Argentina* the Department did not consider a hypothetical circumstance where the expense rate is lower than the *de minimis* rate, since such an exercise was not required. Petitioners contend that raising the expensing rate to one percent would enable foreign governments to subsidize companies through numerous small grants. Additionally, petitioners argue, if the Department were to carry respondents' logic further, and align the expensing rate with the *de minimis* rate of two percent for developing countries set by section 703(b)(4)(B), a government could obtain a subsidization level of immense proportions while avoiding countervailable duties by awarding numerous grants, each below a two percent threshold.

DOC Position: Although the Department normally will allocate nonrecurring grants over time, under the so-called 0.5 percent test, the Department will generally allocate nonrecurring grants received under a particular subsidy program entirely to the year of receipt if the total amount of such grants is less than 0.5 percent of a firm's sales in that year.

Respondents are correct in their assertion that the floor amount was decreased from one percent to 0.5 percent when the *de minimis* rate of 0.5 percent was instituted. However, the recent statutory increase in the *de minimis* rate for investigations does not require an equivalent increase in the rate used to determine whether a non-recurring countervailable subsidy will be allocated over time or entirely to the year of receipt. The use of an expensing rate that is below the *de minimis* rate does not produce the ''anomalous results'' described by the Department in *Steel from Argentina* where the expensing rate was above the *de minimis* rate.

Additionally, a one percent *de minimis* rate is being applied only to certain investigations; investigations in certain developing countries have higher *de minimis* rates of two percent and three percent, and the *de minimis* rate will remain 0.5 percent for all administrative reviews (SAA at 269). We believe retaining a consistent expensing rate of 0.5 percent across all investigations and reviews is desirable.

Comment 4: Northern Italy all-others rate: Pagani, an Italian pasta producer, contends that a single all-others rate, applicable throughout Italy, is unfairly prejudicial to Pagani. Pagani claims that the inclusion of programs available exclusively to producers located in the Mezzogiorno in the calculation of the all-others rate is unfair to pasta producers located in northern Italy.

Pagani argues further that statutory changes resulting from the URAA require the Department to assign Pagani an individual rate. To support this position, Pagani cites to section 777A(e)(1) of the Act which reads: ''[T]he administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.''

In the event the Department declines to assign it an individual countervailing duty deposit rate, Pagani proposes that the Department calculate a separate all-others rate applicable only to producers located in northern Italy, and that programs for which companies located in northern Italy were ineligible to participate be excluded in calculating this rate. Pagani argues that the Act recognizes the independent nature of regions of a subject country in particular situations. Pagani argues that the statute's treatment of ''disadvantaged regions'' under the green light provisions permits Commerce to treat a region as a separate country for purposes of the specificity test. Pagani proposes that the Department recognize the distinction between the Mezzogiorno and northern Italy and determine an all-others rate for companies located in the north of Italy.

Petitioners argue that Pagani's assertion that the Act entitles it to an individual rate is erroneous. Petitioners point to the SAA which states that the amendment cited by Pagani ''eliminates the presumption in favor of a single country-wide CVD rate and amends section 777A of the Act to establish a general rule in favor of individual CVD rates for *each exporter or producer individually investigated*'' (SAA at 271) (emphasis added).

Petitioners state that Pagani's reliance on the regional green light provisions in the statute is misplaced. Petitioners contend that the green light amendments were enacted only to determine whether or not a subsidy was countervailable, and have no bearing on how a subsidy should be calculated.

DOC Position: We agree with petitioners that Pagani is not entitled to

an individual rate. While section 777A calls for the application of individual rates, section 705(c)(1)(B)(i) of the Act, which describes the all-others rate, states the Department shall determine ''an estimated all-others rate for all exporters and producers not individually investigated * * *'' Pagani was not individually investigated in this proceeding; it was not selected to respond, nor did it submit a voluntary response to our questionnaire. Therefore, we see no statutory basis for Pagani's argument.

Moreover, such a proposal is contrary to past practice (*see, e.g., Lumber*, 22578) and would be unadministrable. While there are regional programs in the instant investigation that are available only to producers in the Mezzogiorno, the Department hypothetically could perform an investigation where there are dozens of regional programs, each covering different regions, which would result in dozens of different regional countervailable subsidy rates if we were to follow the methodology proposed by Pagani. Therefore, we have not calculated separate all-other rates for northern and southern Italy.

Comment 5: Trading company deposit rate: Agritalia claims that it should be assigned an individual countervailing duty deposit rate based only on countervailable subsidies it received, and its rate should not include any subsidies received by its suppliers. At the same time, Agritalia states that it does not object to the imposition of duties on its exports to the United States based on any rates assigned to its suppliers.

Agritalia argues that information in the record of this investigation demonstrates that Agritalia received *de minimis* countervailable subsidies, so it should be excluded from any order resulting from this investigation. Agritalia cites to section 705(c)(1)(B)(i)(I) of the Act, which states that the Department will determine an ''individual countervailable subsidy rate for each exporter or producer individually investigated.'' Agritalia argues that a rate based on a weighted average of the rates of its suppliers which produced the pasta it sold during the POI is not the same as an individual rate for each exporter or producer as prescribed in the statute.

Petitioners argue that, contrary to Agritalia's assertions, section 705(c)(1)(B)(i)(I) does not mean that a company's ''individual'' rate must be calculated based solely on subsidies ''individually'' received. Petitioners state that Agritalia should receive a rate based on an aggregation of the countervailable subsidies received by Agritalia and the subsidies received by its producers attributable to the merchandise sold by Agritalia during the POI. Petitioners cite to *Certain Carbon Steel Products from Brazil; Preliminary Results of Countervailing Duty Administrative Review* (51 FR 39774, 39777) (''*Steel from Brazil*''), where the Department stated that subsidies to suppliers benefit the merchandise exported by trading companies. Petitioners request that the Department follow the calculation methodology laid out in *Steel from Brazil* where subsidies to the producers of merchandise sold by export trading companies are included in the margin calculation.

DOC Position: We agree that the Department must calculate a countervailable subsidy rate for each exporter or producer of the subject merchandise which is individually investigated. However, certain subsidies to producers also benefit the merchandise exported by the trading companies. Therefore, we have included all of the countervailable subsidies which benefit the subject merchandise in the countervailing duty rate assigned to Agritalia. A detailed explanation of our calculation methodology for Agritalia's rate is provided in the *Suspension of Liquidation* section of this notice.

Comment 6: Exclusion of de minimis companies: Petitioners assert that the Department should not exclude any *de minimis* companies from any countervailing duty order that is issued as a result of this investigation. Petitioners cite to *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Federal Republic of Germany* (47 FR 39345) (''*Steel from the FRG*''), where the Department did not exclude a *de minimis* company from the order due to likelihood that company would continue to receive benefits under investigated subsidy programs. Petitioners argue that the Department applies strict standards to companies that request individual, company-specific rates in administrative reviews. Further, petitioners argue that the standards for termination or revocation of an order require affirmative evidence that a government has eliminated all subsidies on the merchandise, and that there is an absence of likelihood that the subsidies will be reinstated in the future.

Petitioners assert that the export restitution program has existed for more than 20 years, and there is no indication that this program will be terminated or revoked. Petitioners emphasize that export restitution payments were only available during two months of the POI; accordingly, petitioners contend, it is likely that respondent companies will receive higher levels of countervailable subsidies in the future.

Petitioners further argue that the possibility for circumvention is very real, and that the record of this investigation has demonstrated that pasta producers in Italy maintain an interrelated web of relationships which could allow companies to funnel exports through low-margin, or excluded, respondents. Petitioners think an exception to the Department's general practice of excluding *de minimis* companies is in order in light of these circumstances.

Respondents Arrighi and Barilla argue that any respondent receiving a *de minimis* rate, should be excluded, as a matter of law, from any countervailing duty order the Department might issue in connection with this investigation. Respondents point to section 705(c)(1)(B)(i)(I) of the Act which states that the Department will determine an ''individual countervailable subsidy rate for each exporter or producer individually investigated.'' Respondents then point to section 705(a)(3) of the Act which states: ''In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is *de minimis* * * *'' Respondents argue that since the statute requires the Department to disregard any *de minimis* countervailable subsidy, the Department must exclude respondents which are found to have *de minimis* countervailable subsidy rates.

Respondents further argue that the Department has a long established practice of excluding *de minimis* companies from the order. Respondents point out that *Steel from the FRG,* cited by petitioners, is more than ten years old, and is not reflective of current Department practice.

DOC Position: We disagree that the circumstances surrounding this investigation merit a departure from our usual practice of excluding *de minimis* respondents from an order, even if the law permitted this. The facts in this case differ from those in *Steel from the FRG.* In that case, the Department did not exclude from the order a respondent that had experienced a loss during the POI because there was a pattern of prior subsidization through coverage of losses. Hence, the Department had evidence that countervailable benefits associated with the coverage of losses were likely to be received after the POI. In this case, we have no evidence that the pattern of subsidization will change in such a way that benefits to firms

which are currently below *de minimis* level will increase.

Comment 7: Export Restitution Payments: Respondents Delverde and Tamma argue that, due to amendments effected by the URAA, the Department cannot recognize the benefits from export restitution payments on an ''earned'' basis. Delverde and Tamma assert that the new statute requires a ''financial contribution'' before a subsidy can be found and that ''earning'' a payment does not amount to a financial contribution.

Agritalia and Arrighi argue that the Department should use the date export restitution is recorded in company books as the basis upon which to calculate any potentially countervailable subsidies. Agritalia and Arrighi claim that accrual in the company records is an indication that the company has reached a commercial and legal conclusion that the receipt of the benefit is certain, thereby signifying that there has been an economic effect on the company. Agritalia further claims that the complex documentation process required to receive restitution payments results in the company being uncertain it will receive benefits until it receives confirmation from the GOI.

The EC argues that export restitution benefits should be calculated at the time of the event giving rise to the benefit, *i.e.*, the exportation of the merchandise. The EC argues that the timing of the payment can vary for reasons external to the objective of the subsidy, such as delays in the administrative mechanism paying out the restitution. The EC argues that the objective of the subsidy is a payment for exportation, so restitution should be calculated based on date of exportation.

Petitioners argue that the record in this investigation provides evidence of substantial delays between the date of exportation, the date a request is filed, and the date funds are eventually received. In addition, petitioners contend that the various permutations associated with the export restitution program, such as pre-fixing of the restitution rate and the ability to sell and buy pre-fixing rights, should lead the Department to the conclusion that the best method for measuring restitution benefits is to calculate the benefit rates on a received basis.

DOC Position: We agree with petitioners that various permutations associated with the export restitution program create a level of uncertainty that the amount of restitution expected at the time of export will equal the amount received. Moreover, as stated in the *Export Restitution* section of this notice, we found at verification that companies do not always receive the amount of restitution expected at the time of receipt. Therefore, we have calculated the benefits under this program on a received basis.

Comment 8: Purchased Restitution Benefits: Arrighi argues that any export restitution payments received as a result of using an advance-fixing certificate it purchased are non-countervailable, as Arrighi purchased the certificate from an unrelated party and paid adequate remuneration for the certificate.

Petitioners argue that export restitution benefits, regardless of whether they result from a purchased certificate, represent a direct transfer of funds from the EC to the recipient, and that the Department must countervail at least the net amount received by Arrighi.

DOC Position: We have calculated the benefits of export restitution payments on a received, rather than earned, basis for our final determination. As Arrighi did not receive any payments resulting from purchased export restitution certificates during the POI, this issue is moot.

Comment 9: Fee Received by Agritalia: Petitioners argue that Agritalia was potentially eligible for export restitution on a sale of pasta to the United States, but instead claimed IPR as a service to another party. Petitioners claim that Agritalia would not have been able to receive fees for this service absent the export restitution subsidy program so, in effect, Agritalia indirectly benefited from the export restitution program, and the fees received by Agritalia should be countervailed. Petitioners argue that the fees received by Agritalia represent a benefit provided indirectly by the GOI in that their very existence stems from the design of the export restitution/IPR system in Italy.

Agritalia responds that the fees it received were related to inward processing relief and not to export restitution. Agritalia argues that the Department has not found IPR countervailable, so any fees related to IPR should not be countervailable. Agritalia argues that neither the EU nor the GOI were involved in the transactions associated with the fees, and that there is no more relationship between the fees received by Agritalia and restitution than there is between IPR and restitution. Since the IPR scheme is not a countervailable benefit, the fees received by Agritalia are not a countervailable benefit.

DOC Position: When Agritalia accepted the fees, it surrendered its eligibility to receive any restitution payments on those exports. The fees were payment to Agritalia to give up its export restitution rights with respect to those shipments where it was paid to claim IPR.

Accordingly, we have determined that the fees received by Agritalia should be included in our calculation of countervailable export restitution benefits for Agritalia.

Comment 10: VAT Reductions: Petitioners argue that VAT reductions under Law 675/77 are grants associated with the purchase of capital equipment and should be treated as non-recurring subsidies. Petitioners refer to the verification report in support of their argument that the GOI uses the VAT rebates to distribute these grants as a matter of convenience, and that the method of distribution should not outweigh the consideration that these are grants for capital equipment.

Respondents Delverde and Tamma cite to the General Issues Appendix at 37226 where the Department indicates that its practice is to find benefits to be non-recurring when:

> the benefits are exceptional, the recipient cannot expect to receive the benefits on an ongoing basis from review period to review period and/or the provision of funds by the government must be approved every year.

Delverde and Tamma argue that there is no lengthy application or approval process to receive VAT reductions under Law 675; benefits are claimed as a line item directly on a company's VAT return. Further, recipients can expect to receive benefits on an ongoing basis. Respondents further argue that because this provision of Law 675/77 provides a refund of VAT, it is a simple tax program and should be found recurring.

Respondent De Matteis cites to *Preliminary Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy* (57 FR 57739, 57744) where the Department determined that VAT reductions under Law 675/77 were recurring benefits. De Matteis argues that the Department should follow the precedent set in *Certain Steel from Italy* and in the preliminary determination for this investigation, and continue to treat VAT reductions under Law 675/77 as recurring benefits.

DOC Position: We agree with respondents. In determining whether subsidy benefits are recurring or nonrecurring, the Department considers whether or not the benefits are exceptional, expected to be received on an ongoing basis from review period to review period, and/or require approval every year.

Although no new VAT reductions under Law 675 have been offered since

1991, until that time the program had been longstanding, and pasta manufacturers expected to receive benefits under the program on a recurring basis, without any special approval. Therefore, we have continued to treat these benefits as recurring in our final determination.

Comment 11: Disaster Relief: Petitioners argue that assistance provided under Law 219 for disaster relief should be countervailed in the final determination. Petitioners acknowledge *Float Glass from Italy; Preliminary Results of Administrative Review of Countervailing Duty Order* (47 FR 56160) and *Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Italy* (47 FR 39360 (1982)) as two cases where disaster relief was found to be non-specific because there was no predetermination of eligible areas and because no industry was excluded from eligibility. Petitioners contrast this with the 1993 determination in *Certain Steel from Italy,* where the Department found disaster relief to be countervailable because the government had not provided information on specificity. Petitioners conclude that disaster relief is countervailable when the government has failed to establish its non-countervailable status, or where the assistance appears to be *de facto* specific. Petitioners claim that this is the case in this investigation.

According to petitioners, the Italian government used Law 219 assistance as a mechanism for expanding and modernizing production in the Mezzogiorno region. As such, Law 219 assistance is a regionally specific, industrial development subsidy whose ''[g]eneral financial benefit to the production is sufficient to support a determination of subsidy * * *'' (*British Steel Corp* v. *United States,* 605 F.Supp. 286, 295 (C.I.T 1984). Petitioners maintain that the assistance does not appear to be limited to areas in need of assistance. In addition, petitioners point out that only slightly more than half of submitted applications were ultimately approved, indicating that benefits were distributed selectively. Petitioners also argue that respondents' failure to report Law 219 benefits in their original responses to the questionnaire warrants adverse inferences and, therefore, the Department should assume that these companies benefited from Law 219 to the maximum extent possible.

Guido Ferrara states that Disaster Relief benefits under Law 219 are not countervailable. According to Guido Ferrara, benefits pursuant to Law 219 went to build structures, businesses and churches destroyed during the 1980 earthquake. Guido Ferrara points out that the amount of assistance it received only helped to rebuild the factory, and not to expand beyond the original number of production lines. Guido Ferrara adds that the disaster relief assistance did not make up for several years worth of lost sales and lost customers. Guido Ferrara maintains that countervailing benefits received pursuant to Law 219 would create a bad precedent in that the United States has provided similar assistance during far less serious disasters.

Barilla, De Matteis and Campano argue that assistance under Law 219 was generally available to a wide range of facilities destroyed by the earthquake, *i.e.*, industries, residential buildings, public locations, schools, and churches within an objectively defined geographic area. These respondents also point out that the GOI used objective criteria to select damaged eligible industries and that all companies that met the criteria could participate. These respondents also point out that only 5 of 598 companies eligible for assistance under Law 219 were pasta producers.

DOC Position: We agree with respondents that assistance under Law 219 is non-specific within the meaning of section 771(5A) of the Act and, as such, is not countervailable. Verification showed that all companies that met the prescribed criteria were automatically eligible for assistance. The criteria are neutral and do not favor one enterprise or industry over another. Adherence to the criteria is monitored by the GOI beginning with the application and approval stages (*e.g.*, by requiring proof/documentation of actual damage and the extent of damage) and all the way through completion of the project by requiring proof of costs incurred (*e.g.*, receipts) and on-site verification by government-appointed inspectors to ensure completion of the approved plans.

As for petitioners' concern that the GOI is using Law 219 as another mechanism for expanding and modernizing production in the Mezzogiorno region, we saw no evidence that this program did anything more than assist in the rebuilding of facilities damaged by a natural disaster. Under the provisions of Law 219, the rebuilt facilities are required to produce the same product as the predecessor factory. In addition, eligibility for Law 219 assistance is strictly limited to facilities that suffered more than minor damage. If Law 219 had been designed to function as a mechanism for funneling more money into the Mezzogiorno region for expansion and modernization of production facilities, then one would expect to see looser eligibility requirements. While it is true that companies are not restricted to simple restoration of the damaged facilities, Law 219 assistance is capped by a formula based on the number of employees at the time of the earthquake and by a set percentage of project cost. To require that companies restrict themselves to mere restoration of the previous facility would be unreasonable and inefficient. This is especially true in the presence of technological advances achieved subsequent to the original capital purchases that would allow for cost effective building of plants and for the acquisition of advanced machinery.

Contrary to petitioners'' assertion that the assistance does not appear to be contained to areas in need of it, we found at verification that assistance was limited to facilities damaged by the earthquake within a defined geographic area centered about the area hardest hit by the earthquake.

Our findings at verification also showed that assistance granted to industries was non-specific in fact. First of all, there are numerous users of this program. As respondents pointed out above, the pasta industry is not a predominant user of this program. Also, we saw at verification that in addition to assistance for industries involved in production, all types of facilities (*e.g.*, schools, public facilities, residential structures) are eligible for assistance under other articles of Law 219. Petitioners point to a high application rejection rate as an indication that GOI discretion is being exercised in the distribution of Law 219 assistance for industries. At verification, GOI officials explained that many who sought approval were rejected for a number of reasons such as damage was not significant enough, or the company seeking assistance frequently was a retailer not involved in production activities who properly had to apply for assistance under another Article of Law 219. Hence, the rejections reflect application of the eligibility criteria, and provide no evidence that benefits under Law 219 were specific.

Comment 12: Treatment of Interest Contributions: Petitioners state that interest contributions on Law 64/86 loans received as lump-sum payments should be treated as non-recurring grants.

DOC Position: We disagree with petitioners that the lump-sum interest contributions should be treated as grants. Where the borrower can reasonably expect to receive interest subsidies at the time the loan is taken out, our practice has been to use our

loan methodology to measure the benefit. (*See, e.g., Certain Steel from Italy*, 37331, 37339). In this case, companies applied for the interest subsidies at the same time they applied for the loan and in all but one case, the interest subsidy was granted. Hence we have followed our practice as articulated in *Certain Steel from Italy.*

Comment 13: Tamma's Industrial Development Loans: Delverde argues that no benefits were received pursuant to Tamma's warehouse loan under Law 64/86. According to Delverde, Tamma was paying the commercial rate during the entire POI. Delverde points out that it was not until after the POI that approval for Law 64/86 assistance was granted for this loan.

DOC Position: We disagree with Delverde that Tamma paid a commercial rate during the POI. We have compared the rate paid by Tamma (the reference rate) to our benchmark and determined that Industrial Development Loans conferred a benefit, in addition to the interest contributions, because the loan recipients paid less than they would pay for a comparable commercial loan (see section 771(5)(E)(ii)).

For the reasons stated above in the *Industrial Development Loans* section, we are treating Law 64/86 loans as reduced-rate loans throughout the life of the loans. Therefore, if a loan is outstanding during the POI, benefits are accrued whether or not official notification of approval of Law 64/86 benefits has been received; this is due to the nearly automatic nature of the assistance.

Comment 14: Fees for Loan Guarantees: Delverde argues that the benefit from its Law 64/86 loans should be calculated net of the guarantee fees it paid on these loans. To support its argument, Delverde cites section 701(a) of the Act where it states that the ''net countervailable subsidy'' should be used to calculate countervailing duties. ''Net countervailable subsidy,'' in turn is defined in section 771(6)(A), as follows:

> For the purpose of determining the net countervailable subsidy, [the Department] may subtract from the gross countervailable subsidy the amount of * * * any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.

Petitioners state that there is no evidence on the record showing that guarantee fees were required by the GOI in order to receive Law 64/86 interest subsidies. Instead, petitioners point out that the fees were required by the lending institution upon the transfer of the pasta factory from the previous owners to Delverde. As such, petitioners argue that the guarantee fees are related to the transfer of assets between the two companies, but not to the existence of the benefits on the applicable Law 64/86 loans. Petitioners also allude to potential future refunds of these fees as evidence of the speculative nature of these fees.

DOC Position: We agree with Delverde that the loan guarantee fees it paid on certain Law 64/86 loans should be deducted. These fees are part of the effective cost of the loan. It is Departmental practice to compare the effective cost of the government loan to the benchmark loan (*see*, section 355.44(b)(8) of the Proposed Regulations). In order to determine the interest rate differential between the benchmark interest rate and the interest rate on the loans provided pursuant to this program, we have deducted the loan guarantee fee from the loan interest rate.

Concerning petitioners' suggestion that these fees may be refunded in the future, we note that, as stated in the verification report, the agreement between Delverde and the lending institution speaks only of the possibility of reviewing the agreement in the future upon the reduction of the loan balances to a certain point—it does not mention the possibility of refunding the fees.

Comment 15: Other Subsidies: Petitioners argue that the Department should countervail all funds received from entities that appear to be administering bodies for Law 64/86 contributions. These entities include the Cassa per il Mezzogiorno (''CASMEZ''), the Institute for the Economic Development of Southern Italy (''ISVEIMER''), and Istituto Mobiliare Italiano S.p.A. (''IMI'').

DOC Position: We disagree with petitioners that all transactions via these institutions should be presumed to entail some form of government assistance. At verification we saw that some of these institutions acted as agents for Law 64/86 assistance while also engaging in commercial financial transactions (extension of loans, etc.). Payment schedules and other documents pertaining to the loans from these institutions outside of Law 64/86 did not contain any indication that government assistance was involved. Therefore, consistent with past practice (*see* Proposed Regulations at 355.44(b)(9)), we have not included these loans in our investigation.

Comment 16: Law 64/86 Grants: Petitioners urge the Department to capture all Law 64/86 assistance that was either reported to or found by the Department during the course of verification. In particular, they urge the Department to include unreported grants received by the previous owners of Delverde's pasta factory and by Delverde's related companies, grants received by Tamma pursuant to a predecessor law, and loans received by De Cecco and Indalco.

Delverde counters by stating that it did report Law 64/86 assistance pertaining to the pasta factory while under prior ownership. Delverde points out that the ''unreported'' grants under Law 64 pertained to other unrelated operations of the prior owners of Delverde's pasta factory. As for the grant disbursements received by Tamma under the predecessor law, Delverde comments that the proper denominators can be found in Tamma's financial statements provided to Department officials during verification and attached to Delverde's case brief.

DOC Position: We agree with Delverde that the ''unreported'' Law 64/86 grants referred to by petitioners pertained to unrelated operations (*e.g.*, a box factory, an olive oil producer) belonging to the prior owners of Delverde's pasta factory. As such, these grants were properly tied to operations other than the pasta factory presently owned by Delverde.

Likewise, we verified that the ''unreported'' Law 64/86 loans received by De Cecco pertained to the separately incorporated milling operations and olive oil company. Therefore, they do not provide a benefit to the production of the subject merchandise.

With respect to Indalco, we note that prior to verification the company reported two loans and two grants which were received under Law 64/86 while Indalco was under previous ownership. In addition, at verification we discovered three grants which were also provided under Law 64/86 while the company was under previous ownership. Each of these loans and grants related to the production of subject merchandise. Therefore, they have been included in our calculations.

Comment 17: Riscossa: According to petitioners, the Department should draw an adverse inference from Riscossa's inability to document the source of amounts recorded as ''Other Debt'' in its 1994 balance sheet and, as a result, should classify these amounts as Law 64/86 assistance.

DOC Position: We disagree with petitioners that the use of adverse facts available is warranted with respect to the portion of ''Other Debt'' for which company officials were not able to produce identifying documentation. Riscossa's accounting system has other accounts into which benefits received pursuant Law 64/86 and other programs would more properly be recorded.

During verification, we examined these other accounts and saw no indication that there were unreported loans granted under Law 64/86 or any other program.

Comment 18: Publicita Grants: Delverde argues that the *publicita* grants under Law 64/86 should not be countervailed since the assistance related solely to advertising and publicity expenses for selling products in Italy and not to the ''manufacture, production, or export'' functions enumerated in the Act.

Petitioners counter that the production and sale of merchandise are ''inextricably intertwined.'' According to petitioners, companies produce only with the expectation of selling that production. Petitioners also point out that the aim of governments in providing subsidies is to stimulate production and sales.

DOC Position: We agree with petitioners that benefits received in relation to selling activities do pertain to the manufacture, production and export of merchandise. Both grants pertaining to manufacturing activities and those to selling activities are given by governments with the intention of jointly benefitting production and sales. Hence, these subsidies are properly countervailed.

Comment 19: Publicita Grants: Petitioners argue that the *publicita* grants to Tamma under Law 64/86 should be tied only to pasta since Tamma was not able to distinguish between grants related to pasta and those related to other products at verification.

Delverde counters that for the one *publicita* grant to Tamma that applied to pasta and other products, company officials were able to provide supporting documentation at verification showing the allocation of those funds between pasta and the other products.

DOC Position: We agree with Delverde that Tamma was able at verification to support the allocation of funds between pasta and other products for one of its *publicita* grants. Accordingly, we considered only the portion applicable to pasta for the one grant and used as our denominator sales of all pasta products by Tamma. Since the other *publicita* grants to Tamma were tied to pasta, we applied the entire amounts received to sales of pasta by Tamma.

Comment 20: European Social Fund: Petitioners argue that the Department should find that ESF grants received by Barilla, Delverde, and De Matteis confer countervailable, non-recurring benefits to companies under investigation. According to petitioners, the GOI verification report clearly indicates that ESF grants are exceptional, one-time measures, and that each project requires separate application and government approval. Citing the *Allocation* section of the General Issues Appendix, petitioners argue that it is the Department's practice to treat this type of grant as non-recurring.

Petitioners also argue that the failure of the GOI and the EC to provide accurate and timely information regarding the receipt of ESF grants requires the Department to countervail the grants using adverse inferences. They urge the Department to countervail all assistance received during the period 1983 through 1994 as if it were received in 1994 (*i.e.*, expensed during the POI). Petitioners also argue that the Department should include in its calculations the ESF grant received by De Matteis in 1995 (after the POI) because De Matteis applied for the grant in 1993 and recorded the amount in its books in the same year.

The EC states that ESF grants should be considered non-recurring because the grants relate to specific and individual projects and each project requires separate government approval.

Barilla argues that the Department should continue to find ESF benefits to be recurring because they are a type of benefit the Department has traditionally considered recurring (*i.e.*, worker assistance). In the event that they are found to be non-recurring, Barilla argues that each of its grants are below 0.5 percent of sales in the year of receipt. Accordingly, Barilla urges the Department to expense the ESF grants in the year of receipt.

Delverde argues that there is no basis for making any adverse inference regarding the receipt of ESF benefits by its predecessor company, MI.BA. Delverde claims that it has fully cooperated with the Department and the use of facts available against Delverde would be unlawful. Moreover, Delverde claims the Department was able to verify that Delverde provided all available information regarding MI.BA's use of the ESF program.

De Matteis argues that the Department's practice is to countervail benefits when they are received; therefore, because De Matteis did not receive its ESF grant until after the POI, there is no benefit to De Matteis during the POI. Moreover, De Matteis argues that if the Department were to change its methodology and measure the benefit from the date that De Matteis accrued or applied for the benefit, the benefit would not exceed 0.5 percent of sales and would be expensed prior to the POI.

DOC Position: We agree with petitioners and the EC that benefits under the ESF program are non-recurring. While worker benefits were identified in the General Issues Appendix in a list of benefits which are typically recurring, we note that the list was provided for illustrative purposes only. The General Issues Appendix states that ''[t]he unique factual circumstances of a particular case may indicate that a program listed generally as recurring be found nonrecurring or vice versa.'' It is clear from the GOI verification that ESF grants provide one-time assistance and should be considered non-recurring.

We do not agree, however, that an adverse inference of the type proposed by petitioners is warranted. Under section 776(b) of the Act, the Department is allowed to make an inference that is adverse to the interests of a party only if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' There is no evidence that Barilla, Delverde, or De Matteis did not act to the best of their abilities to supply information regarding this program. Therefore, we have calculated the benefits from the ESF grants using the appropriate years in which they were received, as reported by the companies.

With respect to the ESF grant received by De Matteis, we agree with the respondent that De Matteis received no benefit from this grant during the POI. It is the Department's normal practice to recognize a subsidy benefit when there is a cash-flow effect. In this instance, the cash-flow effect takes place after the POI; therefore, there is no benefit during the POI.

Comment 21: Benefits to Mills: Petitioners argue that the purpose of the upstream subsidy provision, as reflected in the legislative history, is to broaden the scope of subsidy practices that can be captured under U.S. countervailing duty law. Petitioners argue that using the upstream subsidy provision as a basis for excluding subsidies from the investigation would contravene the intended purpose of the provision.

Petitioners claim that the upstream subsidy provision is applicable only when the producer of the subject merchandise purchases the input product from an unaffiliated company. Petitioners point to *Live Swine from Canada; Final Results of Countervailing Duty Adminstrative Review* (59 FR 12243) (''*Live Swine*''), in which the Department has consistently countervailed the Alberta Crow Benefit Offset Program, which offsets the costs of feed grain fed to hogs, as precedent for this position. Petitioners claim that this program was a subsidy for the production of an input product and that

it was found to benefit the subject merchandise—without an upstream subsidy allegation—due to the integrated nature of hog production.

Petitioners also argue that even if the Department determines that subsidies to mills constitute upstream subsidies, they are countervailable on other grounds. Petitioner asserts that they are countervailable as subsidies to related parties and as subsidies discovered during the course of the investigation.

Respondents argue that because semolina is an ''input product,'' subsidies to the production of semolina are correctly examined under the upstream subsidy provision of the statute. To support their position respondents cite *Canadian Meat Council* v. *United States* (661 F. Supp. 622 (CIT 1987)), wherein the Court determined that subsidies to live swine could be found to benefit pork packers only within the context of the upstream subsidy provision.

Respondents maintain that there is no exception to the upstream subsidy provision for input products produced by related parties. According to respondents, the only exception to the upstream subsidy provision, falls under section 771B of the Act, which allows the Department to dispense with the upstream subsidy analysis for processed agricultural products if certain conditions are met. Respondents argue that these conditions are not met with respect to pasta production for several reasons. Respondents contend that semolina is not a raw agricultural product and that the value added in converting semolina into unfinished pasta is substantial.

Finally, respondents refute petitioners' claim that subsidies to semolina mills are subsidies ''discovered during the course of'' a countervailing duty investigation. Respondents point out that information regarding these subsidies was on the record from the start of the investigation.

DOC Position: As discussed above, in the *Subsidies Valuation* section of this notice, the Department's past practice has been to apply the upstream subsidy provision for subsidies to the input product where the product is purchased from a separately incorporated company, whether affiliated or not. Petitioners'' reliance on *Live Swine* is misplaced. The subsidy program in question in that case was provided *directly* to the producers of the subject merchandise to offset the higher costs of the input product. Moreover, we agree with respondents that the processed agricultural products exception to the upstream subsidy provision (section 771B) is not met in the case of pasta. Therefore, where the companies under investigation purchase their semolina from separately incorporated companies, whether or not they are affiliated, we have determined that the upstream subsidy provision applies.

We disagree with petitioners that such subsidies are countervailable as subsidies to related companies or as subsidies discovered during the course of an investigation. We agree with respondents that there is no exception from the upstream subsidy provision for related input producers. Therefore, subsidies to separately incorporated input producers can only be examined in an upstream subsidy investigation. Moreover, we agree with respondents that these subsidies were not discovered during the course of the investigation.

Comment 22: Termination of certain Social Security benefits for Molise and Abruzzo: La Molisana claims that the Department should assign a ''zero'' duty deposit rate to La Molisana for certain social security benefits because companies in the Molise region became ineligible to receive these benefits at the end of 1994. La Molisana argues that because the benefits were terminated prior to the preliminary determination, setting the cash deposit rate at zero for these benefits will accurately reflect the level of subsidization on any entries which have been suspended from liquidation. Moreover, La Molisana claims that any countervailing duty deposits for these benefits will simply be refunded upon review.

Petitioners argue that the Department should reject La Molisana's claims regarding the termination of social security benefits for several reasons. Petitioners claim that La Molisana has not shown that the termination has affected any company other than La Molisana itself. In addition, petitioners point out that the basis of the change is the Molise region's increased level of economic development. Petitioners claim that neither La Molisana nor the government has given any indication that the program will not be reinstated in the event that the Molise region's level of development declines. Moreover, petitioners claim there is no evidence on the record that benefits for the Molise region were terminated by an official act. Finally, petitioners claim that none of La Molisana's allegations were verified at the GOI.

DOC Position: We have determined that the facts of the record do not support a finding that the social security benefits in question were terminated. While the GOI response indicated that benefits in the Molise and Abruzzo regions were terminated pursuant to an August 5, 1994, decree of the Italian Ministry of Labor, record evidence indicates that at least one company located in the Abruzzo region continued to receive benefits after the supposed termination. This indicates that residual benefits may be available under the program. According to section 355.50(d), of the Proposed Regulations, the Department will not adjust the cash deposit rate where residual benefits may continue to be bestowed under a terminated program. Therefore, we have not adjusted the cash deposit rate for companies located in the Abruzzo or Molise regions.

Comment 23: La Molisana Fiscalizzazione: La Molisana argues that there is no evidence on the record that La Molisana received fiscalizzazione deductions at the higher rate available in the Mezzogiorno. La Molisana claims that its 1994 DM–10S forms indicate that different rates were paid by La Molisana from region to region, but that the rates paid for employees in the south were not systematically lower than those paid for employees in the north.

Petitioners argue that La Molisana's claims regarding its use of the fiscalizzazione program directly contradict the verified information regarding the operation of this program, which is that the rate of deduction in southern Italy is greater than that in northern Italy.

DOC Position: We disagree that there is no evidence on the record that La Molisana received fiscalizzazione deductions at the higher rate available in the Mezzogiorno. The company's DM–10S forms reflect National Health Service payments equal to one percent for wages eligible for fiscalizzazione deductions, indicating that deductions were taken at the higher rate available in southern Italy. Therefore, we have calculated the resulting benefit to La Molisana according to the methodology described in the *Social Security* section of this notice.

Comment 24: De Matteis Fiscalizzazione: De Matteis argues that the greater fiscalizzazione deductions taken by De Matteis do not confer any financial benefit. De Matteis claims that in order to receive the greater fiscalizzazione deductions, companies located in the Mezzogiorno must agree to abide by a collective labor bargaining agreement. The company argues that the greater fiscalizzazione deduction is intended to offset the increased cost associated with the collective bargaining agreement and, for this reason, does not confer a benefit.

Petitioners claim that there is no record evidence to support De Matteis'

claims. Petitioners assert that there is no official document establishing a connection between the additional fiscalizzazione benefits and labor agreement compliance. In addition, petitioners argue that neither De Matteis nor any other respondent has provided information regarding any obligations that arise from participating in a collective labor bargaining agreement. In addition, even if there was information on the record regarding potentially increased costs associated with a collective labor agreement, these costs do not fall within the carefully circumscribed list of allowable offsets under the statute.

DOC Position: We agree with petitioners. In order to claim any of the numerous allowable social security deductions in Italy, companies must be in compliance with the labor agreements. However, there is no record evidence that any social security deduction, including fiscalizzazione, is intended to offset any costs associated with labor agreements.

Comment 25: Treatment of De Cecco: De Cecco argues that it misinterpreted the Department's request for information regarding related parties and, hence, should not be penalized for its failure to provide information regarding its affiliate, Pescara. De Cecco claims that it interpreted the term ''related parties'' in the context of Italian tax law, and that because De Cecco and Pescara are not related for Italian tax purposes, De Cecco believed the two companies to be unrelated for purposes of this investigation. De Cecco argues that when it came to De Cecco's attention that their questionnaire response may have been deficient, De Cecco submitted a questionnaire response on behalf of Pescara to correct the error. De Cecco argues that in making this submission, the company was acting to the best of its ability to comply with the investigation and, therefore, adverse inferences may not be used against De Cecco.

De Cecco also argues that if the Department uses facts available for Pescara, the appropriate facts available should be based on De Cecco's verified submissions. According to De Cecco, its own information would be much more representative of Pescara than simply assigning Pescara the highest ''facts available'' rate for each program. In addition, De Cecco argues that De Cecco's own countervailing duty rates should remain unchanged in the event that the Department uses facts available to determine Pescara's countervailing duty rate. De Cecco argues that its responses have been verified and all possible subsidies that De Cecco was alleged to have received were fully investigated.

Finally, De Cecco argues that the Department's decision that adverse facts available is justified in the companion antidumping duty investigation is not relevant to this proceeding. De Cecco argues that the main distinction between the antidumping case and the countervailing duty case is that there was a complete verification of De Cecco in the countervailing duty investigation, during which the Department found no evidence that De Cecco withheld or attempted to withhold information. In addition, De Cecco argues that in the antidumping case, the Department sent a deficiency questionnaire requesting information on related parties from De Cecco, whereas none was sent in the countervailing duty case. De Cecco claims that it submitted information on Pescara before it was even requested by the Department.

Petitioners argue that De Cecco and Pescara are affiliated parties and that De Cecco's failure to respond to the Department's questionnaire on behalf of Pescara merits the use of facts available. Petitioners argue that the legal standard and the facts on which the Department based its affiliated party determination in the antidumping case are identical to those in the present case, and hence, an identical outcome is justified. Petitioners argue that in its responses, De Cecco deliberately withheld information regarding its relationship with Pescara. They argue that De Cecco provided a detailed list of related parties and yet continually declined to include Pescara. Petitioners argue that De Cecco's claim that it misinterpreted the Department's request for information regarding related parties, is without merit for several reasons. They point out that the Department's questionnaire contained explicit definitions regarding the terms used in its questionnaire and that De Cecco was represented by experienced trade counsel that presumably was aware that the relationship between two companies for purposes of foreign tax laws is irrelevant in the context of a countervailing duty investigation.

Petitioners assert that De Cecco's conduct represents consistent non-compliance with an information request, thereby justifying the use of adverse facts available. Petitioner's also argue that the facts available rate should be applied to both De Cecco and Pescara, pointing out that the purpose of facts available is to provide the Department with a necessary tool to encourage cooperation by respondents. In this case, the reporting obligation lay with De Cecco, not Pescara, such that any repercussions for non-cooperation should inure directly to De Cecco.

DOC Position: We agree with petitioners that De Cecco's failure to provide information regarding Pescara warrants the use of facts available with adverse inferences. We are not persuaded by De Cecco's argument that it misinterpreted the related party question because of its understanding of Italian tax law. The Department's questionnaire contained a detailed explanation of the definition of related parties to be used in this investigation; it did not reference foreign tax laws. In response to this and a supplemental questionnaire De Cecco reported several related parties, including two companies, Desemark S.r.L and Prodotti Mediterranei Inc. (''PMI''), which are related to De Cecco through similar circumstances as Pescara. (Presumably these two companies are also not considered related parties for Italian tax purposes, and yet De Cecco chose to include information regarding these companies in its responses.) Furthermore, contrary to De Cecco's assertions, the Department requested information in a supplemental questionnaire regarding whether there were other companies related to De Cecco that were previously not reported but that are involved in the production, distribution, or sale of pasta. In response, De Cecco identified only PMI. For these reasons, we have determined that De Cecco was not acting to the best of its ability to respond to the related party section of the questionnaire. Therefore, the use of facts available with adverse inferences regarding subsidies provided to Pescara is warranted. However, we agree with De Cecco that the company accurately reported and the Department verified, information regarding subsidies received by De Cecco itself. Therefore, we have calculated a combined rate using adverse inferences for Pescara's portion and De Cecco's own verified information for De Cecco's portion.

Comment 26: Export Promotion Assistance: Petitioners allege that information uncovered at verification indicates that Barilla is currently operating a project using export promotion loans under Law 394, which was found to be not used in the preliminary determination. Petitioners argue that while GOI officials stated at verification that no amounts had been disbursed to Barilla under this program, there is no evidence on the record to support this statement. In addition, petitioners argue that the export promotion grant received by Barilla under Law 304 in relation to an export promotion project in South America in

fact promoted Barilla's pasta exports to the United States.

Barilla argues that export promotion benefits are countervailable only if they promote exports to the United States. Barilla asserts that nothing in the record demonstrates that Barilla received export promotion grants or loans for export to the United States. According to Barilla, the Department verified that the export promotion grant received by Barilla related solely to the Argentine and Brazilian markets and that the only export promotion loan for which Barilla applied had not even been approved as of the GOI verification.

DOC Response: We agree with Barilla. Verification at the GOI and at Barilla confirmed that Barilla accurately reported its receipt, or non-receipt, of export promotion grants and loans for export to the United States. We found no evidence at verification that Barilla received export promotion grants which benefit exports to the United States, nor that Barilla had any outstanding export promotion loans under this program.

Comment 27: Green Light Treatment for Law 64/86: The EC, GOI, and Delverde argue that, because of the superior nature of EC law, certain of the necessary conditions for qualifying for green light treatment are met at the Community level rather than at the national level. According to respondents, the Department should not limit its analysis to an examination of the Italian regional aid laws. Rather, the Department should examine the Italian laws in the context of EC competition policy rules which, respondents argue, form the basis of an EC-wide general framework of regional development pursuant to which all national regional aid programs must be granted.

The EC argues that within this general framework, the GOI performed an initial socio-economic analysis using specific criteria and identified all regions that were in need of regional aid. The GOI then notified the EC of its proposed aid scheme and the scheme was found to be compatible with the EC general framework of regional development with the exception of certain regions which were found not to meet the specific criteria of the competition policy rules. According to respondents, the fact that Law 64/86 was notified, modified, and ultimately approved according to the requirements of the competition policy rules demonstrates that Law 64/86 assistance was provided within a general framework of regional development. Respondents also argue that all of the remaining green light criteria were met by Law 64/86.

Petitioners argue that the programs in question were not provided pursuant to a generally applicable regional development policy in Italy. In support of this argument, they point to verification findings that, historically, the GOI has not maintained any statistical criteria for determining which regions were in need of assistance and that a systematic method of selection of the areas eligible for assistance was not applied until 1988 when the EC investigated Law 64. In addition, petitioners argue that it is inappropriate to consider Italy's regional development programs in the context of the EC's competition policy rules because there is no evidence linking the EC competition policy rules to the Italian programs under investigation at the time of their enactment. Petitioners also claim that the EC argument fails in light of its own determination that Law 64/86 was not fully compatible with the competition policy rules until the end of 1992.

Petitioners argue that regardless of whether the Italian regional aid programs are examined within the EC framework, the remaining green light criteria are not met. They argue that the GOI failed to establish that regional development assistance contains ceilings on the amount of assistance and that the GOI failed to establish that regional distribution of aid is not specific.

DOC Position: We disagree with the EC statement that the GOI performed a systematic analysis in order to identify the regions which would receive regional development assistance. There is no evidence on the record that such an analysis was undertaken and, moreover, statements from the GOI verification directly contradict such an assertion. Petitioners correctly note that the GOI verification confirmed that the first time that a systematic review of the regions eligible for assistance was applied in Italy was in 1988, when the EC examined Law 64/86.

Moreover, as discussed in the *Green Light* section of this notice, we need not reach the issue of whether the nature of Law 64/86 as a green light subsidy is governed by a community-wide framework of regional development because we find that Law 64/86 does not meet the criteria established in the community-wide framework. Therefore, we conclude that Law 64/86 programs do not qualify as non-countervailable subsidies.

Comment 28: Initiation of Research and Development and European Investment Bank (''EIB'') Loan Assistance: Petitioners argue that the Department improperly rejected petitioners' request to initiate a countervailing duty investigation of assistance provided through the EIB and of research and development assistance provided under Law 46 because the programs were found to be non-specific in previous investigations. According to petitioners, the fact that the Department found EIB loans and research and development assistance to be *de facto* non-specific in previous investigations is an insufficient basis for rejecting petitioners' allegations. They argue that the previous findings were fact-based, and thus, did not amount to a finding of non-countervailability as a matter of law.

Respondents Barilla and La Molisana argue that the Department correctly decided not to investigate EIB loans or research and development assistance because the programs had been previously found to be non-specific and, in the case of EIB loans, the Department has chosen several times not to investigate the programs. Respondents also argue that petitioners have provided no new evidence warranting a re-examination of these issues.

DOC Position: Our decision not to investigate these programs was based on the fact that petitioners had not provided a sufficient basis to believe that the programs had changed since the previous findings of noncountervailability. With respect to the EIB loan program, petitioners never addressed the fact that the program had been found not countervailable in a previous investigation and, therefore, made no effort to allege that the program had changed or that pasta producers may have received a disproportionate share of the benefits under the program. With respect to the research and development program, petitioners alleged that the Department's previous findings that the program was non-specific had not taken into account an amendment which made the program available to pasta producers. However, we noted in our notice of initiation that the amendment was made seven years prior to the finding that the program was non-specific. Therefore, we determined that this amendment did not constitute a change in the program and was not a sufficient basis for believing that pasta had received a disproportionate share of the benefits under the program.

Comment 29: Affiliated Parties: Petitioners assert that the relationships between several respondent companies and their affiliated parties contain mechanisms through which subsidies can be transmitted and/or exhibit the potential for channeling exports through the company with the lowest margin. Petitioners distinguish between two types of affiliated parties—those that

produce the subject merchandise (*i.e.*, Delverde/Tamma and Arrighi/Italpasta) and those that do not produce the subject merchandise and yet still play a meaningful role in the production process (*i.e.*, De Matteis/Demaservice and Campano/Chirico).

With respect to Delverde and Tamma, petitioners argue that their common board member plays an integral role in the most important strategic decisions made by both companies, making it likely for subsidies to be transmitted between the two companies. Petitioners further argue that the day-to-day transactions between the companies provide a vehicle for the transmittal of subsidies and the potential for export-shifting. Petitioners claim that, for Arrighi and Italpasta, the level of common ownership, the shared board members, and the day-to-day transactions between the companies leads to a similar conclusion. For these relationships, petitioners propose assigning one rate to the affiliated companies, based on a weighted-average of their individually calculated rates using exports to the United States.

Petitioners also argue that the Department should include in its calculations subsidies to certain affiliated companies of Campano and De Matteis. Petitioners support the Department's preliminary determination that De Matteis' affiliated service company, Demaservice, plays an integral role in De Matteis' production and that subsidies to Demaservice are likely to benefit such production. In addition, petitioners allege that certain transactions between Campano and its affiliate exhibit the potential for transmitting subsidies between the two companies. For these types of relationships, petitioners argue that the Department should calculate a combined subsidy rate using subsidies received by both companies and their combined sales.

Delverde argues that the single weighted-average margin applied to Delverde and Tamma in the preliminary determination is an inappropriate and unfounded anti-circumvention measure. According to Delverde, the Department's preliminary finding that the relationship between Delverde and Tamma is not a likely vehicle for transmitting subsidies was confirmed at verification. Delverde asserts that Tamma holds less than a 20 percent ownership interest in Sangralimenti, the holding company that owns Delverde, and that while the companies share one common director they operate as separate commercial entities. Moreover, Delverde argues that there is no evidence on the record which suggests that the companies would (or even could) shift exports in response to differing subsidy rates. Therefore, Delverde claims, the imposition of anti-circumvention measures is unreasonable and unlawful.

Arrighi argues that the methodology proposed by petitioners of assigning a single margin for Arrighi and Italpasta based on a weighted-average of their individual rates is inconsistent with the Department's past practice and is unreasonable. According to Arrighi, the purpose of combining two companies is to treat them as if they were a single entity subsidized at the same rate. In the past, the Department has accomplished this by combining the subsidy information of the two companies and allocating them over their combined sales. Arrighi contends that petitioners' proposed methodology results in the Department not treating the combined companies as a single entity, but rather as two separate entities.

DOC Position: We agree with petitioners that the relationships between Delverde and its affiliate and Arrighi and its affiliate are sufficient that the companies should be treated as a single company. We disagree with Delverde that the ownership interest of Tamma does not meet the 20 percent threshold. As discussed in the *Related Parties* section of this notice, when the ownership interests of Tamma and its affiliate, Tamma Service, are aggregated, the ownership interest is above the 20 percent threshold. Therefore, we have calculated a single rate for the two companies.

However, we agree with Arrighi that the appropriate method for calculating a combined rate is to divide the total subsidy benefits of the two companies by their combined sales. The methodology used in our preliminary determination does not result in the two companies being treated as a single entity and does not accurately measure the level of subsidization of the subject merchandise.

With respect to the treatment of De Matteis and its affiliate, we agree with petitioners and have calculated a combined subsidy rate for the two companies accordingly. With respect to Campano, we note that Chirico does not produce the subject merchandise and therefore Chirico and Campano would only be treated as a single company if there were evidence of the transmittal of subsidies between the companies. While we agree with petitioners that certain transactions between the two companies may exhibit the potential for the transmittal of subsidies, through no fault of Campano's we do not have the information necessary to determine whether transmittal of subsidies was likely. Therefore, we have calculated a rate for Campano using only subsidies received by Campano divided by Campano's sales.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an all-others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States, if available, or pasta exports to the United States. The all-others rate does not include zero or *de minimis* rates, or any rates based solely on the facts available.

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of pasta from Italy which were entered, or withdrawn from warehouse, for consumption on or after October 17, 1995, the date of publication of our preliminary determination in the Federal Register. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to terminate the suspension of liquidation for merchandise entered on or after February 14, 1996, but to continue the suspension of liquidation of entries made between October 17, 1995, and February 13, 1996. We will reinstate suspension of liquidation under section 706(a) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

Company	Ad valorem rate
Agritalia, S.r.l.	2.55
Arrighi S.p.A. Industrie Alimentari	2.44
Barilla G. e R. F.lli S.p.A.	0.65
De Matteis Agroalimentare S.p.A.	2.47
Delverde, S.r.l.	5.55
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	3.37
Gruppo Agricoltura Sana S.r.L.	0.00
Industria Alimentare Colavita, S.p.A.	2.18
Isola del Grano S.r.L.	11.23
Italpast S.p.A.	11.23
Italpasta S.r.L.	2.44
La Molisana Alimentari S.p.A.,	4.17
Labor S.r.L.	11.23
Molino e Pastificio De Cecco S.p.A. Pescara	3.37
Pastificio Guido Ferrara	1.21
Pastificio Campano, S.p.A.	2.59
Pastificio Riscossa F.lli Mastromauro S.r.L.	6.91
Tamma Industrie Alementari di Capitanata	5.55
All Others	3.78

We calculated the *ad valorem* rate for Agritalia, an export trading company, by weight averaging, based on the value of exports to the United States represented by each of Agritalia's suppliers, the adjusted subsidy rate for each supplier and adding to this rate the subsidy rate calculated for Agritalia based on subsidies it received directly. In performing this calculation, we adjusted the suppliers' rates to account for any mark-up or mark-down by Agritalia, to adjust prices to reflect Agritalia's f.o.b. export prices, and to exclude any export restitution benefits received by Agritalia's suppliers on export sales to the United States which were earned on sales made by the producer independently of Agritalia. We note that at the time of our preliminary determination, we lacked information to adjust the producers' subsidy rates for any mark-up or mark-down taken by Agritalia on sales. The methodology we have used in our final determination effectively calculates the f.o.b. subsidy rate for merchandise sold by Agritalia during the POI.

Since the estimated net countervailable subsidy rate for Barilla and Gruppo is either zero or *de minimis*, these companies will be excluded from the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on pasta from Italy.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14734 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–489–805]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Michelle Frederick or Sunkyu Kim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288, (202) 482–0186, or (202) 482–2613, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Final Determination

We determine that certain pasta (pasta) from Turkey is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on December 14, 1995, (60 FR 1351, January 19, 1996) (*Preliminary Determination*), the following events have occurred:

On January 22, 1996, the Department requested that Filiz Gida Sanayii ve Ticaret (Filiz) and Maktas Makarnacilik ve Ticaret T.A.S. (Maktas), the two respondents in this case, submit additional information relating to level of trade. Responses were received on January 31, 1996, as part of their supplemental Section D questionnaire responses.

On January 25, 1996, Hershey Foods Corp., Borden Inc., and Gooch Foods, Inc. (collectively the petitioners) alleged ministerial errors in the Department's preliminary determination calculations regarding the two respondents. The respondents alleged a ministerial error in the Department's preliminary determination on January 26, 1996.

With respect to the petitioners' allegation, we agreed that errors were made as alleged and the errors were found to constitute significant ministerial errors because the correction resulted in a difference of at least five absolute percentage points and was at least 25 percent greater than the preliminary margin, for both Filiz and Maktas. With respect to the respondents' allegation, we determined that the respondents' allegation did not constitute a ministerial error. *See* Memorandum to Barbara R. Stafford from the Team dated February 6, 1996. An amended preliminary determination was issued on February 12, 1996 (61 FR 6348, February 20, 1996).

We conducted verification of Filiz's and Maktas's sales and cost questionnaire responses in Turkey in February and March 1996.

On May 1, 1996, Maktas, at the request of the Department, submitted

revised computer tapes that corrected clerical errors discovered at verification.

Filiz, Maktas and the petitioners submitted case briefs on April 30, 1996, and rebuttal briefs on May 3, 1996. At the request of both the petitioners and the respondents, a public hearing was held on May 7, 1996.

On May 8, 1996, the the Embassy of Turkey requested that the Department accept into the record a copy of Maktas's major shareholder's 1994 financial statements. The Department informed the Embassy that it could not accept any new information into the record at that point. (*See,* Memorandum to File from Barbara R. Stafford, May 8, 1996.)

Scope of Investigation

The scope of this investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. In the companion countervailing and antidumping duty investigations involving pasta from Italy, we have excluded imports of organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB). The Department has determined that AMAB is legally authorized to certify foodstuffs as organic for the Government of Italy(GOI). If certification procedures similar to those implemented by the GOI are established by the Government of Turkey for exports of organic pasta to the United States, we would consider an exclusion for organic pasta at that time.

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is May 1, 1994, through April 30, 1995.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person—(A) Withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Section 782(c)(1) permits the Department to modify the requests for information in its questionnaires if that party, ''promptly after receiving a request {from the Department} for information, notifies {the Department} that such party is unable to submit the requested information in the requested form and manner.'' The Statement of Administrative Action (SAA) to the Uruguay Round Agreements Act (URAA) makes clear that paragraph (c)(1) is intended to apply to the Department's requests for information in computerized form. SAA at 865. Subsection (e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) the information can be used without undue difficulties.

Accordingly, in using the facts available, the Department may disregard information submitted by a respondent if any of the five criteria has not been met.

A. Filiz

As discussed in the *Preliminary Determination,* the Department initiated a cost of production (COP) investigation of Filiz on June 8, 1995. In its questionnaire, the Department requested that in providing cost data, Filiz's valuation of materials used be based upon current material prices in accordance with the Department's normal methodology in hyperinflationary cases. (*See, Fair Value Comparisons* section.) In its response, however, Filiz reported its raw materials costs using last-in, first-out (LIFO) accounting. Filiz maintained that its use of LIFO assumptions accurately reflected the replacement cost methodology requested in the questionnaire. However, Filiz's response raised questions regarding the accuracy of its reported material costs, insofar as LIFO does not require materials used in production to be valued at costs from the current period. Instead, LIFO allows materials consumed to be valued at costs from both current *and* prior periods. Although we informed Filiz that the valuation of materials and conversion costs should be based upon current costs, Filiz provided an inventory accounting methodology that valued some semolina at costs from previous months. This deficiency was brought to Filiz's attention in a supplemental questionnaire and again during verification, but the company failed to modify its methodology to comply with the Department's instructions. Furthermore, during verification, Filiz declined to provide information necessary to quantify the understatement of costs associated with this method.

The results of our investigation, and the evidence which appears on the record, indicate that the use of a LIFO inventory methodology by Filiz has had a significant distortive impact on its reported COP data. Accordingly, we find that Filiz has not provided adequate data to compute its material costs. (For a more detailed explanation, see Memorandum to the File from Michael Martin and William Jones, May 20, 1996).

In addition, Filiz stated in its response to our antidumping duty questionnaire that its annual financial statements are prepared on an actual (not constant) currency basis. During our cost verification, however, we became aware that Filiz had available audited 1994 constant currency financial statements which had not been disclosed to the Department. We were informed by company officials that auditors from an outside accounting firm had prepared these statements from Filiz's normal audited financial statements (which are prepared in accordance with Turkish tax law) and that Filiz personnel would not be able to answer any questions related to the

constant currency statements. We requested that a copy of these financial statements be introduced as a verification exhibit, but Filiz denied our request. Furthermore, although we were permitted to examine the statements for a limited time at verification, we were not permitted to make copies of them, nor take the statements off the premises.

Nevertheless, our limited review of these statements gave us reason to believe that significant distortions exist in the COP and constructed value (CV) data submitted by Filiz. Specifically, the notes to the constant currency financial statements revealed that adjustments had been recorded for certain severance costs, pension liabilities, deferred salaries, operational expenses and interest on loans. We were informed that these adjustments were not reflected in the financial statements Filiz used to derive its COP and CV figures. The nature of the adjustments suggested that Filiz had excluded certain expenses incurred during the POI from its reported COP and CV data, and also raised concerns about whether the submitted conversion costs, general and administrative expenses and financial expenses accurately reflected the company's production costs. During the public hearing, counsel for Filiz stated that the adjustments were recorded to restate Filiz's submitted cash-basis financial statements to the accrual basis required under international accounting standards. Filiz's failure to explain or provide these financial statements as a verification exhibit prevents us from quantifying the magnitude of the distortions which exist in the submitted COP and CV data.

The use of LIFO inventory methodology by Filiz and its failure to provide the constant currency financial statements render Filiz's submitted COP and CV data unusable for purposes of margin calculations. Accordingly, the Department must consider the use of the facts available in determining a margin for Filiz, pursuant to section 776(a) of the Act.

Insofar as Filiz has not raised the issue of difficulty in providing information in the informational format or medium requested by the Department, section 782(c)(1) does not apply in this case.

When examined in light of the requirements of section 782(e), the facts in this case indicate that Filiz's cost data is thoroughly and systematically flawed. The gaps and inaccuracies in Filiz's cost data render its use impossible. First, for the reasons detailed above, the accuracy of Filiz's submitted cost data could not be verified, as required by section (e)(2). Second, because of the flaws in its cost data, Filiz's submitted cost data ''cannot serve as a reliable basis for reaching the applicable determination'' under section (e)(3), nor can it ''be used without undue difficulties'' under section (e)(5). Third, in its failure to provide information based on current material costs (rather than LIFO) and its refusal to allow the constant currency financial statements to be entered into the record (or even closely examined by the Department or explained by Filiz itself at verification), Filiz has not acted to the ''best of its ability'' in meeting the Department's requirements, pursuant to section 782(e)(4) of the Act.

The use of facts available is also subject to section 782(d) of the Act. Subsection 782(d) provides that if the Department ''determines that a response to a request for information * * * does not comply with the request, {the Department} shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for completion of investigations or reviews under this title.'' Filiz had ample opportunity to correct the defects in its submitted cost data. As indicated above, the deficiency in Filiz's submissions regarding materials costs was brought to its attention in a supplemental questionnaire and again during verification. Filiz, however, failed to modify its methodology to comply with the Department's instructions. Thus, Filiz has not acted to the best of its ability during this investigation. Therefore, in applying the facts available under section 776, the Department is acting consistently with section 782(d).

Furthermore, during verification, Filiz declined to provide information that might have remedied the deficiencies: when the Department became aware at verification of systematic flaws in Filiz's cost data, Filiz refused to enter the statements into the administrative record or allow the Department's verification team to examine it closely, thereby ''significantly impeding'' the Department's ability to conduct its investigation (and verify Filiz's submitted data) under section 776(a)(2)(C) of the Act.

For the foregoing reasons, the Department has determined that, insofar as Filiz has failed to provide cost data in the form and manner requested by the Department, and has ''significantly impeded'' this investigation, it is required by section 776(a) of the Act to use the facts available with respect to Filiz's cost data. However, the Department must also determine whether (1) the use of facts available for Filiz's cost data renders the rest of Filiz's submitted information (*i.e.*, the sales data) unusable, and (2) whether the use of adverse information as facts available is warranted.

First, we have determined that the resort to facts available for Filiz's cost data renders its sales data unusable. Because of the flawed nature of the cost data, home market sales cannot be tested to determine whether they were made at prices above production cost. Insofar as the Department can only make price-to-price comparisons (normal value to export price) on those home market sales that are made above cost, the systematically flawed nature of the cost data makes these comparisons impossible. A second problem with using the home market sales data is the absence of reliable difference in merchandise figures (DIFMERS). When comparing normal value to export price, the Department is required to account for the effect of physical differences between the merchandise sold in each market. *See*, section 773(a)(6)(C) of the Act. Insofar as DIFMER data is based on cost information, the effect of these physical differences cannot be determined by the Department.

In addition, the Department cannot derive a normal value that can be compared with U.S. price data. When home market sales prices cannot be used, the Department resorts to the use of constructed value as normal value. *See*, sections 773(a)(4), 773(e). However, the constructed value information reported by Filiz is part of the cost data that, because it is systematically flawed, has been rejected by the Department. Therefore, the use of facts available for Filiz's cost data precludes the use of the submitted constructed value information. The Department's prior practice has been to reject a respondent's submitted information *in toto* when flawed and unreliable cost data renders any price-to-price comparison impossible. The rationale for this policy is contained in *Notice of Final Determination of Sales at Less than Fair Value: Grain-Oriented Electrical Steel From Italy*, 59 Fed. Reg. 33952, 33953–54 (July 1, 1994), (*Grain-Oriented Electrical Steel From Italy)*, where the respondent failed the cost verification. The Department explained that the rejection of a respondent's questionnaire response *in toto* is appropriate and consistent with past practice in instances where a respondent failed to provide verifiable COP information:

If the Department were to accept verified sales information when a respondent's cost information (a substantial part of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation.

That is the situation with Filiz, which has provided accurate and verified sales information, but has not provided accurate and usable cost data and has hindered verification of its cost data (*see* Cost Verification Report). Although *Grain-Oriented Electrical Steel from Italy* was a case involving the Best Information Available (BIA) under the ''old'' statute, it demonstrates the Department practice of regarding verified sales information as unusable when the corresponding cost data is so flawed that price-to-price comparisons are rendered impossible. *Cf. Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18559 (April 26, 1996) (the use of total BIA warranted where reliable price-to-price comparisons are not possible).

Accordingly, we find that there is no reasonable basis for determining normal value for Filiz in this case. As a result, there is nothing to compare to U.S. sales to derive a margin calculation. The Department has resorted, therefore, to total facts available for Filiz.

The next step is to determine whether an adverse inference is warranted. Section 776(b) of the Act provides that, where the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from {the Department} * * * {the Department} may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.''

As discussed above, Filiz failed to provide cost data in the form and manner requested by the Department, notwithstanding the Department's repeated requests. Second, Filiz refused to allow the constant currency financial statements to be entered into the administrative record of this case. We have thus determined that Filiz has not cooperated by virtue of not acting to the best of its ability in this investigation. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total facts available to Filiz, the higher of the margin from the petition or the highest rate calculated for a respondent in this proceeding, which is 63.29 percent.

Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA, accompanying the URAA, clarifies that the petition is ''secondary information.'' *See,* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

In the present case, based on our comparison of the sizes of the calculated margin for the other respondent in this proceeding to the estimated margin in the petition, we have concluded that the petition is the most appropriate information on the record to form the basis for a dumping calculation. Accordingly, the Department has based the margin on information in the petition. In accordance with section 776(c) of the Act, we attempted to corroborate the data contained in the petition. The petitioners based export prices on U.S. import statistics. We find that this information has probative value because it was obtained from an independent, public source. *See, Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa* 61 FR 94, 24271 (May 14, 1996). The normal value was based on prices between a Turkish producer of pasta and its wholesaler which were obtained from a market research report.

When analyzing the petition, the Department contacted the consultant who prepared the market research report and confirmed the accuracy of the data as provided in the petition. Accordingly, we have corroborated, to the extent practicable, the data contained in the petition.

B. Maktas

In our January 16, 1996, supplemental questionnaire of the Department requested Maktas to provide a copy of the 1994 financial statements of its major shareholder, Piyale-Besin Sanayi ve Ticaret A.S. (Piyale-Besin). In its response, Maktas did not provide a copy of Piyale-Besin's financial statements, stating that since ''Piyale-Besin is merely a shareholder of Maktas, the financial statements of Piyale-Besin are irrelevant to this investigation.'' At the cost verification, the Department again requested Piyale-Besin's 1994 financial statements. The Department explained to Maktas that the Department's normal practice is to request financial information from shareholders that own a significant percentage of a respondent's stock. Maktas, however, declined to provide to the Department the financial statements of Piyale-Besin.

The failure of Maktas to provide Piyale-Besin's financial statements raises significant questions as to the accuracy of certain expenses reported to the Department, namely, interest, general and administrative (G&A), and selling expenses. It is the Department's practice to require the use of consolidated group information for the calculation of interest expenses based on the fact that the consolidated group's controlling entity has the power to determine the capital structure of each member of the group. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea,* 54 FR 53141, 53149 (December 27, 1989). Piyale-Besin has such power since it owns a substantial majority of Maktas and its affiliates. It is the Department's position that majority equity ownership is *prima facie* evidence of corporate control. *See, e.g., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy,* 60 FR 31981, 31991 (June 19, 1995). However, because Maktas did not provide Piyale-Besin's financial statements, we have no information about Piyale-Besin's interest expenses. Therefore, in accordance with section 776(a) of the Act, we have applied facts available for Maktas's interest expenses. In addition to our lack of information regarding interest expenses, we are not able to confirm that Piyale-Besin did not provide G&A services to Maktas or incur selling expenses on behalf of Maktas. Accordingly, we have also applied facts available for G&A and selling expenses.

Further, Maktas's refusal to provide Piyale-Besin's financial statements demonstrates that it failed to cooperate by not acting to the best of its ability to comply with requests for information, insofar as Piyale-Besin's financial statements do exist and are available. Indeed, on May 8, 1996, several weeks after the Department conducted verification, the Embassy of Turkey requested that the Department accept into the record 1994 financial statements of Piyale-Besin, which the Embassy of Turkey would provide. The Department rejected the Embassy's request and informed the Embassy that it was too late to accept new factual information for the record. Therefore, in accordance with section 776(b) of the Act, we have determined that an adverse inference is warranted in the selection of the facts otherwise available

for interest, G&A, and selling expenses. As adverse facts available, we calculated an estimate of Piyale-Besin's interest expenses by applying the effective interest rate incurred by Maktas during 1994 to the average amount of Maktas equity owned by Piyale-Besin during the year. We then added the calculated interest expense to the combined interest expense of Maktas and three affiliated parties. As in the preliminary determination, we excluded foreign exchange gains and adjusted the monthly interest expense amounts for inflation using the wholesale price index. For G&A expenses, we have no evidence regarding the level of G&A expense for a company doing business in Turkey, other than the information reported by Maktas. Therefore, we assumed that Piyale-Besin's G&A would be at the same level as Maktas. Lastly, for selling expenses, we treated the indirect selling expenses Maktas incurred on its sales to the United States as a direct selling expense and made a circumstance of sale adjustment (COS) for these expenses. (See Comment 2 below.)

Product Comparisons

For purposes of determining appropriate product comparisons to U.S. sales, we compared identical merchandise, or where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons based on the characteristics listed in the Department's antidumping questionnaire, as had been applied in the preliminary determination, and in accordance with section 771(16) of the Act.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and the level of trade of the normal value sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined.

In implementing these principles in this case, the Department's first task was to obtain information about the selling activities of the producers/exporters. Information relevant to level of trade comparisons and adjustments was requested in our July 12, 1995 questionnaire, and in supplemental questionnaires sent on October 23, 1995, and January 22, 1996. We asked each respondent to establish any claimed levels of trade based on the selling functions provided to each proposed customer group, and to document and explain any claims for a level of trade adjustment.

Our review of these submissions shows that Maktas has identified levels of trade based on channels of distribution. In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling functions attributable to the customer groups claimed by Maktas. Pursuant to section 773(a)(1)(B)(i) of the Act, and the SAA at 827, in identifying levels of trade for directly observed (*i.e.*, not constructed) export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustments. Whenever sales within a customer group were made by or through an affiliated company or agent, we ''collapsed'' the affiliated parties before considering the selling functions performed. The selling functions and activities examined for each reported customer group were:

(1) The process used to establish the terms and conditions of sale (''sales process''); (2) whether the sale was produced to order or filled from normal inventory (''inventory maintenance''); (3) whether the customer was serviced from a forward warehouse (''forward warehousing''); (4) freight and delivery provided or arranged by the manufacturer/exporter (''freight''); (5) manufacturer provided or shared direct advertising or in-store promotion expenses (''advertising''); and (6) warranty service program or after-sales service provided by producer (''warranties'').

In reviewing the selling functions reported by Maktas for each customer group, we considered all types of selling functions, both claimed and unclaimed, that had been performed. Where possible, we further examined whether the selling function was performed on a substantial portion of sales within the relevant customer group. In analyzing whether separate levels of trade exist in this investigation, we found that no single selling function in the pasta industry was sufficient to warrant a separate level of trade (*see, Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7307, 7348 (February 27, 1996)) (Proposed Regulations).

In determining whether separate levels of trade existed in or between the U.S. and home markets, the Department considered the level of trade claims of Maktas, but the ultimate decision was based on the Department's analysis of the selling functions associated with the customer groups reported by Maktas.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale. For Maktas, we compared the level of trade in the U.S. market to the sole home market level of trade and found them to be dissimilar in aggregate selling functions. Therefore, we established normal value at a level of trade different than the U.S. sales.

We then examined whether a level of trade adjustment was appropriate for Maktas when comparing its U.S. level of trade to its home market level of trade. However, because there was only a single home market level of trade, there was no basis for making a level of trade adjustment based on a demonstration of a consistent pattern of price differences between the home market levels of trade. The SAA states that ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *SAA* at 830. The alternative methods for calculating a level of trade adjustment for Maktas were examined. However, we do not have information which would allow us to examine pricing patterns based on Maktas's sales of other products at the same level of trade as the home market sales and there are no other respondents with the same levels of trade as those found for the home market sales of Maktas. Therefore, we were unable to calculate a level of trade adjustment for Maktas based on these alternative methods. Accordingly, Maktas's U.S. sales were compared to home market sales based solely on the product characteristics of the merchandise.

As noted below in the ''Comparison Methodology'' section of this notice, where there were distinct price differences within different levels of trade in the case of Maktas, we considered the customer category in creating the averaging groups for our comparisons.

Fair Value Comparisons

To determine whether sales of pasta by Maktas to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparisons to weighted-average NVs.

As discussed in the *Preliminary Determination,* we determined that Turkey's economy experienced hyperinflation during the POI. Accordingly, to avoid the distortions caused by the effects of hyperinflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis.

Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchase in the United States prior to importation and Constructed Export Price (CEP) methodology was not otherwise warranted based on the facts of this investigation. We calculated EP based on the same methodology used in the preliminary determination. We made the following additional adjustment, based on information obtained at verification; we included export customs commission expenses as part of brokerage and handling expenses and made deductions for these expenses from the starting price (gross unit price).

Normal Value

In accordance with section 773(a)(1)(B) of the Act, we based NV on home market sales, or, where appropriate, on CV. We compared all home market sales to the COP, as described below. Where home market prices were above the COP, we calculated NV based on the same methodology used in the preliminary determination, with the following exceptions:

1. As discussed above, we applied facts available for selling expenses. As facts available, we treated the indirect selling expenses Maktas incurred on its sales to the United States as a direct selling expense and made a COS adjustment for these expenses. Indirect selling expenses as reported were revised based on information obtained at verification.

2. We made an additional COS adjustment for bank charges incurred on U.S. sales, based on information obtained at verification.

3. We used revised home market short-term interest rates obtained at verification for computing imputed credit expenses for home market sales. For the month of August 1994, in which Maktas did not report a short-term borrowing rate, we used the average of the short-term borrowing rates for July and September 1994.

4. For sales made through Andas Gida Dagitim ve Ticaret A.S. (Andas), one of Maktas's two affiliated distributors in the home market, we made no deductions for inland insurance because it was found at verification that Andas did not actually incur any expense for inland insurance during the POI.

Cost of Production Analysis

As discussed in the preliminary determination notice, the Department conducted an investigation to determine whether Maktas made home market sales during the POI at prices below COP within the meaning of section 773(b) of the Act. Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Maktas's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. As noted in the *Preliminary Determination,* we used the respondent's reported monthly COP figures which were based on the current production costs incurred during each month of the POI. This was done in order to avoid the distortive effect of inflation on our comparison of costs and prices. We relied on the reported COP amounts with the following exceptions:

1. As discussed above in the *Facts Available* section, we applied facts available for interest and G&A expenses.

2. Based on information obtained at verification, we recalculated fixed overhead costs by including certain depreciation expenses. *See,* Comment 7 below.

3. We recalculated packing costs for certain products. *See,* Comment 6 below.

B. Test of Home Market Prices

As stated in the *Preliminary Determination,* we used the respondent's adjusted monthly COP amounts and the wholesale price index published by the Government of Turkey's State Institute of Statistics to compute an annual weighted-average COP for the POI. We compared the adjusted weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time. On a product specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, packing, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of sales during the POI of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of sales of a given product were at prices less than the COP, we disregarded only the below-cost sales because such sales were found to be made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, and at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain pasta products, more than 20 percent of Maktas's home market sales were sold at below COP prices within the POI. Further, these sales did not provide for the recovery of costs within a reasonable period of time. We determined, therefore, that these below cost sales were made in substantial quantities within an extended period of time and we excluded these sales and considered the remaining above-cost sales in determining NV, if such sales existed, in accordance with section 773(b). For those pasta products for which there were no above-cost sales in the ordinary course of trade, we compared export prices to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on

the sum of Maktas's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales database. In accordance with sections 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. Where appropriate, we calculated CV based on the methodology described above in the calculation of COP and added an amount for profit. For selling expenses, we used the weighted-average home market selling expenses.

Comparison Methodology

In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs. The weighted averages were calculated and compared by product characteristics and, where appropriate, level of trade and/or price averaging groups. The SAA states that in determining the comparability of sales for inclusion within a particular average, ''Commerce will consider factors it deems appropriate, such as * * * the class of customer involved,'' *SAA* at 842. The Department, not the respondents, determines which customers may be grouped together for product comparison purposes. *Cf., N.A.R., S.p.A.* v. *U.S., 741 F. Supp. 936* (CIT, 1990). Based on the chain of distribution for the pasta industry, we have identified the following five distinct customer categories that represent different points in the chain of distribution: (1) Other pasta manufacturers (Pastificios) who purchase and resell pasta; (2) distributors; (3) wholesalers; (4) retailers; and (5) consumers. Each of these customer categories was defined by functions commonly associated with each category of customer in the areas of: (1) category of the supplier; (2) contractual relationship with the supplier; (3) exclusivity of sales territory; (4) exclusivity of product range; (5) sales practices; and (6) downstream customer category.

For Maktas, based on our analysis, we found that there were consistent price differentials among the customer categories in the home market. Therefore, the weighted-average prices were calculated and compared by product characteristics and by customer category.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rate from the Dow Jones Service, as published in the *Wall Street Journal.* As discussed below under Comment 12, we used the actual daily exchange rates for the final determination.

Verification

As provided in section 782(i) of the Act, we verified information provided by Maktas using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1 Use of Facts Available for Filiz: The petitioners argue that Filiz failed verification and, therefore, the Department should base its final determination on total adverse facts available. Specifically, the petitioners claim that Filiz significantly impeded the investigation and acted in an uncooperative fashion by: withholding its constant currency financial statements; failing to report materials costs in accordance with the Department's instructions; and refusing to provide consolidated financial information.

With respect to the constant currency financial statements, the petitioners argue that Filiz's submitted cost data is flawed due to the absence of adjustments which were observed by the verifiers in notes to these financial statements. Furthermore, the petitioners argue that Filiz was uncooperative by not allowing the constant currency financial statements as an exhibit and by failing to provide adequate explanations for concerns which were raised by the Department regarding the adjustments found in the statements.

Moreover, the petitioners claim that Filiz was instructed by the Department to report its material costs based upon current material prices, rather than a LIFO (last-in, first-out) methodology, but failed to do so. Finally, the petitioners assert that, insofar as Filiz failed to provide the Department with its consolidated 1994 financial information, the Department must use adverse facts available.

According to the petitioners, if the Department determines not to use total facts available, it must adjust Filiz's costs for errors and correct its final margin calculations to account for inaccuracies and omissions in the reported costs and expenses that the Department discovered during verification.

Filiz urges the Department to reject the petitioners' assertion that facts available should be used for the final determination. Contrary to the petitioners' contention, Filiz asserts that it was entirely cooperative throughout the investigation and that its costs were fully verified. Specifically, Filiz claims that the constant currency financial statements are irrelevant to this investigation, that it reported material costs as reflected in its accounting system, and that it was an impossible task to provide the Department with consolidated financial information. Filiz suggests that the Department should use its submitted costs, adjusted for a few clerical errors, for the final determination.

Filiz argues that the Department did not need to utilize the constant currency statements because they are irrelevant to this investigation, insofar as they are adjusted for inflation, were prepared in accordance with international accounting standards, and reflect the consolidation of Filiz and Filiz Pazarlama (its affiliate).

In furtherance of its contention that the Department did not need to make use of the constant currency financial statements, Filiz argues that its independent accountants did not, in fact, perform an audit on Filiz's 1994 financial statement, but rather prepared a consolidated, inflation-adjusted report from the financial statements of the two corporations (Filiz and Filiz Pazarlama). Moreover, according to Filiz the adjustments which were noted in the constant currency statements were not required under Turkish tax law and all pertinent costs of production are captured in the financial statements which were submitted to the Department. Filiz suggests that the constant currency statements may not be used in this investigation since consolidated financial statements prepared in Turkey do not eliminate intragroup transactions, and argues that this renders such consolidated financial statements valueless for antidumping purposes since the Department holds that intragroup sales must be eliminated from a consolidated statement.

In addition, Filiz argues that it properly reported material costs in accordance with the Department's instructions and that the apparent underreporting described by the petitioners is merely a phenomenon caused by the high level of sophistication in Filiz's cost accounting system. According to Filiz, it properly replaced semolina costs with the average purchase price for the month

and used a LIFO inventory assumption thereafter. Filiz claims that it could not have taken any action to avoid the consequence discussed in the Department's verification report without severing the linkage between the company's normal accounting procedures and its reported costs. Therefore, Filiz argues that the Department should accept its reported costs as they reconcile to its cost accounting system and have been fully verified.

Finally, Filiz notes that it submitted the stand-alone financial statements of its parent company and argues that it is prohibited by Turkish tax law from consolidating the financial statements of the 40 or so affiliated parties in its group. Filiz maintains that it provided a group-wide interest expense ratio in a supplemental response and that this figure should be used by the Department for the imputation of any expenses. In the absence of any evidence of financial transactions between Filiz and its affiliated parties, Filiz asserts that there is no justification for amending its reported interest expenses.

DOC Position: Our decision to use facts available for the final determination is discussed in detail in the *Facts Available* section. In this section we respond to additional comments by Filiz which were not addressed therein.

Based upon our limited review of Filiz's constant currency financial statements, we agree with Filiz that they were adjusted for inflation, prepared in accordance with international accounting standards, and reflect the consolidation of Filiz and an affiliated distributor of pasta. However, none of these characteristics mitigate questions raised by the ''major adjustments'' we observed in a note to the financial statements. These adjustments, which were not recorded by Filiz in its submitted financial statements, cause us to question whether Filiz's reported conversion costs, G&A expenses, and financial expenses accurately reflect the company's production costs.

The fact that these consolidated financial statements were inflation-adjusted and prepared in accordance with international accounting standards does not reduce our concerns. Although Filiz claims that these adjustments arise from differences between Turkish tax law and international accounting standards, it does not explain why these differences were not taken into account during its preparation of the COP and CV data. As noted in the cost verification report, Price Waterhouse has stated that the differences between these two sets of accounting rules (Turkish and international) are significant and, in fact, the constant currency financial statements would present a more accurate picture of Filiz's costs: ''In general, lack of clearly defined commercial accounting principles and the predominance of tax law mean that reports prepared in accordance with Turkish law should be treated with extreme caution and the framework of fair presentation under IASC 'Standards Recommended by the International Accounting Standards Committee' is preferred.'' (*Doing Business in Turkey* by Price Waterhouse (1993), page 101.)

Additionally, Filiz's counsel stated during the public hearing that the financial statements used by Filiz to calculate its reported costs were prepared on a *cash* basis. The potential effect of calculating production costs on a cash basis, rather than an accrual basis, is especially significant due to the hyperinflation which existed in Turkey during 1994 (inflation totaled 121.24 percent, according to the IMF's *International Financial Statistics*).

The suggestion at verification by counsel for Filiz that the company's management and staff were unable to answer any questions about the constant currency statements because they were prepared by the company's auditors, is not supported by international accounting standards. As noted in the cost verification report, and as confirmed by Filiz, the constant currency statements were prepared in accordance with standards issued by the International Accounting Standards Committee (IAS). According to the IAS, ''The management of an enterprise has the primary responsibility for the preparation of the financial statements of the enterprise.'' (*Framework for the Preparation and Presentation of Financial Statements*, International Accounting Standards Committee (July 1989) at paragraph 11.) Accordingly, it is reasonable to expect that Filiz personnel should have been able to answer the Department's questions about these statements. Moreover, Filiz management had ample opportunity to consult with its auditors, if they believed it was necessary to do so, for a proper understanding of the statements. Instead, Filiz chose to withhold the statements and explanations.

Additionally, Filiz appears to contradict itself when it argues that the constant currency financial statements do not eliminate intragroup transactions. Filiz claims that certain companies in Turkey produce consolidated financial statements in which ''no elimination of intragroup transactions or unrealized intercompany profits is possible.'' (*Doing Business in Turkey*, page 106.) We note, however, that if these statements were prepared in accordance with IAS standards, as claimed, then, such transactions would not have been included: ''intragroup balances and intragroup transactions and resulting unrealized profits should be eliminated in full.'' (*Consolidated Financial Statements and Accounting for Investments in Subsidiaries*, International Accounting Standards Committee (April 1989) at paragraph 30.)

Regarding the LIFO methodology, the Department provided clear instructions to Filiz that the ''valuation of materials used should be based upon current material prices.'' (*See*, July 12, 1995 questionnaire at D–13 and October 13, 1995 supplemental questionnaire at 3.) Furthermore, the respondent was instructed to contact the Department if there were any questions regarding its computation of costs.

With regard to Filiz's comments regarding its consolidated financial information, these issues became moot when the Department decided to base its final determination on total adverse facts available.

Comment 2 Use of Facts Available for Maktas: The petitioners argue that the Department should use total facts available for Maktas in the final determination because: (1) Maktas failed to provide the Department with critical information; (2) the Department made repeated requests for such information; (3) Maktas ignored these requests and provided no explanation why it would not provide the requested information; and (4) without this information, the Department cannot rely on or properly verify other information provided by Maktas. Specifically, petitioners note that Maktas refused to provide the Department with the 1994 financial statements of its major shareholder, Piyale-Besin, and the monthly financial statements of Mafer Ambalaj Sanayi ve Ticaret Ltd. Sti (Mafer), one of Maktas's affiliated companies. Without the financial statements of these two companies, the petitioners contend that the Department could not confirm the accuracy of the information provided in both the COP/CV and sales verifications, and, thus, the Department cannot calculate an appropriate normal value or perform accurate sales comparisons.

According to the petitioners, Maktas's failure to provide financial statements for Piyale-Besin results in a failure by the Department to verify whether Piyale-Besin has provided Maktas with any assistance or absorbed any costs related to administration, finance,

accounting, selling, marketing, or advertising of pasta. Additionally, the petitioners contend that without Piyale-Besin's financial information, the Department could not properly verify sales information for Maktas and its affiliates. In particular, the petitioners raise questions about Maktas's claim that, with the exception of Maktas's two affiliated distributors in the home market (*i.e.*, Tumgida Dagitim ve Ticaret Ltd. Sti. and Andas), none of the affiliated companies of Maktas, including Piyale-Besin, is engaged in the production or sale of pasta.

Moreover, the petitioners note that Maktas failed to provide the Department with monthly financial information for Mafer, which was requested in a supplemental questionnaire. Accordingly to the petitioners, without the monthly financial statements of Mafer, the Department could not verify Maktas's claim that Mafer is an inactive company. The petitioners in particular question whether Mafer, who is related to Maktas, has provided Maktas with any packaging materials for pasta which, if true, could result in discrepancies in the reported packaging costs.

In support of its position for application of total facts available, the petitioners cite *Grain-Oriented Electrical Steel From Italy*, where the Department concluded that ''without verified COP/CV data'' the Department has no basis to calculate an appropriate normal value and cannot perform sales comparisons. Therefore, the Department used total facts available in that case. Similarly, the petitioners urge the Department to use total facts available for Maktas in the final determination.

Furthermore, the petitioners argue that the Department should apply adverse facts available because the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information. The petitioners claim that Maktas's refusal to provide the financial information of Piyale-Besin and Mafer demonstrates that Maktas has been uncooperative and has significantly impeded this investigation. Accordingly, the petitioners contend that the Department should select as facts available the highest margin contained in the petition for use in the final determination.

Maktas argues that the application of facts available is unwarranted. In the absence of significant intercompany transactions between Piyale-Besin and itself, Maktas claims that it would be improper to presume that expenses of Piyale-Besin and itself should be consolidated for purposes of margin calculation. In support of its argument, Maktas cites *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil*, 59 FR 732, 737 (January 6, 1994) (*Ferrosilicon from Brazil*).

According to Maktas, even though the Department was not able to examine the financial statements of Piyale-Besin, it had full access to all of Maktas's financial records from which to verify that there were no significant transactions between Piyale-Besin and Maktas. Maktas submits that, in fact, there was one small sales transaction between Piyale-Besin and Tumgida during the POI, which was reported in its response and subsequently excluded from the preliminary margin calculation. Maktas maintains that the Department, through its examination of Maktas, Andas, and Tumgida's sales records, verified that no other transactions between Piyale-Besin and the respondent occurred during the POI. Accordingly, Maktas argues that it should not be subjected to facts available by reason of not providing the financial statements of Piyale-Besin.

With respect to Mafer, Maktas maintains that Mafer was inactive during the POI. Mafer's 1994 year-end financial statement, which was provided to the Department in its November 13, 1995, submission, reports a small amount of gross sales and cost of services. Maktas asserts that such small financial figures are indicative of an inactive company. Therefore, Maktas contends that it should not be subjected to any facts available by reason of not providing the monthly financial statements of Mafer.

DOC Position: We disagree with the petitioners' claim that we should use total adverse facts available for Maktas in the final determination. With respect to Piyale-Besin, we do not believe that Maktas's refusal to provide Piyale-Besin's financial statements warrants the application of total adverse facts available. However, as discussed above in the *Facts Available* section of the notice, we conclude that the application of facts available for certain elements of cost and sales data (*i.e.*, interest, G&A and selling expenses) is appropriate for our final determination.

Regarding the petitioners' reliance on *Grain-Oriented Electrical Steel From Italy* in support of its request for total facts available, we note that circumstances as presented in that case are distinct from those in this investigation. Unlike in *Grain-Oriented Electrical Steel From Italy*, there were no significant problems found in Maktas's reported materials, labor, and overhead costs. While it is true that Maktas's failure to provide the financial statements of Piyale-Besin raises questions as to the accuracy of certain reported expenses, Maktas was able to substantiate much of the remaining information contained in its COP/CV database. Therefore, the application of total adverse facts available would be inappropriate.

Furthermore, with respect to the petitioners' assertion that without access to Piyale-Besin's financial statements we could not verify Maktas's claim that Piyale-Besin is not engaged in the sale of pasta, we refer to the Dun and Bradstreet ''Business Information Report'' (BIR) on Piyale-Besin which we independently obtained for the record on January 24, 1996. The BIR states that Piyale-Besin is an ''investment company'' with five employees, which supports Maktas's contention that Piyale-Besin is only a holding company. Further, the BIR lists ''affiliates'' of Piyale-Besin. Based on information on the record, we are satisfied that none of the active affiliates listed in the BIR, other than Maktas, Tumgida and Andas, are engaged in the production or sale of pasta. Thus, we believe that it is reasonable to conclude that Maktas has completely reported its sales of pasta.

Turning to Maktas's argument, we note that Maktas's reliance on *Ferrosilicon from Brazil* in support of its position that consolidation of interest expense (or any other expenses) is required ''only after it has been established that the holding company and the respondent have significant financial transactions with each other'' is misplaced. In that case, the Department clearly stated its position that ''the cost of capital is fungible, therefore, calculating interest expenses based on consolidated statements is the most appropriate methodology.'' *Id.* at 732. With respect to Mafer, we agree with Maktas that the evidence on the record supports its claim that Mafer is inactive.

Comment 3 Level of Trade: Comment 3A Whether the Department Should Consider the Class of Customer and/or Channel of Distribution in Determining Whether Separate LOTs Exist: The petitioners and Maktas argue that the level of trade (LOT) methodology adopted by the Department in its preliminary determination is flawed and should be substantially revised in the final determination. Specifically, the petitioners and Maktas assert that the Department improperly focused solely on selling functions and ignored the customer groups and/or channels of distribution identified by each respondent as potentially different points in the chain of distribution.

The petitioners assert that it has been long recognized by the Department and the Court of International Trade (CIT) that LOTs reflect ''an attempt to reconstruct prices at a specific, 'common' point in the chain of commerce * * *''), *Smith Corona* v. *United States,* 713 F.2d 1568, 1571–72 (Fed. Cir. 1983). Claiming that the new statute, the SAA, and the Department's Proposed Regulations do not define LOT or establish criteria for determining separate LOTs, the petitioners argue that the fundamental concept of LOT has not changed under the new statute. Therefore, they each contend that the definition of LOT still reflects the Court of Appeals' and the Department's longstanding interpretation of that term (*i.e.,* that LOT refers to different points in the chain of distribution). (*See, e.g.,* Import Administration Policy Number 92/1 at 2 (July 29, 1992), (''In asking for LOT information, the Department is trying to determine where in the distribution chain the respondents' customer falls (end user, distributor, retailer).'') *Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18,791, 18,794 (April 20, 1994), (''Comparisons are made at distinct, discernable levels of trade based on the function each level of trade performs, such as end-user, distributor, and retailer.'')).

Although the petitioners recognize that the new statute contains certain refinements to the LOT concept, the petitioners argue that the amendments to the law made by the URAA did not alter the fundamental definition of LOT as noted above. Consequently, they argue that the starting point for determining whether different LOTs exist is whether the sales take place at different points in the chain of distribution. The petitioners cite *Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8916 (March 6, 1996) (*French Rod*) as a recent case where, in analyzing potential LOTs, the Department relied upon the distinctions the respondents identified between channels of distribution. (''Respondents reported two channels of distribution in the home market * * *. We examined and verified the selling functions performed in each channel * * *. Overall we determine that the selling functions between the two sales channels are sufficiently similar to consider them one level of trade in the home market.'')), *French Rod,* 61 FR 8916. Therefore, the petitioners assert that the Department should consider the potential LOTs identified by the respondents, in terms of channels of distribution or customer groups, in determining whether separate LOTs exist.

DOC Position: While neither the Act nor the SAA provides an explicit definition of LOT or establishes criteria for determining whether separate LOTs exist, the SAA does specify that the Department requires evidence that ''different selling activities are actually performed at the allegedly different levels of trade'' before recognizing distinct LOTs. *SAA* at 829. This is confirmed again by the SAA in the discussion of the required pattern of price differences for the LOT adjustment, where it states that ''where it is established that there are different levels of trade based on the performance of different selling activities * * *,'' Commerce will make a LOT adjustment. *SAA* at 830. Thus, the Act and the SAA have identified selling activities as a key factor in determining LOTs; however, the statute does not require that this analysis begin and end with the selling activities of the producer/exporter.

In the preliminary determination, the Department stated that it would continue to examine its policy for making LOT comparisons and adjustments. After reviewing the comments we received on this issue as well as the Department's recent practice for determining the existence of LOTs, we have determined that certain modifications to the LOT methodology used in the preliminary determination are warranted. As described in the ''Level of Trade'' section of this notice, above, in order to determine whether distinct LOTs exist, we have examined the full array of selling functions provided to each of the customer groups alleged by Maktas. As noted in Comment 3C below, we believe that this approach will allow us to consider all types of selling functions, both claimed and unclaimed, that had been actually performed in determining the LOT and avoid instances where a single selling function difference on individual sales transactions warrants the finding of a distinct LOT. Finally, by reviewing the selling functions within each of the alleged customer groups, we expect that the analysis will capture any possible differences in the mix of selling activities provided for each customer group.

Comment 3B Whether the Selling Functions of a Respondent Should be Considered in Determining Whether Separate LOTs Exist: Maktas argues that the functions or services performed by the respondents are not determinative of whether different LOTs exist and should not be taken into consideration in the Department's LOT analysis. Maktas asserts that Section 773(a)(7)(A) of the new statute provides for a *LOT adjustment* ''if the difference in LOT * * * involves the performance of different selling activities.'' Accordingly, Maktas asserts that the selling activities of the respondent cannot be part of the definition of LOT and only become relevant *after* it is determined that separate LOTs, in fact, exist. Therefore, Maktas argues that the question of whether the seller performs different selling functions is only relevant in determining whether a LOT adjustment is warranted.

The petitioners argue that the SAA is clear in stating that selling functions are intended to be an integral part of establishing whether different LOTs exist. (''Commerce will grant {LOT} adjustments only where: (1) There is a difference in the LOT (*i.e.,* there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets)). *SAA* at 829. The petitioners contend that the SAA's reference to a ''difference between the *actual functions performed*'' clearly implies that a distinction in LOT should not be made without a finding of functional differences. In addition, the petitioners claim that the SAA implies that something more than a mere reference to the class of customer would be needed to identify separate LOTs { ''[n]ominal reference to a company as a 'wholesaler,' for example, will not be sufficient'' in determining LOT}. *SAA* at 829. Therefore, the petitioners argue that a selling function analysis is relevant in determining whether separate LOTs exist and that the Department should continue to examine the selling functions of the respondents in its final determination. The petitioners cited *French Rod* as a recent case where the Department examined the selling activities of the respondent in determining whether there were separate LOTs (''In order to identify LOTs, the Department must review information concerning the selling functions of the exporter,'' *French Rod,* 61 FR 8916 (March 6, 1996).

DOC Position: We agree with the petitioners. The SAA states that, ''Commerce will require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade * * *. On the other hand, Commerce need not find that the two levels involve no common selling activities to

determine that there are two levels of trade.'' *SAA* at 159, and *Cf., Proposed Regulations* at 7348. Thus, as noted in Comment 3A above, information about the selling activities of the producer/exporter is essential to the identification of LOTs.

Comment 3C Whether the Department Should Reject The Four Selling Function Coding System Used in the Preliminary Determination: In the event the Department determines it is appropriate to define LOTs based on selling function distinctions, the petitioners argue that the LOT coding methodology used in the preliminary determination should be rejected because it is inconsistent with law and commercial reality. First, the petitioners assert that the Department's LOT coding system resulted in a finding that a difference in any one selling function is sufficient to define a separate LOT. The petitioners argue that this methodology is at odds with the Department's Proposed Regulations which specifically reject the notion that a difference in one selling function alone would be sufficient to define an entirely separate LOT in most instances. *Cf., e.g., Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308, 7348 (February 27, 1996) (*Proposed Regulations*) at 7348.

Second, the petitioners argue that the selling function categories used in the preliminary determination are unreasonable and overly narrow. Given the different combinations of the four selling function categories used in the preliminary determination, there were 16 possible LOT combinations in each market. The petitioners assert that because LOT is used as a matching criterion, the overly-narrow LOT segments resulted in large amounts of home market sales not being used to determine whether dumping was occurring.

Finally, the petitioners argue that the extent or cost of the function provided should not be used to distinguish selling activities. The petitioners assert that while expenses for services to some customers may be more than to others, the expense difference may not reflect a true difference in selling activities or services, but instead represent the costs associated with sales shipped in larger or smaller quantities or to different geographic locations. In addition, the petitioners note that because the Department did not request data concerning the degree to which any selling activity is performed, there is no basis for the Department to perform such an analysis in this case.

DOC Position: In the preliminary determination, the Department stated that it would continue to examine its policy for making LOT comparisons and adjustments. After reviewing the comments we received on this issue as well as the Department's recent practice for determining the existence of separate LOTs, we agree with the petitioners that certain modifications to the LOT methodology utilized in the preliminary determination are warranted. Specifically, we find that: (1) The preliminary coding methodology measured LOTs based on the existence of individual selling functions, rather than basing LOTs on the collective array of selling activities performed by the seller; and (2) the coding system led to the result that a difference in just one selling function on any given sale necessarily justified a difference in LOT. Although neither the Act nor the SAA provide explicit guidelines for identifying LOTs, the preamble to the Proposed Regulations reflects our practice and states that ''small differences in the functions of the seller will not alter the level of trade.'' *Proposed Regulations* at 7348. Although the Proposed Regulations provide that a single function may be so significant as to constitute the existence of a separate LOT, we have determined that no single selling function in the pasta industry warrants the finding of a separate LOT. Therefore, as noted in the ''Level of Trade'' section of this notice, above, we have revised the LOT methodology used for the final determination. In order to determine whether separate LOTs existed within or between the U.S. and home markets, we have reviewed the full array of selling functions, in the aggregate, provided to each of the customer groups alleged by Maktas. In addition, because we have determined that no single selling function in the pasta industry is so significant as to alter the LOT, we have no longer considered a single difference in selling function to justify the finding of a separate LOT.

Comment 3D Which Selling Functions Should be Considered in Determining Whether Separate LOTs Exist: In lieu of the LOT methodology adopted in the preliminary determination, the petitioners argue that the Department should examine the full array of selling functions, in the aggregate, provided to each potential LOT to determine whether separate LOTs exist. The petitioners assert that this methodology was adopted by the Department in the *French Rod* case where the Department examined the collective array of selling activities performed for each channel of distribution and found that minor differences between the home market sales examined did not justify segmenting the sales into different LOTs (''{we} found that the two sales channels provided many of the same or similar selling functions including: strategic planning, order evaluation, warranty claims, technical services, inventory maintenance, packing and freight and delivery. We found some differences between the two channels of trade in advertising, customer contacts, computer systems (order input/invoice system), and administrative functions. Overall, we determine that the selling functions between the two sales channels are sufficiently similar to consider them as one level of trade in the home market''). 61 FR at 8916.

Specifically, the petitioners assert that the following selling functions are relevant to the Department's LOT analysis for the U.S. and Italian pasta markets: (1) Freight and delivery; (2) customer sales contacts; (3) advertising; (4) technical services; (5) warranties; (6) inventory maintenance (pre-sale); (7) post-sale warehousing; and (8) administrative functions. In addition, the petitioners contend that in performing the selling function analysis, the Department should ensure that the selling activity is consistently applied to all, or at least the vast majority, of customers at each potential LOT identified. The petitioners claim it would be inappropriate to consider a selling function applicable to a particular LOT where the function was not provided to all customers, or on some but not all sales.

Finally, the petitioners argue that the Department should not attempt to define LOTs based on the following factors because they do not relate to differences in selling activities:

(1) *Quantities/Volumes Sold:* The petitioners assert that the SAA states that differences based on quantities sold are not a legitimate basis for defining LOTs or LOT adjustments. *SAA* at 830.

(2) *Geographical Location of the Customer:* The petitioners claim that the fact that two customers may be located in physically distinct geographical areas does not, in and of itself, demonstrate that different LOTs exist.

(3) *Which Selling Entity Performs the Functions:* The petitioners assert that whether a selling function is performed by an unaffiliated sales agent, an affiliated sales agent or the manufacturer, the same function is provided and the costs to the seller are the same. Therefore, the petitioners argue that the Department should not differentiate LOT based on which entity performs the selling function.

(4) *Commissions:* The petitioners argue that commissions are merely

payments to an agent to perform the same function that would otherwise be incurred by the manufacturer directly. Accordingly, the petitioners argue that commissions are an invalid basis to distinguish LOT.

(5) *Discounts and Rebates:* The petitioners argue that discounts and rebates are pricing mechanisms, not selling functions or activities, and that the presence of a discount or rebate has no bearing on the point in the chain of distribution at which the transaction occurs. In addition the petitioners contend that the dumping calculations recognize that discounts and rebates are a function of price by deducting them as ''price adjustments'' rather than ''COS adjustments.'' *Proposed Regulations* at 7381. For all of these reasons, the petitioners argue that discounts and rebates should not be included as a selling function distinction for LOT purposes.

(6) *Distinctions Between Customers Based on Price:* The petitioners assert that the statute does not suggest that LOT distinctions can be based on price differentials. (For a further discussion of this issue, see Comment 4D below.)

DOC Position: We agree with the petitioners that the Department's LOT analysis should consider the full array of selling functions in the aggregate, and ensure that the selling function was consistently applied to at least the vast majority of customers and sales in each LOT. As stated in the ''Level of Trade'' section of this notice, above, no single selling function in this industry warranted a separate LOT and, wherever possible, we examined whether the selling function was performed on a substantial portion of sales within the customer groups reported by Maktas. A company specific description of the selling functions assigned to the level(s) of trade for Maktas is provided in Comment 3E, below. In determining whether a selling function was applicable to a substantial portion of customers in the reported customer group, we relied on Maktas's narrative responses and sales transaction data, as well as information obtained during verification.

Section 773(a)(1)(B)(i) of the statute states that normal value will be based on ''the price at which the foreign like product is first sold * * * and to the extent practicable, at the same LOT as the export price or constructed export price.'' The SAA specifies that normal value will be calculated ''at the same LOT as the constructed export price or the starting price for export sales.'' *SAA* at 827. Therefore, in identifying LOTs for export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustment, for the customer group reported by Maktas.

We agree, in part, with the petitioners regarding the types of selling functions that should or should not be considered in defining LOTs. The selling functions to be considered in establishing whether separate LOTs exist were based on the nature of the pasta industry. The five selling functions used by the Department to establish the LOTs in this investigation are reflective of the functions and activities incurred in the sale of pasta to the U.S. and in the home market. These functions have been identified in the ''Level of Trade'' section of this notice, above. However, we disagree with the petitioners that technical services or post-sale warehousing should be included in the selling function analysis; these activities did not occur in the pasta industry. Regarding the other selling functions, we were generally in agreement with the petitioners' recommendations regarding which selling functions to include in determining LOTs.

Comment 3E Company-Specific Analysis of Selling Functions: The petitioners argue that a review of the selling functions undertaken by Maktas to the U.S. and home market customers, based on the collective approach to analyzing selling functions utilized in *French Rod*, shows that there are few, if any, functional differences between the U.S. and home market sales of pasta. Therefore, petitioners claim that the Department should determine that different LOTs do not exist for Maktas within the U.S. or Turkish markets or between the U.S. and Turkish markets.

Insofar as the Department has conducted its own selling function analysis to determine whether separate LOTs exist, many of the arguments presented by the petitioners are now moot and, therefore, have not been specifically addressed. Therefore, the Departmental Position for each respondent reflects the results of the Department's selling function analysis. The selling function analysis utilized by the Department is described in the ''Level of Trade'' section of this notice, above.

The petitioners argue that Maktas's request for differentiating LOTs on must be rejected for two reasons: (1) Maktas has not demonstrated which sales are in which channel of distribution identified, or even that all sales within a channel are shipped as described, and (2) the selling functions examined by the Department provide no basis for distinguishing home market LOTs. Further, the petitioners argue that an examination of the selling functions used by the Department at the preliminary determination provides no basis to find different LOTs in the U.S. or home market. Therefore, the petitioners argue that the Department should continue to compare U.S. sales to all home market sales for the final determination.

DOC Position: We agree with the petitioners, in part. Based on our own analysis of the selling functions performed by Maktas, as described in the ''Level of Trade'' section of this notice, above, we found that all U.S. and home market sales were made at a single LOT. However, we determined that the U.S. LOT was different from the home market LOT.

Maktas reported one customer group in the U.S. market. For the home market, Maktas reported seven customer groups. We found these customer groups to be similar in that Maktas performed the following selling functions for certain customer groups: sales process, inventory maintenance, forward warehousing, freight, advertising and warranties. We found these customer groups to be different in how Maktas performed forward warehousing for certain customer groups. Overall, we determined the selling functions between these seven customer groups to be sufficiently similar to consider them one LOT.

We then compared the LOT in the U.S. market to the home market LOT and found the selling functions performed for certain customer groups in the areas of freight, forward warehousing, and warranties to be similar. We found the selling functions performed for certain customer groups in the areas of sales process, inventory maintenance, forward warehousing, and advertising to be dissimilar. Overall, these factors warrant finding the U.S. and home market sales to be made at different LOTs.

Comment 3F LOT Adjustments: To the extent the Department finds LOT distinctions between U.S. and home market sales, the petitioners argue that there is no justification for a LOT adjustment for any of the respondents in this investigation. Specifically, the petitioners assert that Section 773(a)(7)(A) of the Act states that LOT adjustments are permissible only to the extent that it has been *demonstrated* that the difference between EP and normal value reflects differences in LOTs involving the performance of different selling functions and ''a pattern of consistent price differences between sales'' at the different LOTs in the home market. In addition, the petitioners assert that the *SAA* states that ''if a respondent claims an

adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.'' *SAA* at 829. Therefore, the petitioners argue that by law, the respondents bear the burden of demonstrating entitlement to a LOT adjustment and that Maktas has not met this burden.

DOC Position: We agree with the petitioners, in part. As described in the ''Level of Trade'' section of this notice, above, we found no basis for making a LOT adjustment for Maktas. In light of the fact that we did not make a LOT adjustment, we regard the petitioners argument concerning the burden on respondent to demonstrate entitlement to a LOT adjustment to be moot.

Comment 4A Whether to Take Customer Category into Account in Creating the Weighted-Average Groups used for Product Comparisons: The petitioners argue that neither the law nor the facts of this investigation support making product comparisons based on customer classes unless it is demonstrated that the difference between customer classes reflect a difference in the LOT. Citing Section 773(a)(1)(B) of the Act, the petitioners contend that normal value is defined based on price comparisons reflecting the same physical characteristics and, where possible, the same LOT, as the export or constructed export price. Therefore, the petitioners assert that absent a finding of different LOTs among the various customer categories, the Department cannot make product comparisons based on customer categories or channels of distribution.

Although the petitioners recognize that the SAA refers to ''the class of customer involved'' as a factor that the Department may consider in creating averaging groups, the petitioners contend that the Department's Proposed Regulations emphasize that the use of averaging groups was intended to apply only to U.S. prices, and was not meant to affect the calculation of normal value. (''In applying the average-to-average method, the Secretary will identify those sales* * * *to the United States* that are comparable, and will include such sales in an ''averaging group.'' ''An averaging group will consist of subject merchandise* * * that is sold *to the United States* at the same LOT. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region *of the United States* in which the merchandise is sold* * *.''). *Proposed Regulations* at 7386 (section 351.414(d)). (Emphasis added).

The petitioners contend that normal value is still defined in the law based on price comparisons reflecting the same product characteristics and, where possible, the same LOT. Therefore, the petitioners argue that the Department does not have the authority under the new statute to subdivide home market sales into separate groups based on customer classes unless it is first demonstrated that the difference between customer classes reflects a difference in LOT. The petitioners claim that to do otherwise would effectively be using the product averaging concept to re-define normal value.

Finally, the petitioners argue that the Department's recent practice of considering either the class of customer or the channel of distribution as a factor in the averaging group without first finding distinct LOTs is unlawful and inconsistent. Specifically, the petitioners assert that in *Polyvinyl Alcohol* the Department created product averaging groups based on customer categories stating that it found ''significantly different prices, depending on the customer category.'' 61 FR at 14070. The petitioners contend that in *French Rod* and *Kiwifruit* the Department relied on channels of distribution, rather than customer categories, in determining the averaging groups and further identified no pricing distinctions between the channels examined. In all three cases the petitioners assert that the Department made no statutory citations and provided little or no explanation for its actions.

DOC Position: We disagree with the petitioners. Section 777A(d)(1)(A)(i) of the Act states that the Department will determine whether the merchandise is being sold in the United States at less than fair value ''by comparing the weighted average of the normal values to the weighted average of the export prices (and/or constructed export prices) for comparable merchandise.'' In addition, the SAA specifies that in order to ensure that the weighted-averages are meaningful, ''Commerce will calculate averages for comparable sales of subject merchandise'' sold in both the U.S. and foreign markets. ''In determining the comparability of sales for inclusion within a particular average, Commerce will consider factors it deems appropriate, such as * * * the class of customer involved.'' *SAA* at 842. *See also, Proposed Regulations* at 7349.

Although we agree with the petitioners that the Proposed Regulations refer to the term ''averaging groups'' only in the context of U.S. sales, we do not agree with the petitioners' assertion that the use of averaging groups was intended to apply only to U.S. prices, and was not meant to affect the calculation of normal value. As noted above, the statute directs the Department to compare weighted average normal values to weighted-average export prices/constructed export prices. In addition, the SAA states that for inclusion within a particular average, the Department will consider factors it deems appropriate. Therefore, in order to ensure a fair comparison, customer category is a factor that may be used in both the calculation of export price and/or constructed export price and normal value.

As noted in the ''Comparison Methodology'' section of this notice, above, and Comment 4B, below, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. Accordingly, consistent with the SAA and our practice in *Polyvinyl Alcohol*, we have relied on the revised customer categories in calculating the weighted-average values used for sales comparisons in instances where: (a) We found that distinct customer categories existed, and (b) we determined that there was a consistent and uniform pattern of pricing differences among the customer categories. (For a further discussion on price averaging and the calculation of the weighted average prices for each respondent, see the ''Comparison Methodology'' section of this notice, above.)

Comment 4B Whether to Accept the Customer Classifications or Channels of Distribution Alleged by the Respondents: The petitioners argue that in the event the Department determines it is appropriate to create averaging groups based on customer categories or channels of distribution, it is up to the Department, not the respondents, to determine which customers may be grouped together. *Timken Co.* v. *United States*, 630 F. Supp. 1327 (Ct. Int'l Trade 1986) (the Court held that the Department is obligated to choose the home market models for comparison and may not delegate this role to respondents). In addition, the petitioners cite to the SAA in support of their contention that the Department should not accept a respondent's ''nominal reference to customer classes'' without requiring evidence of actual class differences based on the selling functions of the respondent. *SAA* at 829. To the extent the Department rejects reliance on selling functions as a means of distinguishing customer categories, the petitioners argue that the Department should, at a minimum,

determine whether different customers exist at different points in the chain of commerce. Citing *PETs from Singapore*, the petitioners assert that it is not the Department's practice to accept, without question, the respondents' characterizations of its customer classes as the basis for determining its product comparisons groups. (*See, e.g., Final Determination of Sales at less Than Fair Value: Certain Portable Electric Typewriters from Singapore*, 58 FR 43334, 43338–43339 (August 16, 1993)(*PETs from Singapore*) (stating that all retailers had the same function and, thus, no distinction between the claimed customer categories was justified.)

DOC Position: We agree with the petitioners that it is the responsibility of the Department, not respondents, to identify which customers may be grouped together for product comparison purposes. This has been our consistent practice and policy. *Cf., N.A.R., S.p.A.* v. *United States*, 741 F. Supp. 936 (Ct. Int'l Trade 1990). (Insofar as a foreign manufacturer, given the opportunity of selecting which product comparisons should be used, would most likely make a choice that is most advantageous to itself, the identification of product comparisons are made by the Department.) *See also, United Engineering & Forging* v. *United States*, 779 F. Supp. 1375, 1381 (Ct. Int'l Trade 1991); *See Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 58 Fed. Reg. 37199, 37202 (July 9, 1993).

Therefore, as noted in the ''Comparison Methodology'' section of this notice, above, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. Based on the chain of distribution for the pasta industry, we reclassified the customer groups identified by Maktas into two distinct customer categories representing distinct points in the chain of distribution. For a further discussion, see the ''Comparison Methodology'' section of this notice, above.

Comment 4C Whether to Use Customer Category or Channel of Distribution in Defining the Averaging Groups used for Product Comparisons: The petitioners argue that to the extent a respondent has claimed distinctions in home market sales based on channels of distribution, the Department should reject these distinctions and instead rely on customer categories in creating the product comparison groups. The petitioners assert that nothing in the new statute, the SAA, or the Proposed Regulations permits the Department to consider channels of distribution in making product comparisons. As case precedent for their position, the petitioners cite *PETS from Singapore* where the Department explicitly rejected the respondent's request that it rely on channels of distribution as a comparison criteria, finding no support in the law for such an approach. (''Furthermore, channel of distribution is not a proper merchandise comparison criterion * * * there is no regulatory basis for comparing identical channels of distribution.'') *Id.* at 43338.

DOC Position: We agree with the petitioners that channels of distribution are not an appropriate basis for creating product averaging groups. As noted in Comment 4A above, the SAA states that in determining which sales to include within a particular average, ''Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and the class of customer involved.'' *SAA* at 842. *See also, Proposed Regulations* at 7349. The SAA does not contemplate the use of channels of distribution as a basis for creating an averaging group.

In addition, it has been the Department's past policy and practice, as outlined in Import Administration Policy Bulletin Number 92/2 (''Matching at Levels of Trade''), to consider the customer category, not channel of distribution, to determine whether the respondent's customers exist at distinct points in the chain of distribution (*e.g.*, end-user, distributor, retailer). Therefore, we have not relied on Maktas's reported channels of distribution in creating the weighted-average prices used for product comparisons in this final determination.

Comment 4D Whether the Department Can Rely on Price Differences as a Method for Distinguishing Customer Categories: If the Department determines it is not necessary to establish that there are different selling functions as a means of distinguishing customer categories, the petitioners argue that the Department should not define customer categories based on price distinctions as it did in *Polyvinyl Alcohol.* The petitioners assert that if price distinctions were all that was needed to define customer category, respondents would have a ''field day'' manipulating the dumping law by grouping its low-priced home market sales together and requesting that the Department compare its U.S. sales to this group of low-priced sales. Although the petitioners recognize that price distinctions may be relevant to a determination of whether product comparisons should be segmented by customer category, the petitioners argue that prices themselves cannot be the sole criterion. In order to establish that there are separate customer categories, the petitioners argue that the Department must first determine that different customers exist at different points in the chain of commerce.

DOC Position: We agree with the petitioners that price distinctions can not be a basis for determining the existence of customer categories. As noted in the ''Comparison Methodology'' section of this notice and Comment 4A, above, in order to determine whether the customer groups proposed by Maktas actually represented different customer categories, we considered whether the alleged customer groups represented distinct points in the chain of distribution. Therefore, price distinctions were not considered a relevant factor in defining the existence of customer categories. The existence of consistent price differences, however, was considered in determining whether customer categories should be taken into consideration in creating the product averaging groups.

Comment 5 Cost Test: Maktas states that the Department should conduct its 80/20 cost test on a monthly basis rather than over the POI. Maktas argues that the use of the POI to determine the extent of below cost sales for each control number sometimes results in normal values that are based on only a few above-cost sales. According to Maktas, the comparisons involving these above-cost sales ''drive'' the dumping margins for certain control numbers in certain months. Maktas refers to these above-cost sales as outliers and argues that the Department should delete the outliers from the sales database in performing its margin calculations. Furthermore, Maktas claims that, in a hyperinflationary economy, the Department has the discretion to determine that a single month is an extended period of time and, therefore, the 80/20 cost test should be conducted on a monthly basis for this investigation.

The petitioners argue that the methodology used by the Department to determine whether sales should be disregarded is in accordance with the law. They state that the statute and the SAA direct the Department to use a below-cost test that includes the full POI and argue that the Act does not provide for an exception from this rule for hyperinflationary economies.

Accordingly, the petitioners argue that the Department properly used the POI to determine whether it should disregard respondents' below-cost sales. The petitioners also claim that the Department's use of the few remaining above-cost sales as a basis for normal value in certain months is in accordance with the law. According to the petitioners, the SAA directs the Department to resort to constructed value only if there are no above-cost sales in the ordinary course of trade in the foreign market under consideration.

DOC Position: We disagree with Maktas. The Department's practice is to apply the 80/20 test on a POI basis since the SAA directs us to ''examine below-cost sales occurring during the entire period of investigation or review, as opposed to a shorter time period.'' Although Maktas argues that the Department has the discretion to determine that, in a hyperinflationary economy, we should conduct the 80/20 test on a single month, it has not provided any basis as to why we should depart from our general practice of applying the cost test over the entire POI. The only reason offered by Maktas is a belief that such a deviation might reduce the effect of so-called ''outlier sales.'' Moreover, section 773(b)(2)(B) of the Act defines the extended period of time in which we are to conduct the cost test as ''normally one year, but not less than six months.''

Finally, despite the concerns raised by Maktas with regard to basing normal value on ''outliers,'' the petitioners are correct in stating that the law requires us to use any sales found to be above cost in the ordinary course of business before resorting to CV as the basis for normal value.

Comment 6 Indexing of Costs: Maktas objects to the Department's use of an index to restate submitted monthly production costs. While the use of such an index to adjust costs may smooth out the effects of inflation, Maktas argues that the law's focus on exporter behavior precludes the Department from performing such an adjustment. Additionally, Maktas contends that the Department has not determined whether prices of below-cost sales allow for the recovery of costs in a reasonable period of time.

The petitioners did not comment on this issue.

DOC Position: We disagree with Maktas and have calculated the company's COM following the same methodology as used in our preliminary determination. (*See,* memorandum from William H. Jones and Michael P. Martin to Christian B. Marsh, dated December 13, 1995.) The Department's normal practice in non-hyperinflationary cases has been to calculate a single weighted-average COM, mitigating the effects of monthly cost fluctuations. Such fluctuations may result from the timing of expenses and production runs. We have determined that, where the data permits, it is also appropriate to calculate an annual weighted-average cost in hyperinflationary cases. However, since the value of the local currency (Turkish lira) changed significantly during the POI, the nominal value of costs incurred at different times are not comparable. As a result, it is necessary to restate the average cost into equivalent terms.

To calculate a meaningful, period-average COM, it was first necessary to restate each month's cost of manufacturing in equivalent terms. After each month's cost of manufacturing was restated in equivalent terms, they were added together and divided by the quantity produced during the POI to obtain an annual weighted-average COM expressed in period-end currency. Because this figure is stated in the currency value at the end of the POI, it is necessary to apply the index again to restate it in each month's respective currency value. The resulting monthly COM amounts are used as the basis for monthly COP and CV figures.

Finally, we disagree with Maktas's assertion that we failed to perform the recovery of cost test, as required under section 773(b)(2)(D) of the Act. We compared each home market price to the weighted-average per-unit production costs stated in the value of the month of sale. This approach properly tests whether the prices of below-cost sales allow for the recovery of costs in a reasonable period of time.

Comment 7 Packing Costs: Maktas argues that its reported packing costs should be adjusted for inflation to avoid understating packing costs for certain home market sales, inflating normal values and increasing dumping margins. Maktas suggests that this problem can be solved by removing certain small-volume products from the sales database. Alternatively, Maktas argues that the Department should use production information on the administrative record to identify products which were not produced in every month and that the Department should index the reported packing costs from previous months by means of the wholesale price index.

The petitioners argue that the Department should not attempt to adjust Maktas's reported packing costs as there is no consistent pattern for the discrepancies noted in Maktas's reported packing costs during the cost verification. Additionally, the petitioners argue that the Department cannot make a proper inflation adjustment to Maktas's reported packing costs without information regarding purchases of packing materials during the POI.

DOC Position: The timing of packing materials purchases in a hyperinflationary economy may result in an over-or under statement of net home market prices. We have determined, therefore, that it is appropriate to adjust packing costs as suggested by Maktas and have indexed its reported packing costs for certain products which were not produced in each month of the POI. Although a more accurate solution to the timing problems would be achieved by indexing all packing costs, in a manner similar to that by which we adjusted COM for our preliminary determination, the petitioners are correct in their assertion that the information necessary for such an adjustment is not on the record.

Comment 8 Depreciation Expenses: Maktas argues that its audited depreciation figures should not be revised by the Department. According to Maktas, its depreciation expenses were recorded in accordance with Turkish tax law and that there is no evidence that its treatment of depreciation distorts ''real'' costs.

The petitioners claim that Maktas failed to include certain POI depreciation costs associated with its annual fixed asset revaluation, current year additions, and holiday shut-down periods during the POI. They note that these amounts were identified by the Department in Maktas's financial statements, but were not included by Maktas in its reported costs. Further, since Maktas failed to provide financial statements for its parent company, the petitioners argue that there may be unreported depreciation expenses in addition to those identified during verification. Therefore, the petitioners claim that the Department cannot rely on Maktas's reported depreciation expenses and also cannot obtain an appropriate depreciation figure by adjusting for the unreported amounts which were identified by the Department.

DOC Position: We agree with the petitioners that Maktas understated its reported costs by improperly excluding certain depreciation expenses and we have adjusted COP and CV by adding these amounts to Maktas's reported fixed overhead costs. Maktas has not offered any explanation as to why these depreciation expenses should not be included in its COP or CV.

The depreciation costs associated with the annual fixed asset revaluation were classified by Maktas as ''other operating expenses'' in the company's financial statements. Depreciation costs related to current year fixed asset additions were classified as ''extraordinary expenses,'' along with depreciation costs incurred during normal, recurring holiday shut-down periods. All of these costs are necessary to obtain a fair measurement of costs incurred by Maktas during the POI for its production assets and, thus, these amounts should be included in its COP and CV.

We are satisfied that the adjustments described above will result in an appropriate depreciation expense figure for Maktas's production assets. As to the petitioners' concern regarding possible unreported expenses incurred by Maktas's parent, Piyale-Besin, we have determined that facts available should be applied for the calculation of G&A expenses for Maktas. *See, Facts Available* discussion above.

Comment 9 Tax Assessments: Maktas argues that the taxes identified by the Department's cost verification team are not part of the company's cost of production and were appropriately excluded from its reported costs.

The petitioners claim that the Department normally includes extraordinary expenses in its cost of production calculations. The petitioners argue that, if the Department decides to recalculate Maktas's reported costs, it should include the tax assessments which were excluded by the respondent.

DOC Position: We agree with the petitioners that these taxes should be included in COP and CV. Maktas has classified as extraordinary expenses certain taxes which were calculated on the value of company assets. Maktas also excluded other asset-based taxes which it believes will be recovered from the Turkish government pursuant to ongoing litigation. The Department's practice has been to allow a respondent to exclude certain costs if they demonstrate that such costs are both unusual in nature and infrequent in occurrence. *See, e.g., Final Determination of Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083,37088 (July 9, 1993). Maktas has not demonstrated that the taxes assessed on asset values are unusual in nature nor has it demonstrated that they are infrequent in occurrence. Certain business and property taxes are a normal expense of operating a business and, as such, are appropriately included in COP and CV.

Furthermore, the Department does not normally consider income taxes, based on the profit/loss of a corporation, to be a cost of producing the product. (*See, e.g., Final Determination; Rescission of Investigation and Partial Dismissal of Petition: High Information Content Flat Panel Displays and Display Glass Therefor from Japan*, 56 FR 32376, 32392 (July 16, 1991).) However, taxes based on asset values have been included by the Department in COP. *See, e.g., Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33550 (June 28, 1995). Therefore, we have included the taxes in Maktas's production costs.

Comment 10 Foreign Exchange Gains: Maktas argues that all of its foreign exchange gains which resulted directly from export sales should be applied as an offset against interest expense, since it incurs interest expense to produce and sell merchandise. In support of its position, Maktas cites *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791 (April 20, 1994) (*Wire Rod from Canada*), in which the Department allowed a respondent to offset interest expense with dividend income received. Maktas also cites to *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019 (February 6, 1995) (*Roses from Ecuador*).

The petitioners argue that interest expenses are a normal part of the Department's cost of production calculation. The petitioners contend that foreign exchange gains resulting from export sales of finished pasta are unrelated to the cost of producing pasta in Turkey. Therefore, the petitioners claim that the Department should continue to exclude foreign exchange gains from its cost of production calculation for the final determination.

DOC Position: We agree with the petitioners. Maktas's foreign exchange gains relate to export sales transactions and, thus, are calculated on the accounts receivable balances associated with such sales. It is the Department's normal practice to exclude exchange gains and losses on accounts receivable because the exchange rate used to convert home market sales to U.S. dollars is that in effect on the date of the U.S. sale. *See, e.g., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31991 (June 19, 1995).

With regard to Maktas's reliance on *Wire Rod from Canada*, the respondent provided no explanation as to why it believes foreign exchange gains are the equivalent of dividend income. Moreover, the facts in *Wire Rod from Canada* are quite different from the facts in the instant investigation. In *Wire Rod from Canada*, the respondent demonstrated that its dividend income was directly linked to the interest expense to which it was applied. Maktas has not demonstrated any direct link between its foreign exchange gains and its production costs and, in fact, has argued that they are unrelated. Therefore, we excluded Maktas's exchange gains from the interest expense rate calculation. Furthermore, the Department's position in *Roses from Ecuador* is contrary to Maktas's argument and represents an example of our normal practice, *i.e.*, to disallow the application of foreign exchange gains on sales transactions as offsets to financial expenses.

Comment 11 Short-Term Interest Rate: The petitioners argue that the Department should use the same short-term interest rate to calculate imputed credit expenses for Maktas's U.S. and home market sales. The petitioners argue that since the short-term borrowings that Maktas actually used to finance the credit period for its sales in Turkey were also the short-terms borrowings that Maktas used to finance the credit period for its U.S. sales, the interest rates used to calculate imputed credit expenses should be the same for U.S. and home market sales.

Maktas objects to the petitioners' request and asserts that the Department should not use the same interest rates in computing imputed credit expenses for U.S. and home market sales.

DOC Position: We disagree with the petitioners. The Department's policy is to calculate imputed credit costs using a weighted average short-term borrowing rate which reflects the currency in which the sale was invoiced. *See, Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 107 (June 5, 1995); *Final Determination of Sales at Less than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552 (February 27, 1995). Consistent with the Department's practice, we have continued to apply Maktas's actual Turkish lira denominated short-term borrowing rates for all home market sales. For sales to the United States, all of which were denominated in U.S. dollars, we applied a U.S. dollar short-term interest rate obtained from public information because Maktas did not

have any U.S. dollar denominated borrowings during the POI.

Comment 12 Exchange Rate Conversion: Maktas asserts that the currency conversion methodology used at the preliminary determination should be discarded for the final determination. Specifically, Maktas disagrees with the Department's policy of using a 40-day period to establish a benchmark rate for purposes of defining fluctuations and sustained movement in the exchange rate. Maktas argues that a 30-day period would be more appropriate than a 40-day period.

More importantly, the respondent submits that given the extreme depreciation of the Turkish lira against the U.S. dollar in 1994, the Department should use actual daily rates in making currency conversions.

The petitioners argue that the Department should continue to use the currency conversion methodology used in the preliminary determination for the final margin calculation.

DOC Position: We believe that it is more appropriate in this case to use actual daily exchange rates for currency conversion purposes. As noted in *Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434 (March 8, 1996), the Department is continuing to examine the appropriateness of the currency conversion policy in situations where the foreign currency depreciates substantially against the dollar over the POI. In those situations, it may be appropriate to rely on daily exchange rates. When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that incurred in the intervening time period between the U.S. and home market sales. For this reason, as noted above in the *Fair Value Comparisons* section, we calculated EPs and NVs on a monthly average basis. This need for a high degree of contemporaneity applies not only to home market sales, but to the exchange rate as well, since the dollar value of pasta that Maktas sells in its home market—upon which the calculated margin ultimately rests—depends on (1) the lira price of that pasta, and (2) the dollar price of the lira. Since the dollar value of the lira tends to fall over time—when the rate of domestic price inflation is significant—it is just as important to use contemporaneous exchange rates as it is to use contemporaneous (lira-denominated) home market prices. For this reason, we have used the daily exchange rates for currency conversion purposes.

Comment 13 Inventory Carrying Cost and Indirect Selling Expenses: Maktas argues that the Department should make an adjustment to NV for inventory carrying costs and indirect selling expenses. With respect to inventory carrying costs, the respondent claims that inventory carrying costs should be treated in the same manner as imputed credit expenses, and that no distinction can be drawn between EP and CEP sales for purposes of application of inventory carrying cost. Specifically, Maktas submits that adjustments for both imputed credit expenses and imputed inventory carrying costs are based on ''opportunity cost'' rationale. As with imputed credit expenses, Maktas argues that the opportunity cost of holding inventory is a real expense that should be adjusted for regardless of whether the sales transaction is EP or CEP.

Further, Maktas notes that ''the new legal requirement of section 773 of the Act that a 'fair comparison shall be made between the export price or constructed export price and normal value' requires that like economic elements be treated in a like manner.'' Given the analogy between imputed credit expenses and inventory carrying costs, Maktas urges the Department to adjust normal value for inventory carrying costs in the same manner as imputed credit expenses.

Additionally, Maktas asserts that, in order to make such a ''fair comparison'', the Department should adjust normal value for the difference in indirect selling expenses attributable to the U.S. and home market sales.

The petitioners submit that the statute does not allow the Department to make the type of adjustments requested by the respondent. With respect to inventory carrying costs, the petitioners note that the respondent fails to recognize an important difference between imputed credit expense and inventory carrying cost which is that while imputed credit expense is a COS adjustment that typically can be calculated on a sale-by-sale basis, inventory carrying cost represents indirect selling expenses that are not tied to any particular sales. Regarding indirect selling expenses, the petitioners note that because Maktas's U.S. sales are based on export price, no adjustment to normal value for indirect selling expenses is permitted.

DOC Position: We agree with the petitioners that the statute does not allow the Department to make the type of adjustments for inventory carrying costs and indirect selling expenses requested by Maktas. In export price sales, it is the Department's practice to make an adjustment for inventory carrying costs or indirect selling expenses if the respondent claims a commission adjustment to export price. Because Maktas's U.S. sales are based on export price and no commissions were reported for either the home or U.S. market, there is no basis for making an adjustment for inventory carrying costs or indirect selling expenses. Moreover, the deduction of inventory carrying costs or indirect selling expenses is not one of the enumerated requirements under Section 773 of the Act, which provides for adjustments to normal value to achieve a fair comparison between the export price and normal value.

Regarding Maktas's assertion the inventory carrying costs should be treated in the same manner as imputed credit expenses, we disagree with Maktas that the two items are analogous. Imputed credit expenses represent a direct selling expense which can be tied to particular sales. Inventory carrying costs, on the other hand, represent indirect selling expenses that would be incurred regardless of whether particular sales were made.

Comment 14 Goodwill: Maktas submits that the Department should make an adjustment for the ''goodwill'' which Maktas's products enjoy in the domestic market. Specifically, Maktas notes that its products, which are sold under the ''Piyale'' brand name, are well known throughout Turkey and have higher value than they enjoy elsewhere. In the United States, Maktas sells to importers who, in turn, sell under their own brand name. Accordingly, Maktas asserts that an adjustment should be made in the margin calculation for the brand recognition it commands in the domestic market.

The petitioners oppose Maktas's request for an adjustment for ''goodwill''.

DOC Position: We disagree with Maktas. When making price comparisons, the Department makes adjustments to account for any differences in the prices resulting from verified differences in circumstances of sales. The ''goodwill'' Maktas described is not an expense item and, therefore does not qualify as a COS adjustment. Moreover, such ''goodwill'' is not susceptible to verifiable quantification. Therefore the Department has no basis to make an adjustment for it.

Comment 15 Corrections Found at Verification: Maktas requests that a number of corrections presented at, and found during, the sales verification should be incorporated into the

Department's calculations of the final margins.

DOC Position: All corrections as confirmed on-site at the sales verification were incorporated in the Department's calculation of the final margin.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pasta from Turkey, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after January 19, 1996, the date of publication of our preliminary determination in the Federal Register. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' The Department has determined, in its *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent CVD investigation, we would instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price (as shown below), minus the amount determined to constitute an export subsidy. (*See, Antidumping Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia,* 57 FR 46150 (October 7, 1992)). However, in this investigation, Filiz has not cooperated with the Department and has not acted to the best of its ability in providing the Department with necessary information. This has prevented the Department from making its normal determination of whether the subsidies in question may have affected the calculation of the dumping margin. Thus, as indicated above, Filiz's margin is based on total adverse facts available, taken from the petition. Insofar as the dumping margin for Filiz is not a calculated margin, there is no way to determine the portion of the antidumping duty which is attributable to the export subsidy. For that reason, and to prevent Filiz from benefitting from its non-cooperation in this investigation, we have not subtracted the amount of any export subsidy from that margin. For Maktas, we are subtracting for deposit purposes the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation (12.61 percent) from the antidumping bonding rate for Maktas. We are also subtracting from the ''All Others'' rate the cash deposit rate attributable to the export subsidies included in the countervailing duty investigation for All Others.

This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentages	Deposit percentages
Filiz	63.29	63.29
Maktas	56.87	44.26
All Others	56.87	47.49

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded Filiz's margin from the calculation of the All Others rate because it was determined entirely under section 776 of the Act.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14735 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–475–818]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5288 or (202) 482–0186, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Final Determination

We determine that certain pasta (''pasta'') from Italy is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of the preliminary determination of sales at less than fair value in this investigation on December 14, 1995, (60 FR 1344, January 19, 1996) (*Preliminary Determination*) the following events have occurred:

In January 1996, the Department received letters from the AFI Pasta Group, Pastaficio Guido Ferrara (interested parties), and Hershey Foods Corp., Borden Inc., and Gooch Foods, Inc. (collectively ''the petitioners'') regarding the provisional antidumping measures in this investigation and whether the suspension of liquidation affected entries of the subject merchandise 120 days after the Department's preliminary determination. The Department determined that the requests for an extension of the final determination contained an implied request to extend the provisional measures period, during which liquidation is suspended, to six months (*see Extension of Provisional Measures* memorandum dated February 7, 1996).

On January 22, 1996, the Department requested that Arrighi S.p.A. Industrie Alimentari (Arrighi); F.lli De Cecco di Filippo Fara San Martino S.p.A. (De Cecco); Delverde S.r.l. (Delverde); De Matteis Agroalimentare S.p.A. (De Matteis); La Molisana Industrie Alimentari S.p.A. (La Molisana); Liguori Pastificio Dal 1820 S.p.A. (Liguori); Pastificio Fratelli Pagani S.p.A. (Pagani); and Saral Industrie Alimentari Della Sardegna S.r.l. (Saral) (collectively respondents) provide additional information and comments relating to level of trade.

After publication of the preliminary determination, the petitioners, Pastaficio Guido Ferrara, and two of the respondents, De Matteis and La Molisana, alleged that the Department made ministerial errors in calculating the preliminary margins. We determined that ministerial errors were made with regard to Arrighi and Pagani. (*See, Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, (61 FR 7472, February 26, 1996).)

The Department received responses to supplemental section D questionnaires from Pagani, Delverde, De Matteis, Arrighi, La Molisana, Liguori, and De Cecco in February 1996. Minor corrections to their cost responses were filed by Pagani, De Matteis, Arrighi, Liguori, and La Molisana prior to the respective cost verifications.

Prior to verification, the Department requested each company to provide a reconciliation between the quantity and value reported in its questionnaire response and the company's published financial reports. The Department verified the respondents' sales and cost questionnaire responses during the months of February, March, and April in Italy and the United States. Verification of De Cecco's sales and cost responses were canceled for reasons described in the ''Facts Available'' section, below.

On February 13, 1996, the petitioners argued that the Department should employ transaction-specific export and constructed export price comparisons for Delverde in the Department's final determination (*see* ''Targeted Dumping'' below).

On April 2 and April 30, 1996, Spruce Foods, a U.S. importer of organic pasta from Italy, submitted materials from the Italian Ministry of Agriculture and Forestry and from Associazione Marchigiana Agricultura Biologica concerning the certification of organic pasta in Italy to support its request that the Department exclude organic pasta from the scope of both this investigation and the companion countervailing duty investigation. (*See* ''Scope'' section, below.)

Case and rebuttal briefs were submitted on April 29, 1996, and May 1, 1996, respectively, by the petitioners and the respondents. At the request of the petitioners and several respondents, a public hearing was held on May 6, 1996.

Facts Available

At the preliminary determination, the Department found that De Cecco had not provided a complete reporting of all of its ''affiliated parties,'' as requested in the antidumping questionnaire. The Department stated that, ''[i]nasmuch as the company's responses to date indicate that both the U.S. and home market sales databases are incomplete and that certain sales data and production costs have not been reported, we cannot conduct an accurate cost of production analysis or less-than-fair-value analysis using the reported prices.'' *See Preliminary Determination.* Because of these deficiencies, the Department was unable to use De Cecco's responses to calculate a margin for the preliminary determination of sales at less than fair value. The Department stated that it would proceed with the investigation and attempt to verify De Cecco's information if De Cecco cooperated and provided ''accurate and complete'' information in response to supplemental questionnaires.

On January 11, 1996, the Department issued a supplemental questionnaire to De Cecco, requesting that it revise its section D response so as to incorporate cost information for its affiliated party, Molino e Pastificio De Cecco S.p.A. (Pescara). On February 2, 1996, De Cecco submitted a response to the January 11, 1996, supplemental questionnaire. On February 5, 1996, the Department issued a supplemental questionnaire regarding the Pescara portion of the February 2, 1996, response and the Department reiterated several questions that remained unanswered from the January 11, 1996, supplemental questionnaire. On February 6, 7, and 9, De Cecco submitted revisions to its February 2nd response. On February 8, 1996, the Department received a request from the petitioners to cancel verification of De Cecco's new data and to use facts available to determine the final dumping margin. On February 15, 1996, the Department issued a decision memorandum announcing that it would not verify De Cecco's responses because it was determined that the February 2 and 6 submissions constituted completely new cost of production (COP) responses (the latter of which was untimely), and 2) the acceptance of new responses would have imposed undue difficulties on the Department in completing the case within the statutory deadlines. These points were further developed in a Memorandum to the File from the Office of Accounting, ''Analysis of cost of production and constructed value data submitted by F.lli De Cecco di Filippo Fara San Martino S.p.A.,'' dated February 16, 1996. That memorandum stated:

(1) Rather than addressing the Department's initial concerns documented in the January 11, 1996, supplemental questionnaire regarding the November 27 cost questionnaire response, De Cecco's February 2 submission reported revised COP and constructed value (CV) figures based on a new cost calculation methodology, developed by the company after the Department's preliminary determination.

(2) Every COP and CV figure reported by De Cecco changed between the February 2, 1996, response and the February 6, 1996, submission.

(3) De Cecco failed to explain the significant decreases between the costs reported in the November 27, 1995, and February 2, 1996, responses, and between the February 2, 1996, response and the February 6, 1996, submission.

(4) The inclusion of Pescara's costs did not explain the significant differences we observed in De Cecco's own total cost figures reported originally in the November 27 response and later in the February 6, 1996, submission.

(5) For every product reported by Pescara, specific production quantities for internal product code numbers changed between the February 2 and February 6 responses.

(6) In its February 2 and February 6 responses, De Cecco added new product control numbers but failed to explain the source of these new products.

(7) De Cecco's February 2 response included completely new information, and was subsequently superseded by additional submissions.

(8) It was not until February 13 that De Cecco submitted its reconciliation of reported costs to its financial statements, 37 days after the Department's request and ten days after the deadline.

(*See also* Memorandum to Barbara R. Stafford from Pasta Team, ''Antidumping Duty Investigation of Certain Pasta from Italy: Use of Facts Available for F.lli De Cecco di Filippo Fara San Martino S.p.A.,'' dated February 15, 1996.)

Because it was not possible for the Department to analyze the new responses, issue necessary supplemental questionnaire(s), receive responses to the supplemental questionnaire(s), and conduct verification within the statutory time limits, the Department did not verify the cost responses submitted by De Cecco.

Section 776(a) requires the Department to resort to facts available when, *inter alia*, an interested party or any other person ''fails to provide {requested} information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,'' and when the use of facts available is consistent with section 782(d) of the statute. Section 782(c)(1) provides for the Department to modify its information request if a party, ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner. * * * '' As De Cecco provided no such notification to the Department, subsection (c)(1) was inapplicable.

The determination under section 776(a) as to whether a respondent ''fail{ed} to provide {requested} information by the deadlines for submission of the information or in the form and manner requested,'' must be considered in light of section 782(d), ''Deficient Submissions.'' Section 782(d) provides that, if the Department ''determines that a response to a request for information * * * does not comply with the request, {the Department} shall promptly inform the person submitting the response of the nature of the deficiency and shall, *to the extent practicable*, provide that person with an opportunity to remedy or explain the deficiency *in light of the time limits established* for the completion of investigations or reviews under this title.'' [Emphasis added.] On January 11, the Department informed De Cecco by means of the Department's supplemental questionnaire that its November 27, 1995, COP response did not comply with the Department's original COP questionnaire and explained why the response was deficient. Further, the Department provided De Cecco with ''the opportunity to remedy or explain the deficiency *in light of the time limits established*.'' In order to ensure completion of the investigation within the statutory time period, the Department provided De Cecco with the opportunity to remedy its submission by February 2, which would allow the Department sufficient time to analyze the supplemental information, prepare for verification of the response, as supplemented, and conduct verification.

However, on February 2 and February 6, De Cecco submitted two separate responses to the supplemental questionnaire. The Department determined that neither of these responses constituted a ''remedy'' or ''explanation'' of the deficiencies of its original COP response, but rather were entirely new COP responses. Section 782(d) states that: ''If that person submits further information in response to such deficiency and either—(1) {the Department} finds that such response is not satisfactory, or (2) such response is not submitted within the applicable time limits, then {the Department} may, subject to subsection (e), disregard all or part of the original and subsequent responses.'' The SAA at 195 states that 782(d) ''is not intended to allow parties to submit continual clarifications or corrections of information or to submit information that cannot be evaluated within the applicable deadlines. If subsequent submissions remain deficient or are not submitted on a timely basis, Commerce and the Commission may decline to consider all or part of the original and subsequent submissions * * * '' As detailed, the Department found that De Cecco's responses of February 2 and February 6 were ''not satisfactory'' because they constituted entirely new responses to the Department's original COP questionnaire. Moreover, the February 6 submission was ''not submitted within the applicable time limits.'' Thus, because De Cecco's original response constituted a deficient submission within the meaning of section 782(d), and because its responses to the opportunity to remedy or explain the deficiency did not satisfy the requirements of section 782(d), De Cecco ''failed to provide {requested} information by the deadlines for submission of the information or in the form or manner required.'' Section 776(a) directs the Department in this situation to use the facts available, subject to section 782(e).

Section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by {the Department}, if:

(1) The information is submitted by the deadline established for its submission;

(2) The information can be verified;

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination;

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by {the Department} with respect to the information; and,

(5) The information can be used without undue difficulties.''

Thus, if any one of these criteria is not met, the Department may decline to consider the information at issue in making its determination. In conducting our analysis, the Department assumed, *arguendo*, that De Cecco's information (except for the clearly untimely February 6 submission) satisfied the first two criteria. With regard to the third criterion, whether the information may serve as a ''reliable basis'' for the Department's determination, the respondent had indicated on the record that the original response was fundamentally unreliable (*i.e.*, although De Cecco stated its response was based upon standard costs, counsel noted that De Cecco ''does not have a standard cost accounting system''). When this statement was considered in combination with the fact that De Cecco's February submissions replaced the initial response, it was clear that the deficient original response could not serve as a reliable basis for the Department's determination. Moreover, as the February 6 submission explicitly stated that the February 2 submission was unreliable, the February 2 submission could not serve as a reliable basis for the Department's determination.

As to criterion four, De Cecco had not demonstrated that it acted to the best of its ability in providing the requested information because De Cecco had failed to respond in a satisfactory manner to the Department's supplemental request for information and had provided completely new COP responses in February 1996, long after the Department's November 27, 1995, deadline for such a response. Finally, as to the last criterion, if the Department would have accepted the new submissions, it would have experienced undue difficulties in performing an analysis, obtaining any clarifications prior to verification, and permitting petitioners to participate fully in the process.

Because section 782(e) did not prevent the Department from declining to consider De Cecco's COP information, and 782(d) allowed the Department to disregard De Cecco's original deficient COP response and its unsatisfactory responses to the Department's subsequent request, the Department

determined that De Cecco failed to provide its COP information by the deadlines established or in the form and manner requested. Section 776(a) thus required the Department to use the facts available in making its determination as to De Cecco.

The resort to facts available for De Cecco's cost data rendered its home market sale prices unusable, as the home market sales could not be tested to determine whether they were made at prices above production cost. A second problem with using the home market sales data was the absence of reliable difference in merchandise figures (DIFMERS). Under section 773(a)(6)(C) of the statute, when comparing normal value to export price the Department is required to account for the effect of physical differences between the merchandise sold in each market. In this case, DIFMERS were required for substantially all United States and home market matches; the pasta product sold in the United States is vitamin-enriched while nearly all the pasta sold in the home market is not. Because DIFMER data is based on cost information from the section D response (which was rejected by the Department), the effect of physical differences could not be taken into account. Because the home market sales data could not be verified, it could not be used by the Department in making its final determination.

In the absence of home market sales data (*i.e.,* when the home market is viable but there are insufficient sales above COP to compare with U.S. sales), the Department would normally resort to the use of constructed value as normal value. However, the constructed value information reported by De Cecco was part of the rejected cost data. Therefore, the use of facts available for cost of production data precluded the use of the submitted constructed value information.

We considered the use of ranged public data submitted by other respondents or the petitioners' own cost data as possible alternatives to De Cecco's reported constructed value information. The petitioners' cost data was not on the record because their allegation of sales below cost of production was based on De Cecco's discredited DIFMER data. Moreover, it would not have been appropriate to use ranged public data submitted by other respondents as facts available for normal value in this investigation. Each control number covers sales of numerous unique product codes. The use of ranged public data would likely have resulted in the comparison of De Cecco's U.S. sales to the constructed value of a completely different product mix reported by the remaining respondents. Such comparisons would have been meaningless. Thus, neither the use of petitioners' cost, nor the use of ranged public data, was an acceptable alternative for normal value.

In conclusion, there was no reasonable basis for determining a normal value for De Cecco. It was impossible, therefore, to perform any comparison to U.S. prices. As a result, we did not use De Cecco's U.S. sales data in determining an antidumping margin. The Department, therefore, had no choice but to resort to a total facts available methodology.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* SAA at 870. De Cecco's failure to provide complete and accurate information in a timely manner and its failure to clarify inconsistencies in its submissions to the record demonstrate that De Cecco has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available for De Cecco, an adverse inference is warranted.

On the basis of our having compared the sizes of the calculated margins for the other respondents to the estimated margins in the petition, we have concluded that the petition is the only appropriate information on the record which could form the basis for a dumping calculation for De Cecco. In accordance with section 776(c) of the Act, we attempted to corroborate the data contained in the petition. When analyzing the petition, the Department reviewed all of the data the petitioners had submitted and the assumptions that petitioners made in calculating estimated dumping margins. As a result of that analysis, the Department revised the home market prices that petitioners relied upon in calculating the estimated dumping margins. On the basis of those adjustments, the Department recalculated the estimated dumping margins for certain pasta from Italy and found them to range from 21.85 percent to 71.49 percent. *See Initiation of Antidumping Duty Investigation: Certain Pasta from Italy and Turkey,* 60 FR 30268, 30269 (June 8, 1995). Because De Cecco made some effort to cooperate, even though it did not cooperate to the best of its ability, we did not choose the most adverse rate based on the petition. As facts otherwise available, we are assigning to De Cecco the simple average of the range of the margins stated in the notice of initiation, 46.67 percent.

Targeted Dumping

On February 13, 1996, the petitioners requested that the Department compare Delverde's transaction-specific export prices in the United States to weighted-average normal values, in accordance with the ''targeted dumping'' provisions of section 777A(d)(1)(B) of the Act. The petitioners alleged that there was a statistical pattern of different export prices among different groups of both Delverde's EP and CEP purchasers and that the use of a weighted-average price would have the effect of masking lower prices. The Department has denied this request on the ground that the petitioners' analysis failed to meet the basic requirements of subsections 777A(d)(1)(B) (i) and (ii) of the Act.

The petitioners' allegation was the result of their having selected groups of customers on the basis of relatively higher and lower prices. After the groups had been selected, petitioners ran statistical procedures to establish that the prices of certain groups were lower than those of other groups. These results, however, were predetermined by the initial composition of the different groups. Moreover, by not supplying any relevant source of comparison benchmark prices, petitioners failed to demonstrate that the price differences were ''significant,'' as required by section 777A(d)(1)(B)(i) of the Act.

Even assuming, arguendo, that petitioners had shown targeting, in order for the targeted dumping provision to be applied, section 777A(d)(1)(B)(ii) requires that the price differences cannot be taken into account by comparing the weight-averaged normal values to the weight-averaged U.S. prices. The petitioners' allegation fails to make this demonstration. Accordingly, this targeted dumping allegation does not provide the Department with a sufficient basis for comparing Delverde's transaction-specific export prices in the United States to its weighted-average normal value.

Scope of Investigation

The merchandise under investigation consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or

polypropylene bags, of varying dimensions.

Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB).

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Exclusion for Certain Organic Pasta

On October 2, 1995, a U.S. importer of Italian pasta requested that the Department exclude from the scope of this investigation, and the companion countervailing duty investigation, pasta certified to be ''organic pasta'' in compliance with European Economic Community Regulation No. 2092/91. This regulation sets forth a regime of standards for the cultivation, processing, storage, and transportation of organic foodstuffs with inspections of farms and processing plants by EEC-approved national certification authorities. In addition to the description of the EEC regime, the exclusion request included a copy of a sample certificate issued by the AMAB and a description, in English, of the AMAB organization.

On November 9, 1995, the petitioners stated that they were willing to modify the scope of the petition and the investigation to exclude certified organic pasta of Italian origin if U.S. imports of such pasta were accompanied by certificates issued pursuant to EEC Regulation No. 2092/91.

On November 21, we requested additional data on the EEC regulation from the Section of Agriculture of the Delegation of the European Commission of the European Union. On December 8, 1995, the European Commission submitted responses to our inquiries. The information included a list of seven Italian inspection and certification authorities (of which AMAB was one) and the statement that EEC Regulation No. 2092/91 ''* * * does not provide for certification of products intended for export to third countries.'' Although the Department was not able to fashion an exclusion of organic pasta from the scope of these investigations in our preliminary determination, we stated that if certification procedures similar to those under the EEC regulation were established for exports to the United States, we would reconsider an exclusion for organic pasta.

On April 2, 1996, the importer, that had originally requested the exclusion, submitted a letter attaching a copy of a decree, with a translation into English, from the Italian Ministry of Agriculture and Forestry authorizing AMAB to certify foodstuffs as organic for the implementation of EEC Regulation 2092/91. On April 30, 1996, this importer forwarded letters (with accompanying translations into English) from the Director General of the Italian Ministry of Agriculture and Forestry and from the Director of AMAB. The letter from the Ministry states that it has authorized AMAB to insure compliance with organic farming methods and to issue organic certificates since December of 1992. The letter from the Director of AMAB states that this organization will take responsibility for its organic pasta certificates and will supply any necessary documentation to U.S. authorities. On this basis, we are able to exclude—and do exclude—imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by AMAB from the scope of these investigations.

Period of Investigation

The period of investigation (POI) is May 1, 1994, through April 30, 1995.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of Investigation section and sold in the home market during the POI, to be foreign like products for the purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's antidumping questionnaire.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and the level of trade of the normal value sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined.

Section 773(a)(7)(B) of the Act establishes the procedures for making a CEP offset when: (1) normal value is at a different level of trade; and (2) the data available do not provide an appropriate basis for a level of trade adjustment. In addition, in accordance with section 773(a)(7)(B), in order to qualify for a CEP offset, the level of trade in the home market must constitute a more advanced stage of distribution than the level of trade of the CEP.

In implementing these principles in this case, the Department's first task was to obtain information about the selling activities of the producers/exporters. Information relevant to level of trade comparisons and adjustments was requested in our July 10, 1995 questionnaire, and in supplemental questionnaires sent on October 23, 1995, and January 22, 1996. We asked each respondent to establish any claimed levels of trade based on the selling functions provided to each proposed customer group, and to document and explain any claims for a level of trade adjustment.

Our review of these submissions shows that the respondents have identified levels of trade in various manners. In some instances, respondents used traditional customer categories (*e.g.*, wholesaler, retailer), or customer groups (*e.g.*, supermarkets, wholesalers, buying consortium) to identify levels of trade, while in other instances they used factors such as channels of distribution. In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling functions attributable to the customer groups claimed by the respondents. Pursuant to section 773(a)(1)(B)(i) of the Act, and the SAA at 827, in identifying levels of

trade for directly observed (*i.e.*, not constructed) export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustments. For constructed export price (CEP) sales, we considered the selling functions reflected in the price after the deduction of expenses and profit under Section 772(d) of the Act. Whenever sales within a customer group were made by or through an affiliated company or agent, we ''collapsed'' the affiliated parties before considering the selling functions performed. The selling functions and activities examined for each reported customer group were: (1) the process used to establish the terms and conditions of sale (''sales process''); (2) whether the sale was produced to order or filled from normal inventory (''inventory maintenance''); (3) whether the customer was serviced from a forward warehouse (''forward warehousing''); (4) freight and delivery provided or arranged by the manufacturer/exporter (''freight''); (5) manufacturer provided or shared direct advertising or in-store promotion expenses (''advertising''); and (6) warranty service program or after-sales service provided by producer (''warranties'').

In reviewing the selling functions reported by the respondents for each customer group, we considered all types of selling functions, both claimed and unclaimed, that had been performed. Where possible, we further examined whether the selling function was performed on a substantial portion of sales within the relevant customer group. In analyzing whether separate levels of trade exist in this investigation, we found that no single selling function in the pasta industry was sufficient to warrant a separate level of trade (*see, Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7307, 7348 (February 27, 1996)) (Proposed Regulations).

In determining whether separate levels of trade existed in or between the U.S. and home markets, the Department considered the level of trade claims of each respondent, but the ultimate decision was based on the Department's analysis of the selling functions associated with the customer groups reported by the respondents. (In this analysis, customer group refers to the customers or groups of customers identified by respondents.) Although Liguori, De Matteis, Arrighi, and Delverde did not argue that comparisons should be made on the basis of level of trade, the statute requires that, where possible, the Department make comparisons at the same level of trade. Therefore, we looked at the issue of level of trade for each respondent for which we calculated a margin.

To the extent practicable, we compared normal value at the same level of trade as the U.S. sale. For respondents Arrighi, Delverde, and La Molisana we compared the sole level of trade in the U.S. market to the home market level of trade which we found to be identical in aggregate selling functions to the level of trade in the United States. In the case of De Matteis and Pagani, we found two home market levels of trade, one of which was determined to be identical in aggregate selling functions to that found in the United States. For respondent Liguori, we compared the level of trade in the U.S. market to the sole home market level of trade and found them to be dissimilar in aggregate selling functions. Therefore, we established normal value at a level of trade different than the U.S. sales.

We then examined whether a level of trade adjustment was appropriate for Liguori when comparing its U.S. level of trade to its home market level of trade. However, because there was only a single home market level of trade, there was no basis for making a level of trade adjustment based on a demonstration of a consistent pattern of price differences between the home market levels of trade. The SAA states that ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *SAA* at 830. The alternative methods for calculating a level of trade adjustment for Liguori were examined. However, we do not have information which would allow us to examine pricing patterns based on Liguori's sales of other products at the same level of trade as the home market sales and there are no other respondents with the same levels of trade as those found for the home market sales of Liguori. Therefore, we were unable to calculate a level of trade adjustment for Liguori based on these alternative methods. Accordingly, Liguori's U.S. sales were compared to home market sales based solely on the product characteristics of the merchandise.

Although Pagani did have identical U.S. and home market levels of trade, for certain U.S. product categories there were no sales of comparable merchandise at the same level of trade. We then examined the prices of comparable product categories, net of all adjustments, between Pagani's two home market levels of trade, and found a consistent pattern of price differences. Therefore, for the U.S. product categories without a match to an identical home market level of trade, we made the comparison at a different level of trade, and made a level of trade adjustment based on the weighted-average difference between the prices at the two home market levels of trade. In this case, the adjustment resulted in an increase to normal value.

As noted below in the ''Comparison Methodology'' section of this notice, where there were distinct price differences between a respondent's customer categories within similar levels of trade, or within different levels of trade in the case of Liguori and Pagani, we considered the customer category in creating the averaging groups for our comparisons.

A complete description of the level of trade analysis for each respondent is presented in the DOC Position to Comment 1E below.

Fair Value Comparisons

To determine whether sales of pasta by the Italian respondents to the United States were made at less than fair value, we compared the Export Price (EP) and/or Constructed Export Price (CEP) to the Normal Value (NV), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparisons to weighted-average NVs. For a further discussion, see the Comparison Methodology section, below.

Export Price and Constructed Export Price

We calculated EP, in accordance with subsections 772 (a) and (c) of the Act, for each of the respondents, where the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of record. In addition, for Delverde, we calculated CEP, in accordance with subsections 772 (b) through (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

Furthermore, as in the preliminary determination, we did not include the resale of subject merchandise purchased in Italy from unaffiliated producers. For Arrighi, however, we were unable to

determine which particular U.S. sales were of merchandise produced by firms other than Arrighi. Therefore, we weight the dumping margin for Arrighi for each product category it identified by (1) calculating a ratio of the volume of Arrighi-produced product to the combined total volumes of Arrighi-produced and purchased product in the same period, and (2) applying the ratio to the quantity for the corresponding product sold to the United States during the POI. This allowed us to calculate a margin based on an estimated quantity of Arrighi-produced product (*see* Arrighi's Comment 6).

We calculated EP and CEP based on the same methodology used in the preliminary determination. For certain respondents, we recalculated reported credit expenses in instances where they had not reported a shipment and/or payment date because the merchandise had not yet been shipped or paid for at the time of filing the response. For those sales missing a shipment and/or a payment date, we used the average credit days of all transactions with a reported shipment and payment date. Additional company-specific adjustments were made as follows:

Arrighi

We made minor corrections to the U.S. sales database based on errors noted at verification and we recalculated the warranty claim expense for U.S. sales to reflect verified claim expenses. We also recalculated inventory carrying expense to correct the price basis used in the calculation, and to apply a weighted average short-term interest rate based on Arrighi's and Italpasta's company-specific short-term interest rates (*see* Arrighi's Comment 2).

Delverde

In those instances where negative values were reported for U.S. credit expenses (*i.e.*, where Delverde received payment prior to shipment), we set the credit expense to zero. As discussed in Comment 5 for Delverde below, we did not rely on certain CEP sales by Delverde USA because we determined that the date of these sales fell outside the POI. Consistent with our treatment of slotting fees paid in the home market, we reclassified the slotting expenses reported by Delverde USA (*i.e.*, field ''ADVERT2U'') as indirect selling expenses. We made deductions for warranties and additional direct selling expenses reported by Tamma Industrie Alimentari di Capitanata, SrL (Tamma), a Delverde affiliate. We also increased Tamma's packing costs, indirect selling expense and warehousing cost to reflect the findings of the cost verification.

De Matteis

We deleted one invoice from the U.S. database because it was discovered at verification that the sale was made outside of the POI.

La Molisana

We adjusted La Molisana's reported direct advertising expense by reclassifying a portion as an indirect expense. *See*, Comments 2C and 3B for La Molisana, below. We recalculated the reported indirect selling expenses to reflect verified expenses. In addition, we increased the indirect expenses by including certain unreported expenses discovered at verification. We also corrected the control number associated with certain products to reflect the shape classifications confirmed at verification.

Liguori

For certain of Liguori's U.S. sales, that are associated with a particular invoice number, we corrected the shipment date and the imputed credit expenses, based on errors noted at verification.

Pagani

We revised the interest rate used for calculating Pagani's credit expense and its inventory carrying costs based on information found at verification. We deleted the following sales from the U.S. sales listing: sales made outside of the POI, duplicate entries, and a sale made to a Canadian company.

Normal Value

In accordance with section 773(a)(1)(B) of the Act, we have based NV on sales in Italy or, where appropriate, on constructed value (CV).

For each of the respondents, we made adjustments, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57. In addition, we deducted home market packing costs and added U.S. packing costs for all respondents.

We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2) as follows: Where commissions were paid on some home market sales to calculate normal value and U.S. commissions were greater than the sum of both home market commissions and indirect selling expenses, we deducted from normal value either (1) home market indirect selling expenses attributable to those sales on which commissions were not paid, or (2) the difference between the U.S. and home market commissions. Where commissions were paid on home market sales but not on sales to the U.S., we deducted the lesser of either (1) the home market commissions, or (2) the sum of the weighted average indirect selling expenses paid on U.S. sales. Where no commissions were paid on home market sales used to calculate normal value, we deducted the lesser of either (1) the amount of the commissions paid on the U.S. sales, or (2) the sum of the weighted average indirect selling expenses paid on home market sales, capped by the amount of the commission paid on U.S. sales. Finally, regardless of the applicable scenario, the amount of the commission paid on the U.S. sales was added to normal value.

For certain respondents, we recalculated reported credit expenses in instances where they had not reported a shipment and/or payment date because the merchandise had not yet been shipped or paid for at the time of filing the response. For those sales missing a shipment and/or a payment date, we used the average credit days of all transactions with a reported shipment and payment date.

Liguori and La Molisana reported that the sales to their respective affiliated customer(s) were made at arm's length prices. We used the affiliated party test applied at the preliminary determination to determine whether sales to affiliated customers were made on an arm's-length basis, although we modified it to consider price differences that result from comparisons of sales to different customer categories. (For a further discussion of this issue *see*, Comment 1 under the ''Company Specific Comments—La Molisana'' section of this notice, below. Sales not made at arm's-length prices were excluded from our LTFV analysis.

We compared all home market sales to the cost of production (COP), as described below. Where home market prices were above COP, we calculated NV based on the same methodology used in the preliminary determination, with the following exceptions:

Arrighi

We made minor corrections to the home market sales database based on errors noted at verification (*see* Arrighi's Comment 1). For home market credit expense calculation, we used a weighted average short-term interest rate based on Arrighi's and Italpasta's company-specific short-term interest rates (*see* Arrighi's Comment 2). We also recalculated inventory carrying expense to correct the price basis used in the calculation, and to apply the weighted average short-term interest rate. We reclassified as indirect selling expenses advertising expense 1 and direct selling expenses based on verification findings (*see* Arrighi's Comments 4 and 5). For

Italpasta sales that incurred inland freight, we used the lowest reported unit inland freight expense as ''facts available'' because this expense could not be completely verified (*see* Arrighi's Comment 3).

Additionally, because section 773(a)(1)(B)(i) of the Act incorporates, by reference, the definition of foreign like product in section 771(16) of the Act, it prohibits our using sales of merchandise produced by persons other than the respondents in our calculation of normal value. Accordingly, we have excluded from our analysis all of the sales from each of the companies of subject merchandise in the Italian market that were not produced by the respondent companies (*see* Arrighi's Comment 7).

Delverde

We recalculated home market credit based on the weighted average of the company-specific short term borrowing rates reported by Delverde and Tamma. We also increase Tamma's packing cost, indirect selling expenses and warehousing cost to reflect the findings of cost verification.

De Matteis

All reported commission expenses that were found to be salaries were reclassified as indirect selling expenses.

La Molisana

We disallowed La Molisana's claim for a certain rebate (REBATE2H) because the company failed to provide support documentation for the claimed amount at verification. *See* La Molisana Comment 4, below. We recalculated the indirect selling expense factor to reflect the amounts confirmed at verification. In addition, we reclassified trade promotion expenses as direct advertising expenses. *See* Comment 2B, below. Finally, we reallocated the POI expenses over the appropriate denominator confirmed at verification.

Additionally, we increased the reported advertising expense to include the ''television sponsorship'' expense discovered at verification. *See* La Molisana Comment 2A, below.

Liguori

For certain home market sales, associated with a particular invoice, we corrected the payment date and the imputed credit expenses based on errors noted at verification.

Pagani

We deleted home market sales of enriched pasta, other than enriched whole wheat pasta, because these sales were deemed to have been made outside of the ordinary course of business. In addition, we deleted duplicate entries, sales recorded as gifts, sales made outside of the POI, and sales to employees from the home market database. We also updated the interest rate used for calculating Pagani's credit expense and its inventory carrying costs.

Cost of Production Analysis

As discussed in the preliminary determination notice, the Department conducted an investigation to determine whether each respondent made home market sales during the POI at prices below COP within the meaning of section 773(b) of the Act. Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the cost of materials, fabrication, general expenses, and home market packing in accordance with section 773(b)(3) of the Act. We relied on the submitted COP data, except in the following instances where the costs were not appropriately quantified or valued.

Arrighi

1. We corrected Arrighi's understated depreciation expense to reflect its normal, full-year depreciation expense for fixed assets that were temporarily idle.
2. We corrected general and administrative expenses (G&A) for costs that were improperly excluded by Arrighi and its affiliate, Italpasta S.p.A. (Italpasta).
3. We revised the cost of goods sold figure used as the denominator in the G&A and financial expense ratios and recalculated Arrighi and Italpasta's G&A and financial expense ratios.
4. We recalculated the semolina costs reported by Arrighi's affiliated mill to correct for errors in the cost of raw materials
5. We increased Arrighi's material costs to agree with the actual material costs reported under the company's financial accounting system.
6. We increased Arrighi's G&A expenses to include the G&A expenses incurred by its parent company.
7. We revised Arrighi and Italpasta's financial expenses to include bank charges and to exclude exchange gains and losses related to sales transactions.

De Matteis

1. We revised the cost of goods sold figure used as the denominator in De Matteis' submitted G&A and financial expense rates, and recalculated its per-unit G&A and financial expenses using the revised rates.

Delverde and Tamma

1. We corrected the depreciation expense reported by Tamma, a Delverde affiliate.
2. We increased Tamma's financial expenses to include foreign exchange losses incurred on the extinguishment of debt.
3. We revised the combined cost of sales figure used by Delverde to calculate its G&A and financial expense rates, reducing it for byproduct revenues and intercompany transfers between Delverde and Tamma.
4. We did not calculate a separate financial expense rate for use in the CV calculations because the statute states that COP and CV are based on the actual costs and not imputed costs.

Pagani

1. We increased Pagani's cost of semolina for unreported freight costs.
2. We increased Pagani's fixed overhead for clerical errors reported to the Department on the first day of verification. We also increased fixed overhead to include an additional two months of depreciation expense on a new production line.
3. We revised Pagani's cost of sales figure used to calculate the G&A expense ratio to exclude packing costs and to include all fixed overhead costs.
4. We revised Pagani's consolidated financial expense rate calculation to account for the following: we reduced the costs of sales figure for byproduct revenue that was used to offset the cost of production; we included fixed overhead costs that had been omitted from the costs of sales figure; we excluded packing costs from the cost of sales figure; and we adjusted the consolidated cost of sales figure to account for intercompany transfers.

Liguori

1. We reallocated fuel costs based on the number of pasta production lines in operation.

La Molisana

1. We increased reported costs to account for an unreconciled difference between La Molisana's cost and financial accounting systems.
2. We increased the reported cost of semolina production, disallowing La Molisana's offset for revenues received from sales of finished semolina.
3. We increased the reported costs for the understatement of wheat, labor and electricity costs due to the use of the calendar year 1994 costs rather than POI costs.

4. We increased reported costs to account for an unreconciled difference between La Molisana's total production costs and its reported production costs for 1994.

5. We reduced reported depreciation expense for an overstatement discovered during verification.

6. We increased G&A expenses to disallow an offset for foreign exchange gains related to sales transactions.

7. We increased reported financial expenses to disallow long-term interest income used to offset financial expenses and to include financial expenses that were allocated to the flour mill.

8. We revised the cost of sales figure used as the denominator in La Molisana's G&A and financial expense ratios, and recalculated its per-unit G&A and financial expenses using the revised rates.

B. Test of Home Market Prices

We compared the adjusted weighted-average COP figures to home market sales of the foreign like product on a product-specific basis, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and at prices that did not permit recovery of all costs within a reasonable period of time. The home market prices compared were net of any applicable movement charges, discounts, rebates, packing, and direct and indirect selling expenses.

C. Results of COP Test

Pursant to section 773(b)(2)(C), where less than 20 percent of sales during the POI of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in substantial quantities within an extended period of time. Where 20 percent or more of sales of a given product are at prices less than the COP, we disregard only the below-cost sales because such sales are found to be made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, and at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all sales of a specific product are at prices below the COP, we disregard all sales of that product, and calculate NV based on CV, in accordance with section 773(a)(4) of the Act.

We found that, for certain types of pasta, more than 20 percent of the following respondents' home market sales were sold at below COP prices within an extended period of time in substantial quantities: Arrighi, Delverde, De Matteis, La Molisana, Pagani and Liguori. Further we did not find that these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1). For those types of pasta for which there were no above-cost sales in the ordinary course of trade, we compared export prices to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of cost of materials, fabrication, general expenses and U.S. packing costs as reported in the U.S. sales database. We recalculated the respondents' CV based on the methodology described in the calculation of COP above.

For each of the respondents, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV. In addition, in accordance with section 773(a)(6)(B), we deducted home market packing costs and added U.S. packing costs for all respondents.

Comparison Methodology

In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted average normal values, or to constructed values, where appropriate. The weighted averages were calculated and compared by product characteristics and, where appropriate, level of trade and/or price averaging groups. The SAA states that in determining the comparability of sales for inclusion within a particular average, ''Commerce will consider factors it deems appropriate, such as * * * the class of customer involved,'' *SAA* at 842. The Department, not the respondents, determines which customers may be grouped together for product comparison purposes. *Cf., N.A.R., S.p.A.* v. *U.S., 741 F. Supp. 936* (CIT, 1990). Based on the chain of distribution for the pasta industry, we have identified the following five distinct customer categories that represent different points in the chain of distribution: (1) other pasta manufacturers (Pastificios) who purchase and resell pasta; (2) distributors; (3) wholesalers; (4) retailers; and (5) consumers. Each of these customer categories was defined by functions commonly associated with each category of customer in the areas of: (1) category of the supplier; (2) contractual relationship with the supplier; (3) exclusivity of sales territory; (4) exclusivity of product range; (5) sales practices; and (6) downstream customer category.

For those respondents (De Matteis and Pagani) with the same level of trade in the U.S. and home markets and a single, identical customer category in each market, the weighted-average prices were calculated and compared by product characteristics and level of trade. For those respondents having the same level of trade in the U.S. and home markets, and multiple customer categories, the weighted-average prices were calculated and compared by product characteristics, level of trade, and the identical or, in the case of La Molisana, the most comparable customer category in terms of remoteness from factory, if we found that there were consistent price differences among the various customer categories. Price differentials were analyzed by first calculating the average price net of all reported expenses for each product control number and unique customer category in each market. The average net unit prices for each control number in the customer category least remote in the chain of distribution were compared to the identical product control number in the customer category at the next most remote level in the chain of distribution. Price differentials were considered to be consistent if there were uniform price differences between the customer categories. For those respondents (Arrighi and Delverde) with the same level of trade in the U.S. and home markets and multiple customer categories, but no consistent price differentials, the weighted-average prices were calculated and compared by product characteristic and level of trade. We determined for Arrighi that a price differential analysis was not measurable because Arrighi had grouped different customer categories in its reported customer groups, and we were unable to separate these customers by customer category. For those respondents (Liguori) with different levels of trade in the U.S. and home market, the weighted-average prices were calculated and compared by product characteristics and by customer category, if we found that there were consistent price differentials among the customer categories.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal

Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. The benchmark is defined as the moving average of rates for the past 40 business days. (For an explanation of this method, *see, Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Italian lira did not undergo a sustained movement, nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondents, with the exception of De Cecco, using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information. In addition, we conducted verification of Saral to confirm its claim that it no longer exports pasta to the United States.

Interested Party Comments

I. General Issues

Comment 1 Level of Trade: Comment 1A Whether the Department Should Consider the Class of Customer and/or Channel of Distribution in Determining Whether Separate LOTs Exist: The petitioners and La Molisana argue that the level of trade (LOT) methodology adopted by the Department in its preliminary determination is flawed and should be substantially revised in the final determination. Specifically, the petitioners and La Molisana assert that the Department improperly focused solely on selling functions and ignored the customer groups and/or channels of distribution identified by each respondent as potentially different points in the chain of distribution.

The petitioners assert that it has been long recognized by the Department and the Court of International Trade (CIT) that levels of trade reflect ''an attempt to reconstruct prices at a specific, 'common' point in the chain of commerce * * *'', *Smith Corona* v. *United States*, 713 F.2d 1568, 1571–72 (Fed. Cir. 1983). Claiming that the new statute, the SAA, and the Department's Proposed Regulations do not define LOT or establish criteria for determining separate LOTs, the petitioners and La Molisana argue that the fundamental concept of LOT has not changed under the new statute. Therefore, they each contend that the definition of LOT still reflects the Court of Appeals' and the Department's longstanding interpretation of that term (*i.e.*, that LOT refers to different points in the chain of distribution). (*See, e.g.*, Import Administration Policy Number 92/1 at 2 (July 29, 1992), (''In asking for LOT information, the Department is trying to determine where in the distribution chain the respondents' customer falls (end user, distributor, retailer).'') *Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18,791, 18,794 (April 20, 1994), (''Comparisons are made at distinct, discernable levels of trade based on the function each level of trade performs, such as end-user, distributor, and retailer.'')).

Although the petitioners and La Molisana recognize that the new statute contains certain refinements to the LOT concept, both parties argue that the amendments to the law made by the URAA did not alter the fundamental definition of LOT as noted above. Consequently, they argue that the starting point for determining whether different LOTs exist is whether the sales take place at different points in the chain of distribution. The petitioners and La Molisana cite *Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8916 (March 6, 1996) (*French Rod*) as a recent case where, in analyzing potential LOTs, the Department relied upon the distinctions the respondents identified between channels of distribution. (''Respondents reported two channels of distribution in the home market. * * * We examined and verified the selling functions performed in each channel. * * * Overall we determine that the selling functions between the two sales channels are sufficiently similar to consider them one level of trade in the home market.'')), *French Rod*, 61 FR 8916. Therefore, both La Molisana and the petitioners assert that the Department should consider the potential LOTs identified by the respondents, in terms of channels of distribution or customer groups, in determining whether separate LOTs exist.

Arrighi argues that the LOT methodology adopted by the Department in its preliminary determination was factually correct and in accordance with the law and the URAA. Arrighi disagrees with the petitioners' and La Molisana's claim that the amendments to the law made by the URAA did not alter the fundamental definition of LOT. According to Arrighi, because the SAA specifically states that ''in order to establish the existence of different LOTs, a respondent company must show that different *selling activities* are performed *by the respondent company* at each LOT,'' and there is no mention of another criterion or test in either the statute or the SAA, the position in the chain of distribution of the respondent's customers should not be a precondition to finding separate LOTs.

Arrighi contends that the Department confirmed that the selling functions of a respondent are the proper determinative factor in establishing different LOTs in its comments that were issued with the Proposed Regulations for the URAA. Arrighi claims that while certain commentators argued that a respondent company must sell to customers at different points in the chain of distribution before asserting that different LOTs exist, the Department rejected this position, stating that the ''only test identified in the statute for the legitimacy of the claimed LOTs is the activity of the seller.''

DOC Position: We agree with Arrighi that it is appropriate to look at the selling functions of a respondent to determine whether separate levels of trade exist. While neither the Act nor the SAA provides an explicit definition of level of trade or establishes criteria for determining whether separate levels of trade exist, the SAA does specify that the Department requires evidence that ''different selling activities are actually performed at the allegedly different levels of trade'' before recognizing distinct levels of trade. *SAA* at 829. This is confirmed again by the SAA in the discussion of the required pattern of price differences for the LOT adjustment, where it states that ''where it is established that there are different levels of trade based on the performance of different selling activities * * *,'' Commerce will make a LOT adjustment. *SAA* at 830. Thus, the Act and the SAA have identified selling activities as a key factor in determining levels of trade; however, the statute does not require that this analysis begin and end with the selling activities of the producer/exporter.

In the preliminary determination, the Department stated that it would continue to examine its policy for

making level of trade comparisons and adjustments. After reviewing the comments we received on this issue as well as the Department's recent practice for determining the existence of levels of trade, we have determined that certain modifications to the LOT methodology used in the preliminary determination are warranted. As described in the ''Level of Trade'' section of this notice, above, in order to determine whether distinct levels of trade exist, we have examined the full array of selling functions provided to each of the customer groups alleged by the respondents. As noted in Comment 1C below, we believe that this approach will allow us to consider all types of selling functions, both claimed and unclaimed, that had been actually performed in determining the level of trade and avoid instances where a single selling function difference on individual sales transactions warrants the finding of a distinct level of trade. Finally, by reviewing the selling functions within each of the alleged customer groups, we expect that the analysis will capture any possible differences in the mix of selling activities provided for each customer group.

Comment 1B Whether the Selling Functions of a Respondent Should be Considered in Determining Whether Separate LOTs Exist: La Molisana argues that the functions or services performed by the respondents are not determinative of whether different LOTs exist and should not be taken into consideration in the Department's LOT analysis. La Molisana asserts that Section 773(a)(7)(A) of the new statute provides for a *LOT adjustment* ''if the difference in LOT * * *involves the performance of different selling activities.'' Accordingly, La Molisana asserts that the selling activities of the respondent cannot be part of the definition of LOT and only become relevant *after* it is determined that separate LOTs, in fact, exist. Therefore, La Molisana argues that the question of whether the seller performs different selling functions is only relevant in determining whether a LOT adjustment is warranted.

The petitioners argue that the SAA is clear in stating that selling functions are intended to be an integral part of establishing whether different LOTs exist. (''Commerce will grant [LOT] adjustments only where: 1) there is a difference in the LOT (*i.e.*, there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets)). *SAA* at 829. The petitioners contend that the SAA's reference to a ''difference between the *actual functions performed*'' clearly implies that a distinction in LOT should not be made without a finding of functional differences. In addition, the petitioners claim that the SAA implies that something more than a mere reference to the class of customer would be needed to identify separate LOTs (''[n]ominal reference to a company as a 'wholesaler,' for example, will not be sufficient'' [in determining LOT]). *SAA* at 829. Therefore, the petitioners argue that a selling function analysis is relevant in determining whether separate LOTs exist and that the Department should continue to examine the selling functions of the respondents in its final determination. The petitioners cited *French Rod* as a recent case where the Department examined the selling activities of the respondent in determining whether there were separate LOTs (''In order to identify LOTs, the Department must review information concerning the selling functions of the exporter,'' *French Rod*, 61 FR 8916 (March 6, 1996).

Finally, the petitioners claim that because all of La Molisana's U.S. sales are EP sales, no indirect selling expenses are deducted from either the U.S. or home market prices. Therefore, the petitioners argue that La Molisana is incorrect in stating that an examination of selling functions is double counting and that the margin calculations already account for all expenses incurred by La Molisana.

Arrighi and De Matteis both argue that the existence of different selling functions is the proper basis for establishing whether different LOTs exist. For a further discussion of Arrighi's arguments concerning this issue, *see* Comment 1A, above.

DOC Position: We agree with the petitioners. The SAA states that, ''Commerce will require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade * * *. On the other hand, Commerce need not find that the two levels involve no common selling activities to determine that there are two levels of trade.'' *SAA* at 159, and *Cf., Proposed Regulations* at 7348. Thus, as noted in Comment 1A above, information about the selling activities of the producer/exporter is essential to the identification of levels of trade.

Comment 1C Whether the Department Should Reject The Four Selling Function Coding System Used in the Preliminary Determination: In the event the Department determines it is appropriate to define LOTs based on selling function distinctions, the petitioners, La Molisana, Delverde and De Matteis argue that the LOT coding methodology used in the preliminary determination should be rejected because it is inconsistent with law and commercial reality. Neither Liguori, Pagani or Arrighi commented on the specifics of the LOT coding methodology used in the preliminary determination. However, Arrighi and Liguori state that they agree with the outcome of the Department's preliminary LOT analysis.

First, the petitioners and La Molisana assert that the Department's LOT coding system resulted in a finding that a difference in any one selling function is sufficient to define a separate LOT. The petitioners and La Molisana argue that this methodology is at odds with the Department's Proposed Regulations which specifically reject the notion that a difference in one selling function alone would be sufficient to define an entirely separate LOT in most instances. *Cf., e.g., Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7308, 7348 (February 27, 1996) (*Proposed Regulations*) at 7348.

Second, the petitioners argue that the selling function categories used in the preliminary determination are unreasonable and overly narrow. Given the different combinations of the four selling function categories used in the preliminary determination, there were 16 possible LOT combinations in each market. Both the petitioners and La Molisana assert that because LOT is used as a matching criterion, the overly-narrow LOT segments resulted in large amounts of home market sales not being used to determine whether dumping was occurring. For example, with respect to Arrighi, the petitioners claim that as a result of the Department's preliminary LOT methodology, less than one percent of Arrighi's home market sales were used as comparison sales to determine whether dumping was occurring.

Third, La Molisana and De Matteis both argue that the Department's use of sales with the same number of selling expense categories to determine the ''next most comparable LOT'' in the preliminary determination has no factual or logical basis. Specifically, La Molisana and De Matteis assert that the Department's methodology essentially treats each selling function category as having an equal effect on the sales price. La Molisana and De Matteis contend this not true and that in reality, each selling function influences pricing in a different manner.

Fourth, La Molisana and De Matteis argue that the Department's preliminary methodology erred by measuring the existence or absence of a selling activity in absolute terms, rather than in degrees. La Molisana and De Matteis assert that in determining LOT comparisons, the relative degree or extent to which an activity or function is performed (*e.g.,* ''great degree,'' ''moderate degree'' or ''small degree'') should be taken into account by the Department in the final determination.

The petitioners argue that the extent or cost of the function provided should not be used to distinguish selling activities. The petitioners assert that while expenses for services to some customers may be more than to others, the expense difference may not reflect a true difference in selling activities or services, but instead represent the costs associated with sales shipped in larger or smaller quantities or to different geographic locations. In addition, the petitioners note that because the Department did not request data concerning the degree to which any selling activity is performed, there is no basis for the Department to perform such an analysis in this case.

Fifth, Delverde argues that the LOT coding methodology is fundamentally flawed in concept because it ''constructed'' a LOT based on selling functions that were not part of CEP. Specifically, Delverde argues that the statutory definition of CEP clearly describes a price at an ex-factory LOT. Delverde claims that although the Department concluded that Delverde provided movement and advertising services in connection with its CEP sales, both types of expenses were deducted from the U.S. starting price when CEP was calculated. Therefore, Delverde contends that the Department's preliminary methodology created a ''constructed'' CEP LOT that was more advanced than the LOT of the actual CEP.

DOC Position: In the preliminary determination, the Department stated that it would continue to examine its policy for making level of trade comparisons and adjustments. After reviewing the comments we received on this issue as well as the Department's recent practice for determining the existence of separate levels of trade, we agree with the respondents that certain modifications to the LOT methodology utilized in the preliminary determination are warranted. Specifically, we find that: (1) the preliminary coding methodology measured levels of trade based on the existence of individual selling functions, rather than basing levels of trade on the collective array of selling activities performed by the seller; and (2) the coding system led to the result that a difference in just one selling function on any given sale necessarily justified a difference in level of trade. Although neither the Act nor the SAA provide explicit guidelines for identifying levels of trade, the preamble to the Proposed Regulations reflects our practice and states that ''small differences in the functions of the seller will not alter the level of trade.'' *Proposed Regulations* at 7348. Although the Proposed Regulations provide that a single function may be so significant as to constitute the existence of a separate level of trade, we have determined that no single selling function in the pasta industry warrants the finding of a separate level of trade. Therefore, as noted in the ''Level of Trade'' section of this notice, above, we have revised the level of trade methodology used for the final determination. In order to determine whether separate levels of trade existed within or between the U.S. and home markets, we have reviewed the full array of selling functions, in the aggregate, provided to each of the customer groups alleged by the respondents. In addition, because we have determined that no single selling function in the pasta industry is so significant as to alter the LOT, we have no longer considered a single difference in selling function to justify the finding of a separate level of trade.

We agree, in part, with La Molisana and De Matteis' assertion that the relative extent to which an activity or function is performed should be considered in the Department's LOT analysis. As noted in the ''Level of Trade'' section of this notice, above, before determining that a particular selling function was performed for a particular customer group, we examined whether the selling function was performed on a substantial number of sales within the customer group. We disagree with La Molisana and De Matteis, however, that the degree to which a selling function is performed (*i.e.,* ''great degree'', ''moderate degree'' or ''small degree'') should be considered in our LOT analysis for this investigation. While it is conceivable that the Department may determine in a particular case that it is necessary to consider the degree to which a particular selling function is performed in its analysis, the selling functions in this case were such that they can be viewed as either having been performed or not having been performed. Accordingly, we have not taken the degree to which a selling function is performed into consideration in conducting our LOT analysis.

Delverde's arguments concerning whether the LOT coding methodology improperly ''constructed'' a LOT based on selling functions that were not part of CEP are addressed separately under the ''Company Specific Comments'' section of this notice, below.

Comment 1D Which Selling Functions Should be Considered in Determining Whether Separate LOTs Exist: In lieu of the LOT methodology adopted in the preliminary determination, the petitioners and De Matteis argue that the Department should examine the full array of selling functions, in the aggregate, provided to each potential LOT to determine whether separate LOTs exist. The petitioners assert that this methodology was adopted by the Department in the *French Rod* case where the Department examined the collective array of selling activities performed for each channel of distribution and found that minor differences between the home market sales examined did not justify segmenting the sales into different LOTs (''[we] found that the two sales channels provided many of the same or similar selling functions including: strategic planning, order evaluation, warranty claims, technical services, inventory maintenance, packing and freight and delivery. We found some differences between the two channels of trade in advertising, customer contacts, computer systems (order input/invoice system), and administrative functions. Overall, we determine that the selling functions between the two sales channels are sufficiently similar to consider them as one level of trade in the home market''). 61 FR at 8916.

Specifically, the petitioners assert that the following selling functions are relevant to the Department's LOT analysis for the U.S. and Italian pasta markets: (1) freight & delivery; (2) customer sales contacts; (3) advertising; (4) technical services; (5) warranties; (6) inventory maintenance (pre-sale); (7) post-sale warehousing; and (8) administrative functions. In addition, the petitioners contend that in performing the selling function analysis, the Department should ensure that the selling activity is consistently applied to all, or at least the vast majority, of customers at each potential LOT identified. The petitioners claim it would be inappropriate to consider a selling function applicable to a particular LOT where the function was not provided to all customers, or on some but not all sales.

In the event the Department determines it is appropriate to consider

the selling functions of the respondent in determining whether separate LOTs exist, La Molisana argues that by examining the selling activities of respondents, the Department is ''in a sense double-counting'' because the selling functions have already been accounted for in the margin calculations. For example, La Molisana claims that in its margin calculations, the Department deducts freight expenses from both the export price and home market price in order to make an ''apples to apples'' comparison of the prices. Accordingly, La Molisana asserts that it is unnecessary to account for potential price differences in freight expenses by treating sales sold on an ex-factory basis to be a different LOT than sales made on a delivered basis. Therefore, La Molisana asserts that only those selling activities that are not otherwise accounted for in the margin calculation should be considered in determining the LOT.

Regarding whether the Department should examine all selling activities undertaken or should focus only on those activities that are not already accounted for in the dumping calculation, the petitioners note that the SAA cautions the Department against making adjustments for the same activities twice, once as a circumstance of sale adjustment and once as a LOT adjustment. *SAA* at 830. Therefore, the petitioners assert that it might be appropriate to consider selling functions only to the extent that such functions were not already accounted for as a COS adjustment. Because all of La Molisana's U.S. sales are EP sales, the petitioners claim that indirect selling expenses are not deducted from either the U.S. or home market prices. Therefore, only indirect selling expenses (and their related selling activities) might serve as the basis for distinguishing LOTs.

Whichever approach the Department adopts (either examining all selling functions or only those not otherwise accounted for in the margin calculations), the petitioners argue that the Department must begin with the same starting point for the sales prices compared. For example, the petitioners assert that if the Department adjusts CEP sales to exclude U.S. selling functions, the Department should similarly adjust EP and normal value sales for all statutory adjustments before examining LOT.

Finally, the petitioners argue that the Department should *not* attempt to define LOTs based on the following factors because they do not relate to differences in selling activities:

(1) *Quantities/Volumes Sold:* The petitioners assert that the SAA states that differences based on quantities sold are not a legitimate basis for defining LOTs or LOT adjustments. *SAA* at 830.

(2) *Geographical Location of the Customer:* The petitioners claim that the fact that two customers may be located in physically distinct geographical areas does not, in and of itself, demonstrate that different LOTs exist.

(3) *Which Selling Entity Performs the Functions:* The petitioners assert that whether a selling function is performed by an unaffiliated sales agent, an affiliated sales agent or the manufacturer, the same function is provided and the costs to the seller are the same. Therefore, the petitioners argue that the Department should not differentiate LOT based on which entity performs the selling function. La Molisana asserts the LOT can only be defined with respect to the first arm's length transaction. Therefore, La Molisana argues that selling activities performed by an unaffiliated agent should not be considered in the Department's analysis.

(4) *Commissions:* The petitioners argue that commissions are merely payments to an agent to perform the same function that would otherwise be incurred by the manufacturer directly. Accordingly, the petitioners argue that commissions are an invalid basis to distinguish LOT.

(5) *Whether the Services Were ''Intentionally'' Provided:* Arrighi argues that the Department should differentiate between selling functions that were provided based on whether Arrighi intentionally marketed the service to the customer or not (*see* Comment 1E, below). The petitioners assert that nothing in the statute authorizes the Department to distinguish between selling functions based on the intent of the seller. Therefore, the petitioners argue that Arrighi's attempt to include the factor of ''intent'' into the LOT analysis should be rejected.

(6) *Discounts and Rebates:* The petitioners and La Molisana argue that discounts and rebates are pricing mechanisms, not selling functions or activities, and that the presence of a discount or rebate has no bearing on the point in the chain of distribution at which the transaction occurs. In addition the petitioners and La Molisana contend that the dumping calculations recognize that discounts and rebates are a function of price by deducting them as ''price adjustments'' rather than ''circumstance of sale (COS) adjustments.'' *Proposed Regulations* at 7381. For all of these reasons, the petitioners and La Molisana argue that discounts and rebates should not be included as a selling function distinction for LOT purposes.

(7) *Distinctions Between Customers Based on Price:* The petitioners assert that the statute does not suggest that LOT distinctions can be based on price differentials. (For a further discussion and arguments on a related issue - whether to consider price distinctions in defining customer categories, see Comment 2D, below.)

DOC Position: We agree with the petitioners and De Matteis that the Department's level of trade analysis should consider the full array of selling functions in the aggregate, and ensure that the selling function was consistently applied to at least the vast majority of customers and sales in each level of trade. As stated in the ''Level of Trade'' section of this notice, above, no single selling function in this industry warranted a separate level of trade and, wherever possible, we examined whether the selling function was performed on a substantial portion of sales within the customer groups reported by the respondents. A company specific description of the selling functions assigned to the level(s) of trade for each respondent is provided in Comment 1E, below. Three of the respondents, Pagani, Delverde and De Matteis, were found to have more than one (but no more than two) levels of trade in either their U.S. or home market; in each of these instances there were at least two selling function differences between the levels of trade. In determining whether a selling function was applicable to a substantial portion of customers in the reported customer group, we relied on the respondent's narrative responses and sales transaction data, as well as information obtained during verification.

We disagree with La Molisana and, in part, with the petitioners regarding the starting point for considering selling functions in determining the level of trade. The process of establishing whether separate levels of trade exist is distinct from both the margin calculation and the level of trade adjustment. We reject any attempt to alter the statutory criteria for levels of trade, even if such alteration might arguably eliminate a redundant step.

Section 773(a)(1)(B)(i) of the statute states that normal value will be based on ''the price at which the foreign like product is first sold * * * and to the extent practicable, at the same level of trade as the export price or constructed export price.'' The SAA specifies that normal value will be calculated ''at the same level of trade as the constructed export price or the starting price for

export sales.'' *SAA* at 827. Therefore, in identifying levels of trade for export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustment, for the customer group reported by the respondent. Section 772(d) of the Act provides that constructed export price will be based on the price after the deduction of expenses and profit. Thus, for CEP sales, we considered the selling functions reflected in the price after the deduction of expenses and profit under Section 772(d) of the Act.

We agree, in part, with the petitioners regarding the types of selling functions that should or should not be considered in defining levels of trade. The selling functions to be considered in establishing whether separate levels of trade exist were based on the nature of the pasta industry. The five selling functions used by the Department to establish the levels of trade in this investigation are reflective of the functions and activities incurred in the sale of pasta to the U.S. and in the home market. These functions have been identified in the ''Level of Trade'' section of this notice, above. However, we disagree with the petitioners that technical services or post-sale warehousing should be included in the selling function analysis; these activities did not occur in the pasta industry. Regarding the other selling functions, we were generally in agreement with the petitioners' recommendations regarding which selling functions to include in determining levels of trade. Regarding La Molisana's claim that we should start our level of trade analysis with the first arm's length transaction, as noted in the ''Level of Trade'' section of this notice, above, we collapsed affiliated parties before considering the level of trade.

Comment 1E Company-Specific Analysis of Selling Functions: The petitioners argue that a review of the selling functions undertaken by each of the respondents to the U.S. and home market customers, based on the collective approach to analyzing selling functions utilized in *French Rod*, shows that there are few, if any, functional differences between the U.S. and home market sales of pasta. Therefore, petitioners claim that the Department should determine that different LOTs do not exist for any of the respondents within the U.S. or Italian markets or between the U.S. and Italian markets.

Certain respondents challenge the petitioners' assumptions regarding the selling functions performed. The petitioners' analysis and the respondents' rebuttal comments are summarized below. Insofar as the Department has conducted its own selling function analysis to determine whether separate LOTs exist, many of the arguments presented by the petitioners and the respondents are now moot and, therefore, have not been specifically addressed. Therefore, the Departmental Position for each respondent reflects the results of the Department's selling function analysis. The selling function analysis utilized by the Department is described in the ''Level of Trade'' section of this notice, above.

(1) Liguori

The petitioners claim that there are no differences in selling functions accorded to its home market customers by Liguori. Therefore, the petitioners assert that a single LOT exists in the home market. In the U.S. market, the petitioners claim that Liguori's record establishes no functional distinctions between the services offered on Liguori's U.S. sales. Thus, the petitioners claim that a single LOT exists for all U.S. sales. Regarding the U.S. to home market comparison, the petitioners contend that the only functional differences between the U.S. and home market sales are the presence of freight and delivery and warranty services on home market sales that are not present on U.S. sales. The petitioners assert that these differences are not sufficient to distinguish LOTs and that the Department should consider all U.S. and home market sales to be at the same LOT. If the Department determines that the home market sales are at a more advanced LOT, the petitioners argue that no LOT adjustment should be applied because Liguori has not claimed or demonstrated entitlement to such an adjustment. (For a further discussion of LOT adjustments, *see* Comment 1F, below.)

Liguori agrees with the petitioners. Specifically, Liguori states that the company has neither claimed a level of trade adjustment to normal value nor has it requested that its U.S. prices and normal value be compared within levels of trade. Thus, Liguori asserts that the level of trade methodology employed in the preliminary determination achieved a result consistent with Liguori's own position (*i.e.*, no level of trade adjustment was granted).

DOC Position: We agree with the petitioners and Liguori, in part. Based on our own analysis of the selling functions performed by Liguori, as described in the ''Level of Trade'' section of this notice, above, we found that all U.S. and home market sales were made at a single LOT. However, we determined that the U.S. LOT was different from the home market LOT.

Liguori reported two customer groups in the U.S. market. We found that Liguori performed similar selling functions for these customer groups in the areas of inventory maintenance, forward warehousing, freight, advertising, and warranties. However, we found different sales processes for these customer groups. Overall, we determined that the selling functions between these two customer groups are sufficiently similar to consider them as one level of trade. For the home market, Liguori reported six customer groups. We found these customer groups to be similar in that Liguori performed the following selling functions for certain customer groups: sales process, inventory maintenance, forward warehousing, freight, advertising and warranties. We found these customer groups to be different in how Liguori performed the following selling functions for certain customer groups in the areas of sales processing, forward warehousing, and advertising. Overall, we determined the selling functions between these six customer groups to be sufficiently similar to consider them one level of trade.

We then compared the level of trade in the U.S. market to the home market level of trade and found the selling functions performed for certain customer groups in the areas of sales processing, forward warehousing, and advertising to be similar. We found the selling functions performed for certain customer groups in the areas of sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties to be dissimilar. Overall, these factors warrant finding the U.S. and home market sales to be made at different levels of trade.

(2) La Molisana

The petitioners argue that its review of the array of selling functions offered to La Molisana's home market customers reveals no significant distinctions in the selling functions which would justify a finding of different LOTs in the home market. The petitioners contend that the selling functions La Molisana relied upon to differentiate its home market LOTs are invalid. Specifically, the petitioners contend the following: (1) any price distinctions between distributors and non-distributors are a result of differences in the quantities purchased and geographic location of the customer, both invalid bases for differentiating LOTs; (2) no matter whether La Molisana incurs administrative services directly or pays others to incur these

expenses, the question of which entity performs the function is not a valid basis to distinguish LOTs; and (3) the degree or extent to which inventory maintenance and advertising functions were performed is irrelevant.

Since all of La Molisana's U.S. sales are made to a distributor, the petitioners assert that a single LOT exists in the U.S. market. Regarding the U.S. to home market comparison, the petitioners argue that with the exception of inventory maintenance, the selling functions offered to its U.S. and home market customers are the same and that all U.S. and home market sales should be considered to be at the same LOT in the final determination.

La Molisana argues that in the event the Department determines it is appropriate to examine the selling functions in determining whether separate LOTs exist, the petitioners have failed to support their assertion that the home market distributor LOT is not distinguished from the rest of its home market sales. La Molisana recognizes that price differences are not a basis for determining distinctions in LOTs. However, La Molisana argues that the mere existence of separate price lists is important evidence of the significance of the different customer categories in commercial practice in the home market. In addition, La Molisana contends that the distributor price list applies to all sales to distributors, regardless of the volume sold. Further, La Molisana argues that while there is inevitably some ''inventory'' on all sales, since it takes time to pack and load the merchandise, this type of inventory is very different from maintaining stocks of inventory for just in time (JIT) delivery, a function not performed on its distributor sales. In addition, La Molisana asserts that it does not incur advertising expenses for advertisements directed at its customer's customer for sales made to wholesalers and distributors. Instead, La Molisana asserts that this advertising is directed at its customer's customer's customer. Therefore, La Molisana argues that its home market distributor sales should be found to be a different LOT than its other home market sales and that all of its U.S. distributor sales should be compared to the home market distributor sales in the final determination.

DOC Position: We agree with the petitioners and La Molisana, in part. Based on our own analysis of the selling functions performed by La Molisana, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in each market and that all U.S. and home market sales were made at the same LOT.

La Molisana reported one customer group in the U.S. We found one level of trade for the U.S. market because La Molisana performed the same selling functions to all customers in that single category. For the home market, La Molisana reported six customer groups. We found that La Molisana performed similar selling functions to certain customer groups with regard to: sales process, inventory maintenance, forward warehousing, freight, advertising and warranties. We found that La Molisana performed different selling functions for certain customer groups with regard to forward warehousing. Overall, we determined the selling functions performed by La Molisana for each of the six home market customer groups to be sufficiently similar to consider them as one level of trade.

We then compared the level of trade in the U.S. market to the home market level of trade and found the selling functions performed by La Molisana for certain customer groups for inventory maintenance and forward warehousing to be dissimilar between the markets. However, we found the selling functions performed by La Molisana for certain customer groups in the area of sales process, forward warehousing, freight, advertising, and warranties to be similar. Overall, these factors warrant finding U.S. and home market sales as the same level of trade.

(3) Arrighi

In its original questionnaire responses, Arrighi requested that LOT distinctions in the home market be made based on customer groups, and submitted data that would allow the Department to segregate home market data by either channel of distribution or customer group to determine whether different LOTs exist. The petitioners contend that a review of the actual selling functions associated with home market and U.S. sales demonstrates that selling functions do not vary based on either customer group or channel of distribution. In addition, with respect to customer category, the petitioners contend that Arrighi has not differentiated its customer groups based on commercial points in the chain of distribution and selling functions, but rather has made LOT distinctions based on factors such as the volume of the sales involved. With respect to channel of distribution, petitioners cite Arrighi's own statement that ''the functions performed and services offered by Arrighi in each distribution channel do not vary'' (*see*, Arrighi's August 16, 1995, questionnaire response, at A–8) in support of their claim that all of Arrighi's sales to both markets occur at the same level of trade.

Regarding the U.S. to home market comparison, the petitioners contend that since all of Arrighi's U.S. sales are to a single class of customer and all home market sales are made at a single level of trade based on the absence of distinct selling functions, all U.S. sales should be compared to all home market sales, without regard to LOT distinctions.

Arrighi contends that since the petitioners' arguments are based on a flawed LOT analysis, their comments concerning Arrighi's and Italpasta's levels of trade are likewise meritless and factually incorrect. Contrary to the petitioners' arguments, Arrighi claims that its LOTs are based upon differing selling functions and services, not sales quantities or geographic location. Specifically, Arrighi claims that the customers at one of its LOTs require a disproportionate amount of sales and administrative support relative to customers at the other LOTs. Concerning the petitioners' claim that Arrighi's LOTs are based on geography, Arrighi argues that while geographic location is the reason some of the selling functions for certain customers are provided, it is the difference in selling functions, and not geographic location, which distinguishes these customers as being at a distinct LOT. With respect to the specific selling functions, Arrighi claims that its provision of freight and inventory maintenance to a certain class of customers constitute selling functions.

DOC Position: We agree with the petitioners and Arrighi, in part. Based on our own analysis of the selling functions performed by Arrighi, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in each market and that all U.S. and home market sales were made at the same LOT.

Arrighi reported one customer class in the U.S., that was comprised of three customer groups. However, as noted in the ''Comparison Methodology'' section of this notice, above, Arrighi provided insufficient information in the sales database for the Department to perform an analysis of the selling functions performed for each of the three customer groups. Therefore, we found one level of trade for the U.S. market. For the home market, Arrighi reported three customer groups. As noted in the ''Normal Value'' section of this notice, above, we have excluded sales to one customer group because we determined that the quantity of these sales was insignificant and there were no sales

made by Arrighi to a comparable customer in the U.S. (for further discussion, *see*, the Department's June 3, 1996, final determination calculation memorandum for Arrighi). We found the remaining two customer groups similar in that Arrighi performed the same selling functions for each group. Overall, we determined the selling functions performed for these two home market customer groups are sufficiently similar to consider the sales made to them to be at one LOT.

We then compared the LOT in the U.S. market to the home market LOT and found them to be only dissimilar in Arrighi's performance of the freight selling function. We found the selling functions performed, including sales process, inventory maintenance, forward warehousing, advertising and warranties, to be similar. Overall, these factors warrant finding the U.S. sales and home market sales to be at the same level of trade.

(4) De Matteis

The petitioners contend that although De Matteis identifies a number of customer categories, it does not correlate these customer classes to its reported LOTs. Therefore the petitioners have based their LOT analysis on De Matteis' reported channels of distribution. The petitioners argue that their review of the selling functions offered to De Matteis' home market channels of distribution reveals that the only functional difference between the selling functions offered on De Matteis' home market sales is the presence of freight and delivery services on sales of De Matteis' own brand name pasta which are not present on sales made to resellers. Citing the Proposed Regulations, the petitioners assert that this difference is not sufficient to distinguish LOTs and that the Department should consider all of De Matteis' home market sales to be at one LOT (small differences in the functions of the seller will not alter the level of trade). *Proposed Regulations* at 7348.

Regarding De Matteis' assertion that there are significant differences in LOT based on whether the company markets its own brand name pasta or sells it to a reseller, the petitioners argue that because the pasta sold to resellers is produced to order, De Matteis takes an active role. Therefore, the petitioners assert that customer contacts are present on both types of sales and cannot be a basis for differentiating LOTs.

Since De Matteis reports that all of its U.S. sales are at a single LOT, the petitioners assert that U.S. and home market sales should be compared without regard to LOT distinctions. If the Department determines that differences exist between the U.S. and home market LOTs, the petitioners argue that no LOT adjustment should be applied because De Matteis has not claimed or demonstrated entitlement to such an adjustment. (For a further discussion of LOT adjustments, see Comment 1F, below.)

De Matteis argues that the petitioners erroneously state that the company has not correlated its home market or U.S. customer categories to its reported LOTs. De Matteis asserts that it has consistently stated in its submissions that it sells to the following channels of distribution/customer groups in the U.S. and home markets: (1) sales to companies that resell the pasta under their own name (*i.e.*, pastificios and the U.S. trading company); and (2) sales of its own brands of pasta to distributors and retailers. De Matteis asserts that these two channels of distribution/ customer groups should be considered to be separate LOTs because its sales to retailers and distributors are one step further in terms of remoteness from the factory than its sales to pastificios and the U.S. trading company.

In addition, De Matteis asserts that a collective examination of the selling functions performed for each channel of distribution show distinct LOTs in the home market. Contrary to the petitioners' arguments, De Matteis argues that although it must take an active role in its sales to pastificios, the degree to which it engages in overall selling functions differs significantly between the two channels of distribution/customer groups. For example, De Matteis asserts that it performs no significant functions or services for pastificio customers while it is responsible for warehousing and inventory control, advertising and promotional activities, brand name development, distribution, and the development of packaging materials for its sales to retailers and distributors. In addition, De Matteis asserts that its sales to pastificios are large orders which generally require less sales and administrative resources. Further, De Matteis contends that the extent to which the company engages in customer contacts and the development of packaging varies significantly between the two channels/customer groups.

Finally, regarding inventory maintenance services, De Matteis argues that the Department should distinguish between merchandise placed in the warehouse for production scheduling which is not intentionally marketed as a service to the customer and merchandise held in inventory for JIT delivery. De Matteis asserts that it intentionally markets an ''inventory'' service on merchandise sold from stock for JIT delivery and that its administrative expenses and risk exposure are greater on these sales than on sales produced to order. De Matteis asserts that these costs are reflected in the higher prices charged to the customer.

DOC Position: We agree with the petitioners and De Matteis, in part. Based on our own analysis of the selling functions performed by De Matteis, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in the U.S. market and that the home market sales were made at two different LOTs.

De Matteis reported one customer group in the U.S. that was comprised of a single class of customer. Therefore, we found one level of trade for the U.S. market. For the home market, De Matteis reported three customer groups described as distributors, retailers and pasta manufacturers. We found the distributor and retailer customer groups similar with regard to the selling functions performed by De Matteis for sales process, inventory maintenance, forward warehousing, advertising and warranties. We found these two groups to differ in De Matteis' performance of the selling function for freight. Overall, we determined the selling functions between these two customer groups are sufficiently similar to consider them as one level of trade (LOT 2). We found customer group ''pasta manufacturer'' similar to the other two groups (LOT 2) with regard to the selling functions performed for certain customer groups in the areas of warranty service and freight, and different in selling function regarding sales process, inventory maintenance, forward warehouse, freight, and advertising. Overall, we determined the selling functions between this customer group and the other two customer groups sufficiently dissimilar to consider these customer groups a separate level of trade (LOT 1).

We then compared the level of trade in the U.S. market to the two home market levels of trade and found that all selling functions performed for LOT 1 customers in the home and U.S. markets were the same. We found the level of trade in the U.S. market dissimilar to LOT2 with regard to the selling functions for certain customer groups in the areas of sales process, inventory maintenance, forward warehousing, freight, and advertising. Therefore, we are treating U.S. sales and home market sales in LOT 1 as being sold at the same level of trade.

(5) Pagani

The petitioners argue that their review of the array of selling functions offered to Pagani's home market customers reveals no significant distinctions in the selling functions which would justify a finding of different LOTs in the home market. The petitioners contend that the selling functions Pagani relied upon to differentiate its home market LOTs are invalid in that: (1) quantity differences or differences in the sales resources allocated to various customer classes do not meet the statutory standard for differentiating LOTs; (2) no matter whether Pagani takes the order and handles payment directly or an affiliate undertakes these functions, the question of which entity performs the function is not a valid basis to distinguish LOTs; and (3) the fact that different prices are offered to various customer categories does not show that different selling functions exist.

Since Pagani reports that all of its U.S. sales are at a single LOT, the petitioners assert that all U.S. and home market sales should be compared without regard to LOT distinctions.

Pagani did not comment on the petitioners' LOT analysis.

DOC Position: We agree with the petitioners, in part. Based on our own analysis of the selling functions performed by Pagani, as described in the ''Level of Trade'' section of this notice, above, we found that a single LOT exists in the U.S. market and that home market sales were made at two different LOTs.

Pagani reported one customer group in the U.S. that was comprised of a single customer. Therefore, we found one level of trade for the U.S. market. For the home market, Pagani reported seven customer groups. We found that six of the seven customer groups had similar selling functions performed by Pagani with regard to: sales process, inventory maintenance, forward warehousing (for certain customer groups), freight, advertising and warranties. We found certain customer groups to differ in selling functions performed for forward warehousing. Overall, we determined the selling functions between these six customer groups are sufficiently similar to consider them as one level of trade (LOT 2). We found the remaining customer group ''pasta manufacturer'' similar to other customer groups in selling functions performed by Pagani with regard to sales process, forward warehousing, advertising, and warranties, and different from other customer groups in the areas of inventory maintenance, forward warehousing, freight and advertising. Overall, we determined the selling functions performed for this customer group compared to the other six customer groups sufficiently dissimilar to constitute a separate level of trade (LOT 1).

We then compared the level of trade in the U.S. market to the home market levels of trade and found the selling functions performed by Pagani in the U.S. to be identical to all selling functions performed on LOT 1 sales in the home market. We found the level of trade in the U.S. market dissimilar to LOT 2 with regard to certain customer groups in the areas of inventory maintenance, forward warehousing, freight, and advertising. Therefore, we considered U.S. sales and home market sales in LOT 1 to be made at the same level of trade.

(6) Delverde

The petitioners assert that Delverde failed to submit information necessary to determine whether different selling functions correspond to different levels of trade. Specifically the petitioners contend that Delverde failed to release under APO the customer names relating to certain customer codes. As a result, the petitioners claim they are unable to distinguish between the selling functions performed on EP and CEP sales, respectively. Therefore, the petitioners argue that the Department should find that all U.S. and home market sales are at the same LOT. In the event the Department determines it is appropriate to analyze Delverde's sales to determine whether separate LOTs exist, the petitioners argue that the Department should begin its analysis with an unadjusted CEP. (For a further discussion of this issue, see the ''Company Specific Comments—Delverde'' section of this notice, below).

Delverde argues that the petitioners mischaracterize the record as to the information submitted by the company. Delverde asserts that the CEP and EP sales are not intermixed in the database and were clearly identified as either ''CEP'' or ''EP'' sales in the sales listing as were the customer codes and categories. Finally, Delverde contends that it is under no obligation to provide customer names to the petitioners.

DOC Position: We agree with the petitioners and Delverde, in part. Based on our own analysis of the selling functions performed by Delverde, as described in the ''Level of Trade'' section of this notice, above, we found that single LOTs exist in each market and that all U.S. and home market sales were made at the same LOT.

Delverde reported four customer groups in the U.S. market. We found that certain customer groups were similar based on the following selling functions performed by Delverde in the areas of sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties. We found certain customer groups to differ in sales process and advertising. Overall, we determined the selling functions performed by Delverde for these four customer groups are sufficiently similar to consider them as one level of trade. For the home market, Delverde also reported four customer groups. We found certain customer groups similar in the following selling functions: sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties. We found that certain customer groups differed in the selling function for forward warehousing. Overall, we determined the selling functions performed by Delverde for these four customer groups as sufficiently similar to consider them as one level of trade.

We then compared the level of trade in the U.S. market to the home market level of trade and found the selling functions performed by Delverde in each market to differ for certain customer groups with regard to sales process and advertising. We found the following selling functions performed by Delverde for certain customer groups to be similar: sales process, inventory maintenance, forward warehousing, freight, advertising, and warranties. Overall, these similarities warrant finding the U.S. sales and home market sales to be made at the same level of trade.

Comment 1F LOT Adjustments: To the extent the Department finds LOT distinctions between U.S. and home market sales, the petitioners argue that there is no justification for a LOT adjustment for any of the respondents in this investigation. Specifically, the petitioners assert that Section 773(a)(7)(A) of the Act states that LOT adjustments are permissible only to the extent that it has been *demonstrated* that the difference between EP or CEP and normal value reflects differences in LOTs involving the performance of different selling functions and ''a pattern of consistent price differences between sales'' at the different LOTs in the home market. In addition, the petitioners assert that the SAA states that ''if a respondent claims an adjustment to decrease normal value, as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.'' *SAA* at 829. Therefore, the petitioners argue that by law, the respondents bear the burden of

demonstrating entitlement to a LOT adjustment and that none of the respondents in this investigation have met this burden.

The petitioners assert that Arrighi, De Cecco, Liguori, Delverde, and De Matteis have not claimed a LOT adjustment. Absent even a claim for the LOT adjustment, let alone any evidence demonstrating entitlement, the petitioners argue that no LOT adjustment should be granted.

Although La Molisana and Pagani have each made claims for a LOT adjustment, the petitioners argue that neither respondent has demonstrated entitlement to the adjustment. The petitioners argue that La Molisana has admitted that a number of the selling function differences between the LOTs identified reflect factors already accounted for in the margin calculations. Therefore, the petitioners assert that if it is ''double counting'' to consider these functions in defining LOTs as La Molisana asserts (*see* Comment 1B, above), it is also ''double counting'' to calculate LOT adjustments reflecting these differences. In addition, the petitioners argue that because La Molisana has based its LOT adjustment on differences between the net prices for each control number by customer category, La Molisana has not demonstrated price distinctions based on LOTs that exist under the new law (*i.e.,* the petitioners assert that LOTs are based both on the point in the chain of distribution and the selling functions of the respondent).

The petitioners argue that Pagani has not tied its proposed LOTs to different selling functions because the company improperly relies on quantity differences and rebates in support of its claim for a LOT adjustment. In addition, the petitioners argue that Pagani's claimed price adjustment fails to establish a pattern of price differences.

Concerning the petitioner's argument that it is double counting to calculate LOT adjustments based on selling function differences which were accounted for in the margin calculations, La Molisana argues that certain functions (*e.g.*, indirect selling expenses and inventory maintenance) have not been fully accounted for in the Department's calculations. In addition La Molisana asserts that the statute states that the Department must base LOT adjustments on price differences. Finally, if the Department compares U.S. distributor sales to home market sales at other LOTs, La Molisana asserts that it has provided all the necessary information to calculate a LOT adjustment in accordance with the criteria set forth in the statute.

Liguori contends that the Department's preliminary determination incorrectly stated that Liguori claimed a LOT adjustment for comparisons between different LOTs (*Preliminary Determination,* 61 FR 1344, 1347 (January 19, 1996)). Liguori asserts that it has not claimed any LOT adjustment.

DOC Position: We agree with the petitioners, in part. As described in the ''Level of Trade'' section of this notice, above, Pagani was the only company for whom the Department made a level of trade adjustment. As noted, we found no basis for making a level of trade adjustment for any of the other respondents in this investigation. The level of trade adjustment for Pagani was not based on the adjustment claimed by Pagani but rather on the Department's independent analysis of the home market levels of trade and patterns of price differences. In light of the fact that we did not base this LOT adjustment on Pagani's claimed LOT adjustment, we regard the petitioners argument concerning the burden on respondent to demonstrate entitlement to a LOT adjustment to be moot.

In addition, we agree with Liguori that the preliminary determination incorrectly stated that Liguori claimed a LOT adjustment. Liguori has not claimed a LOT adjustment.

Comment 2 Price Averaging: Comment 2A Whether to Take Customer Category into Account in Creating the Weighted-Average Groups used for Product Comparisons: La Molisana, Arrighi and De Matteis argue that, in performing its product comparisons, the Department should compare products based on averaging groups that reflect customer categories. La Molisana, Arrighi and De Matteis claim that both the SAA and the Department's Proposed Regulations recognize that customer class is a factor the Department may consider in composing its averaging groups. (''In determining the comparability of sales for inclusion in a particular average, Commerce will consider factors it deems appropriate, such as * * * the class of customer involved..''). *SAA* at 842. *See also, Proposed Regulations* at 7348 (Nevertheless, the Department does recognize that prices within a single LOT, defined by seller function, can be affected by the class of customer, and the Department will make every effort to compare sales at the same LOT to the same class of customer).

In addition, La Molisana, Arrighi and De Matteis assert that record evidence demonstrates that each company consistently offers significantly different prices to its various customer categories. Therefore, La Molisana asserts that in accordance with the Department's Proposed Regulations, there is a clear and consistent dividing line between La Molisana's sales to different customer categories, ([in identifying averaging groups based on customer category] ''the Department's general approach ''[will be to look for *clear dividing lines* among sales] * * *''). *Proposed Regulations* at 7349. Finally, La Molisana, Arrighi and De Matteis assert that comparing products based on averaging groups that reflect customer categories would be consistent with a recent final determination where the Department found no separate LOTs, but compared averaging groups by customer category. *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14,064, 14069 (March 29, 1996) (*Polyvinyl Alcohol*) (* * * in composing an averaging group, customer classification is a factor the Department may take into account * * *. Therefore, we have made comparisons of average prices within the same customer class wherever possible). In addition, Arrighi and De Matteis cite *Fresh Kiwifruit from New Zealand: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15922, 15924 (April 10, 1996) (*Kiwifruit*) (finding that all sales were made at one LOT, but comparing averaging groups by channel of distribution) and *French Rod* (finding two levels of trade, but comparing averaging groups by channel of distribution within each LOT). La Molisana argues that, for the above reasons, the Department should compare its U.S. distributor sales to its home market distributor sales.

The petitioners argue that neither the law nor the facts of this investigation support making product comparisons based on customer classes unless it is demonstrated that the difference between customer classes reflect a difference in the LOT. Citing Section 773(a)(1)(B) of the Act, the petitioners contend that normal value is defined based on price comparisons reflecting the same physical characteristics and, where possible, the same LOT, as the export or constructed export price. Therefore, the petitioners assert that absent a finding of different LOTs among the various customer categories, the Department cannot make product comparisons based on customer categories or channels of distribution.

Although the petitioners recognize that the SAA refers to ''the class of customer involved'' as a factor that the Department may consider in creating averaging groups, the petitioners contend that the Department's Proposed Regulations emphasize that the use of

averaging groups was intended to apply only to U.S. prices, and was not meant to affect the calculation of normal value. (''In applying the average-to-average method, the Secretary will identify those sales * * * *to the United States* that are comparable, and will include such sales in an ''averaging group.'' ''An averaging group will consist of subject merchandise * * * that is sold *to the United States* at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region *of the United States* in which the merchandise is sold * * *''). *Proposed Regulations* at 7386 (section 351.414(d)). (Emphasis added).

The petitioners contend that normal value is still defined in the law based on price comparisons reflecting the same product characteristics and, where possible, the same LOT. Therefore, the petitioners argue that the Department does not have the authority under the new statute to subdivide home market sales into separate groups based on customer classes unless it is first demonstrated that the difference between customer classes reflects a difference in LOT. The petitioners claim that to do otherwise would effectively be using the product averaging concept to re-define normal value.

Finally, the petitioners argue that the Department's recent practice of considering either the class of customer or the channel of distribution as a factor in the averaging group without first finding distinct LOTs is unlawful and inconsistent. Specifically, the petitioners assert that in *Polyvinyl Alcohol* the Department created product averaging groups based on customer categories stating that it found ''significantly different prices, depending on the customer category.'' 61 FR at 14070. The petitioners contend that in *French Rod* and *Kiwifruit* the Department relied on channels of distribution, rather than customer categories, in determining the averaging groups and further identified no pricing distinctions between the channels examined. In all three cases the petitioners assert that the Department made no statutory citations and provided little or no explanation for its actions.

DOC Position: We agree with La Molisana, Arrighi and De Matteis that customer category is a factor the Department may consider in composing its averaging groups. Section 777A(d)(1)(A)(i) of the Act states that the Department will determine whether the merchandise is being sold in the United States at less than fair value ''by comparing the weighted average of the normal values to the weighted average of the export prices (and/or constructed export prices) for comparable merchandise.'' In addition, the SAA specifies that in order to ensure that the weighted-averages are meaningful, ''Commerce will calculate averages for comparable sales of subject merchandise'' sold in both the U.S. and foreign markets. ''In determining the comparability of sales for inclusion within a particular average, Commerce will consider factors it deems appropriate, such as * * * the class of customer involved.'' *SAA* at 842. *See also, Proposed Regulations* at 7349.

Although we agree with the petitioners that the Proposed Regulations refer to the term ''averaging groups'' only in the context of U.S. sales, we do not agree with the petitioners' assertion that the use of averaging groups was intended to apply only to U.S. prices, and was not meant to affect the calculation of normal value. As noted above, the statute directs the Department to compare weighted average normal values to weighted-average export prices/constructed export prices. In addition, the SAA states that for inclusion within a particular average, the Department will consider factors it deems appropriate. Therefore, in order to ensure a fair comparison, customer category is a factor that may be used in both the calculation of export price and/or constructed export price and normal value.

As noted in the ''Comparison Methodology'' section of this notice, above, and Comment 2B, below, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. Accordingly, consistent with the SAA and our practice in *Polyvinyl Alcohol*, we have relied on the revised customer categories in calculating the weighted-average values used for sales comparisons in instances where: (a) we found that distinct customer categories existed, and (b) we determined that there was a consistent and uniform pattern of pricing differences among the customer categories. (For a further discussion on price averaging and the calculation of the weighted average prices for each respondent, see the ''Comparison Methodology'' section of this notice, above.)

Comment 2B Whether to Accept the Customer Classifications or Channels of Distribution Alleged by the Respondents: The petitioners argue that in the event the Department determines it is appropriate to create averaging groups based on customer categories or channels of distribution, it is up to the Department, not the respondents, to determine which customers may be grouped together. *Timken Co.* v. *United States*, 630 F. Supp. 1327 (Ct. Int'l Trade 1986) (the Court held that the Department is obligated to choose the home market models for comparison and may not delegate this role to respondents). In addition, the petitioners cite to the SAA in support of their contention that the Department should not accept a respondent's ''nominal reference to customer classes'' without requiring evidence of actual class differences based on the selling functions of the respondent. *SAA* at 829. To the extent the Department rejects reliance on selling functions as a means of distinguishing customer categories, the petitioners argue that the Department should, at a minimum, determine whether different customers exist at different points in the chain of commerce. Citing *PETs from Singapore*, the petitioners assert that it is not the Department's practice to accept, without question, the respondents' characterizations of its customer classes as the basis for determining its product comparisons groups. (*See, e.g., Final Determination of Sales at less Than Fair Value: Certain Portable Electric Typewriters from Singapore*, 58 FR 43334, 43338–43339 (August 16, 1993) (*PETs from Singapore*) (stating that all retailers had the same function and, thus, no distinction between the claimed customer categories was justified.)

If the Department determines it is appropriate to weight-average by customer class, the petitioners argue that La Molisana's data do not support a distinction between the seven customer categories the company identifies in the home market. The petitioners assert that not only has La Molisana failed to demonstrate that the seven customer classes operate at different points in the chain of distribution, but La Molisana has also failed to demonstrate: (1) that there are different selling functions corresponding to each customer class; (2) that there are price distinctions among the customer categories (*i.e.*, as noted in Comment 1E, above, the petitioners assert that the price differences claimed by La Molisana resulted from the geographic location of the customer and quantities purchased, not differences due to the class of customer; and (3) that there is no other evidence on the record supporting La Molisana's contention that there are distinct customer categories in the home market.

In the absence of any verified data indicating distinctions between the various customer categories, the petitioners assert that the Department cannot distinguish between La Molisana's customer categories for purposes of defining LOT or product comparison purposes. Therefore, the petitioners argue that the Department should not find that there are distinct customer categories in the home market and should make its product comparisons based solely on the physical characteristics of the merchandise without regard to customer category or channel of distribution.

DOC Position: We agree with the petitioners that it is the responsibility of the Department, not respondents, to identify which customers may be grouped together for product comparison purposes. This has been our consistent practice and policy. *Cf., N.A.R., S.p.A.* v. *United States*, 741 F. Supp. 936 (Ct. Int'l Trade 1990). (Insofar as a foreign manufacturer, given the opportunity of selecting which product comparisons should be used, would most likely make a choice that is most advantageous to itself, the identification of product comparisons are made by the Department.) *See also, United Engineering & Forging* v. *United States*, 779 F. Supp. 1375, 1381 (Ct. Int'l Trade 1991); *See Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 58 Fed. Reg. 37199, 37202 (July 9, 1993). Therefore, as noted in the ''Comparison Methodology'' section of this notice, above, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. Based on the chain of distribution for the pasta industry, we reclassified the customer groups identified by the respondents into five distinct customer categories representing distinct points in the chain of distribution. For a further discussion, see the ''Comparison Methodology'' section of this notice, above.

Regarding the petitioners' assertion that La Molisana failed to demonstrate that there are distinct customer categories in the home market, we agree that La Molisana's data do not support a distinction between the six customer groups identified. Based on our analysis of La Molisana's proposed customer groups, we have determined that there are three distinct customer categories representing different points in the chain of distribution in the home market (*i.e.*, wholesalers, retailers and consumers). However, we disagree with the petitioners' contention that La Molisana has not demonstrated that there are price distinctions among the home market customer categories. Based on our analysis of the average net prices for each product control number and the three customer categories identified by the Department in the home market, we conclude that La Molisana consistently offered different prices, depending on the customer category. (For a further discussion of this issue, *See* Comment 1—Arm's Length Test of the ''Company Specific Comments—La Molisana'' section of this notice, below.)

Comment 2C Whether to Use Customer Category or Channel of Distribution in Defining the Averaging Groups used for Product Comparisons: The petitioners argue that to the extent a respondent has claimed distinctions in home market sales based on channels of distribution, the Department should reject these distinctions and instead rely on customer categories in creating the product comparison groups. The petitioners assert that nothing in the new statute, the SAA, or the Proposed Regulations permits the Department to consider channels of distribution in making product comparisons. As case precedent for their position, the petitioners cite *PETS from Singapore* where the Department explicitly rejected the respondent's request that it rely on channels of distribution as a comparison criteria, finding no support in the law for such an approach. (''Furthermore, channel of distribution is not a proper merchandise comparison criterion * * * ''there is no regulatory basis for comparing identical channels of distribution.'') *Id.* at 43338.

DOC Position: We agree with the petitioners that channels of distribution are not an appropriate basis for creating product averaging groups. As noted in Comment 2A above, the SAA states that in determining which sales to include within a particular average, ''Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and the class of customer involved.'' *SAA* at 842. *See also, Proposed Regulations* at 7349. The SAA does not contemplate the use of channels of distribution as a basis for creating an averaging group.

In addition, it has been the Department's past policy and practice, as outlined in Import Administration Policy Bulletin Number 92/2 (''Matching at Levels of Trade''), to consider the customer category, not channel of distribution, to determine whether the respondent's customers exist at distinct points in the chain of distribution (*e.g.*, end-user, distributor, retailer). Therefore, we have not relied on a respondent's reported channels of distribution in creating the weighted-average prices used for product comparisons in this final determination.

Comment 2D Whether the Department Can Rely on Price Differences as a Method for Distinguishing Customer Categories: If the Department determines it is not necessary to establish that there are different selling functions as a means of distinguishing customer categories, the petitioners argue that the Department should not define customer categories based on price distinctions as it did in *Polyvinyl Alcohol*. The petitioners assert that if price distinctions were all that were needed to define customer category, respondents would have a ''field day'' manipulating the dumping law by grouping its low-priced home market sales together and requesting that the Department compare its U.S. sales to this group of low-priced sales. Although the petitioners recognize that price distinctions may be relevant to a determination of whether product comparisons should be segmented by customer category, the petitioners argue that prices themselves cannot be the sole criterion. In order to establish that there are separate customer categories, the petitioners argue that the Department must first determine that different customers exist at different points in the chain of commerce.

DOC Position: We agree with the petitioners that price distinctions can not be a basis for determining the existence of customer categories. As noted in the ''Comparison Methodology'' section of this notice and Comment 2A, above, in order to determine whether the customer groups proposed by the respondents actually represented different customer categories, we considered whether the alleged customer groups represented distinct points in the chain of distribution. Therefore, price distinctions were not considered a relevant factor in defining the existence of customer categories. The existence of consistent price differences, however, was considered in determining whether customer categories should be taken into consideration in creating the product averaging groups.

Comment 3 Should Wheat Quality Be Considered as a Product Matching Criterion: The petitioners assert that Liguori, Delverde, and Tamma have altered the Department's product matching criteria by adding wheat quality as a physical characteristic. They urge the Department to delete

wheat quality as a product matching criterion for three reasons. First, petitioners allege that by changing the product matching criteria set out in the Department's questionnaire, these respondents have established a second ''foreign like product'' within the meaning of the Act. Petitioners argue that the Act does not allow for the introduction of additional foreign like products into an investigation. Second, petitioners argue that the product matching criteria ought to be confined to those specified in the Appendix to the Department's questionnaire. Permitting respondents to select matching criteria, would enable respondents to analyze their pricing data and, then, to select the matching criteria which would lower their exposure to dumping margins. Petitioners reference *Timken* v. *United States,* 630 F. Supp. 1327, 1338 (1986) (''*Timken*''), for the proposition that the Department is prohibited from delegating the selection of the physical characteristics for product matching. Third, as a factual matter, petitioners assert that both the physical differences and the cost differences associated with wheat quality are insignificant.

Respondents contend that the existence of different semolina qualities was confirmed by a wheat expert in the U.S. Department of Agriculture as well as by the Department at verification. Moreover, the Department had instructed respondents to establish product matching criteria which reflected all differences in physical product characteristics, not merely those listed in the Appendix to the Department's questionnaire. Accordingly, reporting wheat quality as a matching characteristic was an appropriate response to the Department's questionnaire. With respect to petitioners' assertions that the physical and cost differences associated with wheat qualities were inconsequential, respondents assert that these differences are material and that their materiality was verified by the Department.

DOC Position: We disagree with petitioners' reading of Section 771 (16) of the Act. This section sets out the basis for the Department's comparison of U.S. sales to sales in the home market. It defines ''foreign like product'' as follows:

The term foreign like product means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same by the same person as, that merchandise.

(B) Merchandise—

(i) Produced in the same country and by the same person as the merchandise which is the subject of investigation,

(ii) Like that merchandise in component material or materials and in the purposes for which used, and

(iii) Approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) Produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) Like that merchandise in the purposes for which used, and

(iii) Which the administering authority determines may reasonably be compared with that merchandise.

Foreign like products, therefore, are specific to each responding company. When certain respondents reported wheat quality as a physical characteristic which would result in more appropriate product matches, the Department required that they justify the claimed differences in wheat quality. At the respective verifications, each of these respondents established that different wheat (*i.e.,* semolina) qualities existed and that these were measured by ash and gluten content. It was primarily these characteristics which were used to select semolina for pasta production. We verified that physical differences exist and that the cost of the highest grade of semolina is materially more than that of the lowest grade. We found these quality differences reflected in semolina costs and pasta prices. We found that they are commercially significant and an appropriate criterion for product matching. Moreover, in our judgment, petitioners' reliance on *Timken* is misplaced. The differences in wheat quality reported by these respondents, and verified by the Department, resulted in more appropriate product matches, as contemplated by section 771(16).

II. Company-Specific Comments

Arrighi

Comment 1 Findings at Verification: The petitioners contend that the Department should make the following corrections to Arrighi's response: adjust Arrighi's claimed home market rebate percentage for one of its customers; revise Arrighi's U.S. sales listing to include allocated warranty expense claims; eliminate early payment discounts for an Italpasta invoice; adjust the credit period for another Italpasta invoice; and revise the rebate calculation for sales to a particular Italpasta customer to correct errors discovered at the Arrighi and Italpasta sales verifications.

DOC Position: We agree with the petitioners. We have used the corrected figures to calculate Arrighi's margin.

Comment 2 Interest Rates Used in Calculating Home Market Credit Expense: Arrighi states that, contrary to past Department practice, the Department mistakenly used Arrighi's home market short-term interest rate in calculating credit expenses for Italpasta's home market sales. Arrighi contends that the Department should calculate the credit expenses for Arrighi's and Italpasta's home market sales using verified company-specific short-term interest rates.

Petitioners counter that, because the Department determined that Arrighi and Italpasta are affiliated, the Department's use of Arrighi's short-term interest rate for both Arrighi's and Italpasta's sales was appropriate.

DOC Position: We agree with petitioners in part. The Department weight-averaged Arrighi's and Italpasta's short-term interest rates for home market credit expense calculations.

Comment 3 Inland Freight: Petitioners contend that because the Department could not verify Italpasta's claimed inland freight charges, it should deny Italpasta's claimed home market inland freight charges in their entirety or should, at a minimum, use the smallest freight cost reported by Italpasta for all of Italpasta's home market sales.

Arrighi maintains that the Department's verification report inaccurately implies that Italpasta refused to provide information about transport costs when using its own trucks. According to Arrighi, the tasks of identifying the sales where Italpasta used its own truck, calculating a transaction-specific transport expense, and substantiating its claim that common-carrier rates were a reasonable surrogate, would have been extremely burdensome because of the lack of comprehensive shipping records. Arrighi contends that the Department's requests at verification were unreasonable and untimely; therefore, Italpasta's inability to provide the requested information at verification should not be deemed by the Department as a refusal to cooperate. Accordingly, Arrighi argues that the Department should use the reported per-unit freight expenses for sales shipped using Italpasta's own trucks.

DOC Position: We agree with petitioners. As stated in the

Department's verification report, despite repeated efforts to verify various aspects of Italpasta's inland freight expense when its own trucks were used, this movement expense could not be verified. It is important to note that there is no way in which to determine, on a transaction-specific basis, whether the merchandise was transported by common carrier or using Italpasta's own truck. To account for this unverified movement expense in the margin calculation, as facts available, we have used Italpasta's lowest reported inland freight expense for all home market sales. We chose this adverse rate because, in our view, Italpasta did not act to the best of its ability to substantiate the expenses of using its own trucks.

Comment 4 Advertising expenses: Petitioners allege that the Department should treat both of Italpasta's claimed advertising expenses (*i.e.*, ''advertising expense 1'' and ''advertising expense 2'') as indirect selling expenses, rather than as direct selling expenses. Citing the verification report, petitioners contend that Italpasta was unable to support its claim that these expenses were directly related to sales or were directed at Italpasta's customers' customers.

With respect to advertising expense 1, Arrighi maintains that even though Italpasta's records do not note transfers of promotional items from Italpasta to its customer and then to the customer's customers, this should not detract from the fact that these items, by their nature, are promotional items of the type normally given out to the general public (*i.e.*, Italpasta's customer's customers). According to Arrighi, the large quantity of these items purchased by Italpasta make it highly unlikely that these items were not given to the general public.

Concerning advertising expense 2, Arrighi argues that samples shown at verification demonstrated that only the Italpasta brand name was displayed and that the advertising was directed at the general public. According to Arrighi, broadcast advertising and sponsorship of sport teams, by their nature, are directed at the general public and, therefore, these expenses were properly reported.

DOC Position: We agree with Arrighi concerning advertising expense 2. The information on the record reflects that advertising expense 2 was properly reported as a direct advertising expense for Italpasta brand sales. The Department requires that advertising expenses that are claimed as direct expenses must be shown to be directed to the ultimate consumer of the merchandise. *See, e.g., Final Results of Administrative Review: Antifriction bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Various Countries*, 58 FR 39729, 39741 (July 26, 1993). The advertising 2 expenses listed in Italpasta's subaccount noted banners shown at sports events and television publicity, which are typically considered by the Department to be advertising directed at the customer's customer. As Arrighi correctly noted, the samples provided at verification demonstrated that only the Italpasta brand was promoted through such advertising.

With respect to advertising expense 1, however, the information on the record does not demonstrate that these promotional items (such as sports trophies, calendars, pens, and so forth) are in any way directed at the customer's customers or directly tied to sales of the subject merchandise. Therefore, advertising expense 1 has been reclassified as an indirect selling expense for purposes of the final determination.

Comment 5 Direct Selling Expenses: Petitioners contend that the Department should treat Italpasta's claimed direct selling expenses for introduction incentive fees as indirect selling expenses. Citing the verification report, petitioners state that Italpasta failed to substantiate its claim that these payments were contingent upon the customer purchasing the pasta.

Arrighi counters that it is not unusual that such promotional agreements do not include language which specifies the merchandise purchasing requirement. According to Arrighi, if the customer did not already agree to purchase the pasta, then the agreements would never have been made. Therefore, Arrighi maintains that these promotional payments are directly related to the subsequently purchased pasta and should be treated as a direct selling expense.

DOC Position: We agree with petitioners that introduction incentive fees should be treated as indirect selling expenses. The Court of Appeals for the Federal Circuit has explained that direct selling expenses ''are 'expenses which vary with the quantity sold,' '' *Zenith Elecs. Corp* v. *United States*, 77 F.3d 426, 431 (Fed. Cir. 1996), or that are ''related to a particular sale,'' *Torrington Co.* v. *United States*, 68 F.3d at 1347, 1353 (Fed. Cir. 1995). While Arrighi has claimed that these promotional payments were contingent upon the customer purchasing the pasta, Arrighi has not proven that the payment varies with the quantity of pasta sold, or that the payment can be tied directly to a particular transaction. Therefore, we are treating these expenses as indirect selling expenses for purposes of the final determination.

Comment 6 U.S. Resales of Purchased Pasta: Arrighi argues that the methodology used to account for U.S. resales in the preliminary determination is inconsistent with past agency practice because it was applied on a control number-specific basis. Arrighi contends that the data on the record allows the Department to limit the impact of its adjustment to only those products that contained purchased merchandise by applying its methodology on a product-specific basis. Further, Arrighi argues that the Department did not implement its stated methodology from the preliminary determination. According to Arrighi, instead of calculating the adjustment ratio by dividing the volume of pasta produced for a particular control number by the combined volumes of produced and purchased pasta for that control number, the Department actually calculated the ratio by dividing the control number's production volume by its sales volume, resulting in an inconsistent ratio calculation.

For these reasons, Arrighi requests that the Department make the following changes to its resale methodology: (1) the adjustment should be performed on a product-specific basis; and (2) the adjustment ratio should be based on volume produced over volume produced plus volume purchased.

Petitioners counter that the Department's methodology for excluding U.S. sales of purchased pasta was reasonable and should be used in the final analysis. According to petitioners, Arrighi's request to change the methodology is an attempt to redefine product matching hierarchy and product characteristics and should be rejected by the Department.

DOC Position: We agree with Arrighi. The denominator of the resale adjustment ratio in the preliminary margin calculation was inconsistent with the numerator. For purposes of the final determination, the Department has used revised production and purchase volume data from Arrighi's February 12, 1996, submission to recalculate the adjustment ratio for purchased pasta, basing it on the ratio of purchased pasta to the sum of total production and purchases, by product code. We have applied this revised adjustment factor to the quantities of U.S. sales for each product code known to include sales of purchased pasta.

Comment 7 Home Market Resales of Purchased Pasta: Arrighi argues that the Department's methodology for excluding home market sales of

purchased pasta was unreasonable because it excluded a large number of sales of pasta that were actually produced by Arrighi and that should have been included in the calculation of Arrighi's margin. By excluding numerous sales of pasta produced by Arrighi, Arrighi contends that the Department eliminated a significant quantity of valid sales and price information decreasing the accuracy of the calculation of Arrighi's normal value.

Additionally, Arrighi asserts that the Department's treatment of home market resales is inconsistent with its adjustment methodology for Arrighi's U.S. resales of pasta. Arrighi requests that the Department modify its treatment of Arrighi's home market sales of purchased pasta and calculate product-specific quantity adjustment factors (*i.e.,* total volume of product produced divided by sum of total quantity of product produced and purchased) and apply this factor to the quantity of each sale of that product. Finally, Arrighi requests that the Department correct certain clerical errors concerning the control number references in Arrighi's margin calculation program.

The petitioners maintain that the Department's methodology is consistent with Department practice and conclude that there is no reason for the Department to depart from the methodology used in the preliminary determination to exclude home market sales of purchased pasta from the calculation of normal value.

DOC Position: We agree with petitioners. Section 771(16) prohibits the Department from using sales of merchandise produced by persons other than the respondents in the calculation of normal value. The information on the record only provides volume figures of purchased pasta, by product code, during the POI. Based on the information on the record, it is impossible to isolate the amount of purchased pasta actually sold by Arrighi during the POI. Therefore, we excluded all sales of pasta with product codes known to include purchased pasta during the POI to ensure that the pool of home market sales is not tainted with sales of purchased pasta.

Furthermore, Arrighi's alternative adjustment methodology is contrary to section 771(16) because it would allow sales of purchased pasta to be included in the calculation of normal value. Therefore, we have used the preliminary determination methodology for the final determination.

With respect to the alleged clerical errors in the control number identification of certain product codes for both U.S. and home market sales of purchased pasta, we agree with Arrighi and have corrected these errors pursuant to Arrighi's revised control number groupings.

Comment 8 Depreciation Expense: Arrighi believes its reported depreciation expense is correct because it is based on the costs recorded in its audited annual financial statements. It contends that a respondent's costs will normally be calculated based on that company's records if the records are kept in accordance with generally accepted accounting principles and reasonably reflect the company's costs. *See* section 773(f)(1)(A) of the Act. Arrighi holds that its auditors specifically reviewed its depreciation expense and they did not take issue with the lower depreciation rate. It claims that the reduced depreciation reflects its costs because the assets received less usage during the year. Arrighi suggests that if the Department adjusts the depreciation expense it should allow, at a minimum, the reduced depreciation expense on the assets placed in service during the year.

The petitioners state that the Department should increase the depreciation expense to reflect Arrighi's normal depreciation rates. The petitioners note that, unlike the reduced rates used in the submission, Arrighi's normal depreciation rates are based on fixed annual rates and do not reflect the number of units produced or reductions in capacity utilization. Thus, according to the petitioners, the reported depreciation expense should be based on the normal annual rate.

DOC Position: We agree with the petitioners. Recording of depreciation expenses provides a systematic, rational method of recognizing the costs of fixed assets. This allocates the one-time expense of purchasing (or constructing) fixed assets over the longer time period which these assets will benefit. In this case, the company simply elected to record less than a full year's depreciation expense without any change in the underlying economic assumptions and estimates on which its depreciation expense was based. Without documentary evidence of such a change in the underlying assumptions, it is inappropriate for the respondent to recognize less than a full year's depreciation expense.

We note that although the Department calculates costs in accordance with the generally accepted accounting principles (''GAAP'') of the home market country, the Department will not do so if the use of a country's GAAP does not reasonably reflect a company's costs. In such cases, the Department may make adjustments or may use alternative methodologies that more accurately reflect the costs incurred. *See, e.g., Final Determination of Sales at Less than Fair Value: New Minivans from Japan* (''Minivans from Japan'') 57 FR 21937, 21952 (May 26, 1992).

Comment 9 Excluded Costs: The petitioners note that Arrighi excluded from its reported costs the cost of purchased pasta, charitable contributions, and repairs. They also note that Italpasta excluded from its reported costs, the cost of purchased wheat flour, company vehicles, gifts to customers, and publication material. They argue that there is no basis for these costs to be excluded from the COP and CV since the Department's questionnaire requires respondents to report actual costs incurred during the POI. The petitioners state that the Department should revise Arrighi and Italpasta's cost data to include all costs incurred during the POI.

Arrighi argues that most of the amounts it excluded from the reported costs were related to purchased pasta and the purchase and sale of nonsubject merchandise. It contends that it properly excluded these costs.

DOC Position: We agree, in part, with both the petitioners and Arrighi. The Department excluded sales of purchased pasta from the sales reporting requirements. Therefore, Arrighi properly excluded the costs of the purchased pasta from its COP and CV. Additionally, the Department only requires a respondent to report the COP and CV for subject merchandise. Accordingly, Arrighi properly excluded the costs of nonsubject merchandise.

However, as the petitioners point out, Arrighi and Italpasta also excluded from reported costs certain types of general expenses. These expenses relate to company operations as a whole and not to a specific product. Moreover, Arrighi has not provided any information or reasonable grounds to conclude that these items are related solely to purchased pasta or non-subject merchandise. Therefore, we revised Arrighi and Italpasta's G&A expenses to include these costs.

Amounts incurred for gifts to customers and publication materials are related to the marketing of products and Italpasta should have included these costs in its reported indirect selling expenses. Therefore, we have revised the company's indirect selling expenses to reflect these items.

Comment 10 Cost of Sales: The petitioners state that Arrighi calculated its reported G&A and financial expense ratios using total sales as the

denominator. They contend that Arrighi applied these ratios to the cost of manufacture which understated the reported G&A and financial expenses. Italpasta, the petitioners argue, also calculated its G&A and financial expense ratios using an overstated denominator. They claim that Italpasta included selling expenses, packing expenses, and transportation expenses in the denominator of the ratio calculations but applied the ratio to a product cost of manufacture which did not include these costs. The petitioners contend that the Department should correct these errors in Arrighi's and Italpasta's G&A and financial expense ratios.

Arrighi acknowledges that it incorrectly reported the cost of goods sold figure used in its calculation of G&A and financial expense ratios. Arrighi states that it used the incorrect amount due to a translation error on its part. It concedes that the cost of goods sold calculated by the Department and used in the preliminary determination is more accurate.

DOC Position: We agree with the petitioners and Arrighi. Arrighi and Italpasta did not apply the G&A and financial expense ratios to the same basis in their calculation, resulting in an understatement of each company's per-unit G&A and financial expenses. We calculated a revised cost of goods sold figure by subtracting scrap revenue, packing, selling, and G&A expenses from total production costs reported in each company's financial statement. This resulted in revised G&A and financial expense rates that are computed on a basis consistent with the COM figures to which they were applied.

Comment 11 COP of Affiliated Party: The petitioners argue that Arrighi's affiliated mill understated its unit cost of semolina by including the weight of water in its reported production quantities. They contend that the weight of the output from the mill was greater than the weight of the input into the mill due to water added during the milling process. The petitioners believe that the Department should adjust the mill's unit costs to a dry measure basis by dividing the total costs by the weight of the durum wheat that was used in the milling process.

Arrighi states that it calculated the unit semolina costs by dividing the mill costs by the mill output which resulted in a yielded semolina cost. The semolina which was used as the input into the next step of pasta production reflects the relatively wet semolina input. Arrighi then yielded the pasta production costs to a dry weight by calculating the unit cost of pasta based on packed pasta quantities. It argues that the semolina COP for its affiliated mill appropriately accounted for water added in the production process.

DOC Position: We agree with Arrighi. Assuming all finished goods are identical, dividing the total cost incurred to produce the finished products by the quantity of finished goods produced results in the unit cost of each product. Deriving the unit cost in this manner accounts for yield changes. This is the methodology Arrighi's affiliated mill used to calculate the cost of durum wheat in finished semolina. Therefore, the gain attributable to water added during production was captured by the mill's raw material cost methodology, and, it was not necessary for us to make an adjustment to the affiliate's semolina production costs for the weight gain attributable to water.

Comment 12 Allocation of Cost at Affiliated Mill: The petitioners argue that Arrighi's affiliated mill allocated its costs between soft wheat and durum wheat production using a basis which it was not able to substantiate. They note that the affiliated mill allocated variable costs, variable overhead, fixed overhead, G&A, and financial costs based on the relative cost of soft wheat and durum wheat. The cost verification report, according to the petitioners, stated that soft wheat and durum wheat were processed in the same manner using the same machinery and production process. They argue that quantity of production reflects the resources used and the relative costs incurred by the mill since the processes and the machinery for soft wheat and durum wheat are the same. The petitioners believe that the Department should reallocate the manufacturing costs based on production quantity at the mill.

DOC Position: Arrighi's affiliated mill used an allocation methodology that did not accurately reflect the costs incurred to mill durum wheat. The mill allocated its conversion costs (labor and overheads) between soft wheat and durum wheat based on the relative cost of the raw material purchased. Personnel from the mill stated that the only difference between processing soft wheat and durum wheat was that the soft wheat was bagged while durum wheat was shipped in bulk. This represents a very minor difference in packing costs only. They also stated that the same machinery was used to mill both soft wheat and durum wheat. The cost of converting a raw material to a finished product is dependent on the processes performed and the machinery used and not the cost of the raw material input. Therefore, if the production process and machinery are the same regardless of the type of wheat milled, the conversion costs also would be the same. Since the processes and machinery were the same, we reallocated the mill conversion costs based on total production of the mill, regardless of the type of wheat processed. After we recalculated the cost of semolina from the affiliated mill, we compared this amount to the weighted-average transfer price to Arrighi and Italpasta. We found that the transfer price did not reflect the semolina's full cost of production. Therefore, we relied on the actual cost to value the semolina from the related mill.

Comment 13 Allocation of G&A and Financial Expense at Affiliated Mill: The petitioners argue that Arrighi's affiliated mill calculated a per-unit amount for G&A and financial expenses while the Department's questionnaire instructed the respondents to allocate these costs based on cost of sales. They believe that the Department should recalculate the mill's G&A and financial expenses based on the cost of sales.

DOC Position: We agree with the petitioners. The mill allocated total G&A and financial expenses between soft wheat and durum wheat based on the relative cost of wheat purchased. His methodology is contrary to the Department's normal practice, which is to compute a ratio based on the relationship of these expenses to the cost of sales of the company. *See, e.g., Preliminary Results of Antidumping Administrative Review: Roller Chain (Other than Bicycle) from Japan,* 60 FR 43771 (August 23, 1995), *Final Determination of Sales at Less Than Fair Value: Small Business Telephone Systems from Korea,* 54 FR 53141 (December 27, 1989) and *Final Results of Antidumping Administrative Review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom,* 56 FR 31692, Comment 25, (July 11, 1991). Therefore, we recalculated G&A and financial expense ratios as a percentage of cost of goods sold and multiplied these rates by the product specific cost of manufacture.

Comment 14 Understated Material Costs: The petitioners argue that the Department should increase Arrighi's raw material costs because Arrighi's submitted material costs were based on amounts from its management reports. They state that at verification the Department found that the costs of materials in the management reports

were understated and did not reconcile to the financial accounting system.

Arrighi did not comment on this issue.

DOC Position: We agree with the petitioners. As indicated in the questionnaire, the Department instructed Arrighi that the per-unit COP and CV must reconcile to the actual costs reported in the accounting system used by the company to prepare its financial statements. Arrighi's financial accounting system did not allow for the segregation of material costs. Hence, Arrighi used information from its management reports to segregate the material costs reported to the Department. At verification, we found an unreconciled difference between the management reports and the financial accounting system. Company officials stated that Arrighi's financial accounting system reflected its actual costs. We therefore increased the reported material costs to agree with the actual material costs reported in the company's financial accounting system.

Comment 15 Parent Company G&A: The petitioners propose that the Department increase Arrighi's reported G&A expenses to include G&A expense amounts incurred by its parent company. They argue that the questionnaire instructed Arrighi to include in its reported G&A, an amount for administrative services performed by its parent. Based on the record evidence, the petitioners conclude that Arrighi was the only subsidiary of its parent and argue, therefore, that all of the parent's expenses should be included in Arrighi's G&A expenses.

Arrighi did not comment on this issue.

DOC Position: We agree with the petitioners. As indicated in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 37082 (July 9, 1993), all expenses incurred by a parent company without operations, relate to the subsidiaries with operations. Additionally, our standard questionnaire instructs respondent companies to include an amount for administrative services performed by its parent company or other affiliates. Arrighi did not include in its reported G&A any amount for administrative services performed by its parent. Additionally, the evidence on the record shows that Arrighi is the only subsidiary of its parent company and that the parent did not engage in activities other than those relating to Arrighi's pasta operations. Since the only activity of the parent was to act as a holding company for Arrighi, it is reasonable to assume that any expenses it incurred were for the benefit of Arrighi. Therefore, we increased Arrighi's G&A expense to include the net expenses incurred by its parent company.

Comment 17 Financial Expenses: The petitioners argue that Arrighi improperly excluded bank fees from its reported financial expenses. They contend that financial expenses should include all interest expenses and fees incurred to finance the operations of the company.

The petitioners also argue that Italpasta incorrectly included exchange gains and losses generated from sales transactions in its calculation of the financial expense rate. They assert that the Department generally does not consider exchange rate gains and losses from sales transactions in its COP and CV. Therefore, they believe that the Department should revise the financial expenses of Italpasta to exclude the exchange rate gains and losses generated from sales transactions.

Arrighi did not comment on these issues.

DOC Position: We agree with the petitioners. Fees paid to a bank to obtain or maintain a loan are integral parts of financial expenses. Therefore, we increased Arrighi's financial expense to include the bank fees it incurred.

Regarding foreign exchange gains and losses, it is the Department's normal practice to distinguish such gains and losses realized or incurred in connection with sales transactions from those associated with purchases of production inputs. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy,* 60 FR 31981 (June 19, 1995) and *Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese from Venezuela* (''Silicomanganese from Venezuela''), 59 FR 55436 (November 7, 1994). The Department does not include in COP and CV exchange gains and losses on accounts receivable because the exchange rate used to convert home market or third-country sales to U.S. dollars is that in effect on the date of the U.S. sale. The Department does include foreign exchange gains and losses on financial assets and liabilities in its COP and CV calculation where they are related to the company's production. Financial assets and liabilities are directly related to a company's need to borrow money, and we include the cost of borrowing in our COP and CV calculations. We therefore adjusted Arrighi's and Italpasta's financial expense rate calculation to exclude exchange gains and losses related to the company's sales transactions.

De Cecco

Comment 1 Use of Facts Available: De Cecco argues that the Department should not have canceled verification of its sales and cost responses. De Cecco argues that its February 2 and February 6 responses were satisfactory responses to the requests for supplemental information to remedy the deficient November 27 response, and should have been accepted by the Department.

The petitioners argue that the Department should continue to use facts available to calculate the final margins. Both De Cecco's and the petitioners' specific arguments are described in the Facts Available section, above.

DOC Position: We agree with the petitioners that facts available should be used to calculate the final dumping margin for De Cecco. Our reasons are set out in the Facts Available section, above.

Comment 2 Use of Adverse Facts Available: De Cecco argues that the Department should not have used adverse facts available in determining De Cecco's margin for the preliminary determination because De Cecco provided complete answers to all requested information in a timely manner and otherwise cooperated to the best of its ability. Both De Cecco's specific arguments and the petitioners' comments are discussed in the Facts Available section, above.

DOC Position: We agree with the petitioners that De Cecco's February 6, 1996, cost submission consisted of new information. The receipt of subsequent, unsolicited submissions left no time for the Department, or the petitioners, to review, reconcile, or comment on the new submissions in time to conduct any meaningful verification of the cost data. We disagree with De Cecco's characterization of its participation as having ''provided complete answers to all requested information in a timely manner and otherwise cooperated to the best of its ability.'' De Cecco submitted a new cost methodology in February, did not attempt to explain the differences between the data submitted in its various February responses, and did not attempt to explain the differences between the data submitted in February and the original data submitted in November 1995. We do not consider these facts as evidence that De Cecco acted to the best of its ability to respond to the questionnaire. Finally,

De Cecco's argument that it failed to understand our questionnaire instructions concerning affiliated persons because it was reading them within the context of Italian law is unpersuasive. Appendix I of the questionnaire contained a glossary that defined, *inter alia*, the term ''Affiliated Persons.'' Moreover, the Department works with all respondents, and their representatives, to clarify any questions they might have about questionnaire requirements.

Comment 3 Corroboration of Secondary Information: De Cecco argues that if the Department uses facts available, it should corroborate such information by using other information readily available and should not rely exclusively on the petition in determining De Cecco's margin rate. It asserts that the Department is obligated to determine the dumping margin as accurately as possible. De Cecco argues that the Department acts unreasonably if it rejects low margin information in favor of high margin information that is demonstrably less probative. *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185,1991 (Fed. Cir. 1990); *Floral Trade Council v. United States,* 822 Fed. Supp. 766, 711 (CIT 1993). De Cecco contends that the Department failed to corroborate the information it relied upon in calculating the facts available margin applied to De Cecco in the preliminary determination. It insists that the Department could have utilized information from other respondents (*e.g.*, Delverde, whose costs, it assumes, are most similar) or averages from the calculated margins of other companies, and should do so for the final determination.

The petitioners disagree with De Cecco's argument that its costs are similar to Delverde's simply because they are located in the same town in Italy. Moreover, the petitioners believe that the Department properly followed the statutory requirements for calculating De Cecco's dumping margin based on facts available.

DOC Position: We disagree with De Cecco that corroboration of information used for facts available means determining accurate dumping margins for a specific company. Accurate dumping margins can only be calculated on the basis of reliable information provided by the respondent. De Cecco did not provide such information. We also disagree that we have any basis for accepting De Cecco's assumptions that Delverde's costs of producing pasta should have some bearing on the dumping margin assigned to De Cecco.

In this case, the petition is the only information on the record which could appropriately form the basis for a dumping calculation. Section 776(c) of the Act provides that where the Department relies upon ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably available to the Department. The SAA, at page 870, clarifies that the petition is ''secondary information,'' and that ''corroborate'' means to determine that the information has probative value. *Id*. During our analysis of the petition, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. In addition, we contacted the source of the market research data and confirmed to our satisfaction the reliability of the market research information presented in the petition. As a result of our analysis, we revised the home market prices that petitioners had relied upon in calculating the estimated dumping margins. On the basis of these revisions, we recalculated the estimated dumping margins and found them to range from 21.85 percent to 71.49 percent.

Delverde

Comment 1 Collapsing Delverde and Tamma for Purposes of Calculating the Dumping Margin: In the preliminary determination, the Department concluded that Delverde and Tamma are affiliated companies within the meaning of section 771(33) of the Act based on response information that the common ownership of these companies exceeded five percent. Consistent with Departmental practice, we also concluded that the information on the record required us to collapse Delverde and Tamma into a single entity for purposes of calculating a dumping margin. (*See, Final Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada,* 59 FR 25603 (May 17, 1994); *Final Determination of Sales at Less Than Fair Value: Certain Granite from Italy* (''Italian Granite''), 53 FR 24335 (July 19, 1988).) This decision was based on our finding ties of common ownership, interlocking boards of directors, similar production processes and shared transactions. (*See* letter from Gary Taverman to Delverde of August 22, 1995.)

For the final determination, Delverde argues that the two companies should be treated as separate companies because ''neither company exercises control over the other within the meaning of section 771(33) of the Act''. Specifically, Delverde asserts that neither company is legally or operationally in a position to exercise restraint or direction over the other company based on the following claims: (a) Tamma holds only a minority ownership interest in Delverde; (b) the companies operate as wholly separate commercial entities and do not consolidate financial statements or share cost/financial information; (c) the common board member is not involved in the day-to-day business operations of Delverde; (d) pricing and marketing strategies are conducted independently; (e) the companies have separate letterheads and locations; (f) there are no common employees or managers; (g) production information is not shared; and (i) Tamma sells semolina to Delverde at arm's length prices.

The petitioners state that the ownership relationship between Delverde and Tamma clearly meets the definition of affiliated persons. Whether affiliated companies operate independently or in conjunction is not at issue, and does not alter the fact that Delverde and Tamma are affiliated companies. Accordingly, the petitioners urge the Department to uphold its preliminary determination and collapse the data of Delverde and Tamma into a single entity in the final margin calculations.

DOC Position: In determining whether to collapse related or affiliated companies, the Department must decide whether the affiliated companies are sufficiently intertwined as to permit the possibility of price manipulation. In making this decision, the Department considers factors such as: (1) The level of common ownership; (2) interlocking boards of directors; (3) the existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and (4) whether the operations of the companies are intertwined as evidenced by coordination in pricing decisions, shared employees or transactions between the companies. *See, e.g., Certain Granite Products from Spain,* 53 FR 24335 (1988); *Italian Granite; Cellular Mobile Telephones and Subassemblies from Japan* (43 FR 48011, 1989); *Steel Wheels from Brazil,* 45 FR 8780 (1989); *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Steel Plate from Canada,* 58 FR 37099 (1993). The Department's use of these factors was implicitly accorded deference by the Court of International Trade (CIT) in *Nihon Cement Co., Ltd., et al.* v. *United States,* Slip Op. 93–80 (CIT 1993)(which overturned our determination for a

failure to articulate the evidence which supported the different elements of this test).

While consistent with our practice on this issue, section 351.401(f) of the Department's proposed regulations give a new articulation to the collapsing test. Under this articulation, the Department will treat affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and where there is a significant potential for the manipulation of price or production, as evidenced by common ownership, interlocking boards of directors or shared management, and intertwined operations.

The administrative record establishes a close, intertwined relationship between Delverde and Tamma. At verification of Delverde and Tamma, we confirmed reported information concerning ownership, boards of directors, transactions, and production processes. This information demonstrates that these affiliated producers have similar production processes and exhibit a significant potential for price manipulation as evidenced by interlocking boards of directors and shared transactions. Based on the information on the record, we believe that Delverde and Tamma cannot be considered separate manufacturers under the antidumping law, and that it is appropriate to calculate a single, weighted-average margin for these companies.

Comment 2 Calculation of Constructed Export Price for Delverde: In the preliminary determination, we calculated CEP by deducting from the starting price (*i.e.*, the price to the unaffiliated purchaser) discounts and rebates, international movement expenses, U.S. movement expenses, direct U.S. selling expenses, commissions and CEP profit, as well as indirect selling expenses and inventory carrying costs associated with economic activities occurring in the United States. We did not deduct the indirect selling expenses and inventory carrying costs incurred by the foreign producer in Italy because we did not deem these expenses to be specifically related to commercial activity in the United States.

For the final determination, both petitioners and Delverde argue that the Department is required by the statute to deduct all expenses, including indirect expenses incurred by the foreign producer, in calculating CEP. The parties state that nothing in section 772(d)(1) suggests that the expenses listed in subparagraphs (1)–(D) must be related to activities that take place within the United States, or that such expenses must be incurred within the territory of the United States. They argue that the inclusion of a clause in the statutory definition of CEP (*i.e.*, 772(d)(1)(D)) mandating the deduction of *any* selling expenses from the U.S. starting price) ensures that all indirect selling costs are stripped from the selling price. The parties further argue that the legislative history establishes that Congress intended the new CEP provision to be merely a clarification of prior law which provided for the deduction of all direct and indirect selling expenses, regardless of whether the expenses were attributable to activities in the United States. While the parties acknowledge that the language of the SAA may be unclear or ambiguous, they argue that, as a matter of law, such language cannot be used by the Department to override the clear and unambiguous language of the statute. Accordingly, both the petitioners and Delverde contend that in calculating CEP the Department must deduct all selling expenses, as required by section 772(d), regardless of where the expenses are incurred.

These arguments concerning statutory interpretation notwithstanding, Delverde also contends that the Department made a factual error by not classifying the inventory carrying costs incurred by the foreign producer on U.S. sales as specifically related to commercial activity in the United States. Delverde notes that pasta on which the inventory carrying expense is incurred is enriched pasta that cannot be sold in Italy. Delverde states that this pasta is dedicated to the U.S. market from the point in production that vitamins are added, and is segregated from other pasta while in inventory. Accordingly, Delverde argues that all reported inventory maintenance expenses for enriched pasta are necessarily related to U.S. commercial activity.

DOC Position: Consistent with the SAA and our proposed regulations, the Department reads section 772(d)(1) of the Act to require us to make deductions to CEP only for the expenses associated with economic activity in the United States (*see* SAA at 823 and the Department's proposed Regulations at 7331 and 7381). Our preliminary determination reflected this requirement insofar as our deductions to CEP excluded those expenses we deemed not specifically related to commercial activity in the United States (*i.e.*, Delverde's indirect selling and inventory carrying expenses incurred in Italy).

For the final determination, we reevaluated our treatment of indirect expenses incurred in Italy based on our findings at verification. In the case of indirect selling expenses, the indirect selling accounts reviewed at verification indicated that Delverde accurately identified each of the expenses that specifically related to U.S. commercial activity. With regard to inventory carrying costs, our observations confirmed Delverde's explanation that enriched pasta, other than whole wheat pasta, is virtually all sold to the United States and that any inventory carrying costs incurred on enriched pasta is necessarily attributable to U.S. economic activity. Therefore, we included inventory carrying costs and indirect selling expenses incurred in Italy (*i.e.*, database fields DINVCARU and DINDIRSU) in our deductions from CEP.

Comment 3 Payment Dates of Delverde Sales: At verification, we noted that Delverde had not updated the payment dates reported for U.S. and home market sales that were paid after submission of its September, 1995, sales response. This caused the credit expense for these sales to be incorrectly calculated in the preliminary determination. Following verification, Delverde provided a revised sales tape with updated payment information for its U.S. sales. It did not revise the payment data for its home market sales, although this revision would have decreased the normal value of the affected sales.

According to the petitioners, Delverde should be penalized for not disclosing its error prior to verification. The petitioners contend that all U.S. sales transactions by Delverde, showing a payment date of September 13, 1995, should be reset to a payment date of March 15, 1996 (the date of the sales verification) for purposes of calculating the credit expense on these sales.

DOC Position: For the final determination, we calculated U.S. credit based on the revised and verified payment information provided by Delverde. We believe this approach is appropriate because it is consistent with our practice of promoting accuracy and completeness in the calculation of margins, a practice which forms the basis for our approach to both pre- and post-verification submissions. *See, Murata Mfg. Co.* v. *United States*, 829 F. Supp. 603, 607 (CIT 1993) with *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992), aff'd, 996 F.2d 1236 (Fed. Cir. 1993) (*Cf.* the preamble of the Department's proposed regulations at

7323). We also believe that this approach is conservative because the revised payment information adversely affects the credit calculation of U.S. sales, and does not include revised home market information that would have been beneficial to the respondent.

Comment 4 Revised Sales Tapes: The petitioners assert that the Department should carefully review the revised sales tapes submitted by Delverde and Tamma to ensure that the proper revisions have been made to the proper fields. For any field that has not been properly modified, the petitioners contend that the Department should apply facts available. In the case of CEP sales by FSM and Cavalier, U.S. importers related to Delverde, the petitioners argue that the widespread and fundamental changes submitted by Delverde very late in the investigation call into question the reliability of Delverde's responses. In light of the changes submitted by Delverde, the petitioners argue that if the Department identifies any anomalies in the data contained on the final sales tape, it should apply facts available to Delverde's sales in their entirety.

Delverde insists that all its affiliated entities have cooperated with the Department at every stage of this investigation. According to Delverde, the submission of computer tapes to update their sales databases for revisions occurring after November 27, 1995, and to ensure that the database incorporates verified information clearly serves a useful function, and is intended to reduce the burden on the Department and other parties. Delverde emphasizes that every effort has been made to ensure that the sales tapes reflect exactly those changes previously identified by Delverde and Tamma, or requested by the Department. Delverde contends that there is no basis for the petitioners' unsupported speculation or requests for the use of ''facts available'' with respect to unspecified ''anomalies.''

DOC Position: We agree that Delverde and its affiliated entities have been cooperative throughout this investigation. At our request, Delverde submitted revised computer tapes that updated their sales databases for revisions made subsequent to November 27, 1995, and incorporated changes identified at verification. We have examined these tapes and there is no basis for the petitioners' assertion that the use of facts available is warranted for selected portions of Delverde's databases or for Delverde's sales in their entirety.

Comment 5 Slotting fees on CEP sales by Delverde USA: The petitioners argue that the Department's verifiers noted certain irregularities with respect to the slotting fees paid to a certain Delverde USA customer. According to the petitioners, the Department reviewed four invoices to the customer at verification that Delverde USA explained were up-front slotting fees on post-POI sales. The petitioners argue that because Delverde did not provide full disclosure of the details of any ''up-front'' slotting fees paid before the POI, the Department must associate the expenses with the POI since that is when they were incurred. The petitioners request that the Department increase the slotting expense reported in field ADVERT2U for this customer, or apply facts available in the absence of available sales information for this customer.

Delverde states that the petitioners' arguments reflect a fundamental misunderstanding of Delverde USA's sales to this customer and of the methodology used to report this customer's slotting expense. Delverde asserts that the petitioners' arguments fail to take into account the fact that sales to this customer by Delverde USA are made pursuant to an agreement which became effective at the end of the POI. Delverde argues that it has never claimed that the referenced invoices are related to post-POI sales. Rather, as reflected in the Department's verification report, Delverde notes that the referenced invoices relate to post-POI shipments which were appropriately included in calculating the slotting expenses reported in ADVERT2U for this customer. Delverde also dismisses the petitioners' suggestion that Delverde did not disclose the details of up-front slotting fees that might have been paid to this customer before the POI. Given that Delverde USA's business with this customer began with the agreement at the end of the POI, Delverde asserts that it is factually incorrect to assume that up-front slotting fees were paid to this customer prior to the POI. Delverde submits that the petitioners' request for an adjustment to field ADVERT2U should be rejected.

DOC Position: At verification, we reviewed Delverde USA's agreement with the customer, dated near the end of the POI. We also reviewed four invoices which represent the totality of sales made pursuant to the agreement, each of which was invoiced and shipped after the POI. The results of this review indicate that, more than a year after the agreement, only a small fraction of the total quantity of pasta specified in the agreement had been sold and delivered to the customer. We also found that another fundamental element of the agreement had only been partially implemented. Consequently, although Delverde USA continues to consider its relationship with this customer to be unchanged, in our judgment the agreement is not in effect. We therefore reclassified the date of sale for these invoices to the invoice date, pursuant to Delverde's date of sale methodology for its other sales and to our findings at verification. Given that this reclassification indicates that the four invoices were dated outside the period of investigation, we did not include these sales in the final margin calculations for Delverde. Therefore, the arguments concerning the ADVERT2U field are moot.

Comment 6 Delverde USA's Indirect Selling Expenses: In its revised calculation of U.S. indirect selling expenses, Delverde USA added a separate line item to POI operating expenses for a slotting fee provided to one U.S. customer. The petitioners contend that this is an improper means of accounting for a slotting fee expense, which is customer-specific in nature. According to the petitioners, proper accounting for this customer-specific expense would be to allocate this additional expense over the POI sales to this customer. The petitioners recommend that if the Department is unable to readily arrive at a total sales figure for this customer, it should use facts available and add the highest slotting fee expense reported in the U.S. sales database (field ADVERT2U) to any existing expenses in this field for this customer.

Delverde maintains that it is appropriate to treat the cost incurred in selling to this customer as an indirect selling expense. As explained by Delverde at verification, Delverde USA actively solicited the business of this customer because of that customer's retail outlets. In order to secure the opportunity to sell to that potential customer, the customer demanded an up-front payment which Delverde USA provided in the form of an initial delivery of pasta free of charge. In providing the up-front payment, Delverde sought to induce that customer to begin placing large volume, follow-up orders on an on-going basis. Delverde notes that its investment was not successful as the customer subsequently purchased and paid for only a very small amount of merchandise. Delverde notes that no other orders were placed by the customer, despite the customer's demand for, and receipt of, the up-front payment.

Based on this explanation, Delverde argues that Delverde USA's investment

is properly recognized as a general cost of doing business. Given that the customer did not subsequently place orders with Delverde USA, Delverde argues that it would not be appropriate to treat the expenses as a slotting cost related solely to this customer. Rather, Delverde argues that it is the lack of follow-up business that distinguishes this situation from other instances where slotting fees were reported in field ADVERT2U.

DOC Position: We agree with Delverde that it is appropriate to treat the up-front slotting fee provided to one Delverde USA customer, as an indirect selling expense for all sales to all customers. Such treatment is warranted in this instance given that no orders were subsequently placed with Delverde USA by this customer. Accordingly, we believe that the lack of follow-up business distinguishes this situation from other instances where slotting fees were reported on a customer-specific basis in field ADVERT2U.

Comment 7 Delverde's Request for a CEP Offset: Delverde did not claim a level of trade adjustment for its EP sales. With respect to its CEP sales, the company argues that the statute directs the Department to deduct all selling expenses from the CEP and that the resulting adjusted CEP is an ex-factory price. Delverde then concludes that the adjusted CEP, or ex-factory price, is at the ex-factory level of trade. In the absence of ex-factory sales in its home market, Delverde further argues that it is impossible to quantify the price effect of selling functions involved in sales at levels of trade more advanced than ex-factory, and, as a consequence, it must be entitled to the CEP offset.

The petitioners argue that Delverde would have had to submit data concerning its selling functions in response to the Department's requests related to the Department's level of trade analysis in order to qualify for a CEP offset. As a consequence of failing to provide the Department with this requested information, the petitioners assert that the SAA prohibits a CEP offset.

DOC Position: The Department requested level of trade information from Delverde on October 23, 1995, and on January 22, 1996. Delverde responded with the argument that it had not claimed a level of trade adjustment for its EP sales and that it was pointless for the Department to compare CEP activities for level-of-trade purposes. As a result of Delverde's refusal to provide the requested information, the Department has had to infer different selling functions from the narrative of Delverde's responses concerning other topics. On the basis of our analysis of its selling functions, described in the ''Level of Trade'' section of this notice, above, we concluded that Delverde's U.S. sales and home market sales are made at the same level of trade. As stated in the SAA, at page 160, ''Only where different functions at different levels of trade are established under Section 773(a)(7)(A)(i) [and a level of trade adjustment is not appropriate] will Commerce make a constructed export price offset adjustment under Section 773(a)(7)(B).'' Accordingly, we did not grant Delverde's request for a CEP offset in our final determination.

Comment 8 Water Gain: Tamma argues that its semolina yield calculation correctly and accurately accounts for water absorbed by the wheat in producing semolina. It states that its submitted quantity of semolina and byproducts produced from a given quantity of durum wheat reflects the water gain. Tamma explains that the higher moisture content of milled semolina and byproducts is an inherent physical characteristic of those products. Tamma argues, therefore, that it would be improper to back out the weight gain attributable to such an inherent physical characteristic and such an adjustment would distort Tamma's semolina yield rates by not fully capturing the actual quantity of milled semolina produced.

The petitioners argue that Tamma's semolina costs should be increased to properly account for the water gain. They state that it is not acceptable to allow Tamma to compare the ''wet'' semolina output to the ''dry'' durum wheat input to calculate yield loss. A ''dry'' input, the petitioners contend, should be compared to a ''dry'' output in deriving yield loss.

DOC Position: We agree with Tamma that its semolina yield calculation properly accounted for the water gain during the milling process. We noted in our verification report a concern that the water weight gain might understate semolina costs by overstating production quantities. However, after further review of information on the record, we note that Tamma allocated its milling cost (*i.e.*, wheat and conversion costs), net of byproduct revenue, based on the actual quantity of semolina produced. Therefore, the weight gain attributable to water has been properly absorbed by allocating milling costs to finished semolina output.

Comment 9 Depreciation Expense: Tamma contends that its reported depreciation expense is accurate and does not distort costs. It argues that the submitted depreciation expense is identical to the amount reported in its audited financial statements and fixed asset ledger. Tamma further argues that its method of calculating the depreciation expense conforms with Italian GAAP and that the actual useful lives of its fixed assets reflect the expanded depreciation period allowed under Italian law. Tamma states that it is the Department's practice to accept home market GAAP when it does not distort production costs and cites *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 6997 (February 6, 1995); *Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy*, 60 FR 31981 (June 19, 1995); *Final Results of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from Germany*, 61 FR 13834 (March 28, 1996); and *Final Results of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995).

The petitioners contend that the Department should increase Tamma's depreciation expense. They argue that Tamma reduced its straight-line depreciation rates from the Italian civil code to rates it employs for income tax purposes which are inappropriate for a dumping analysis.

DOC Position: We disagree with Tamma. To calculate depreciation expense, Tamma relied on industry specific depreciable asset lives authorized by the Italian Civil Code. However, Tamma later modified these depreciable asset lives in calculating depreciation expense for all of its assets, including the manufacturing equipment used to produce pasta. Contrary to Tamma's argument, the change to its assets depreciable lives was not the result of new events, changing conditions, experience, or additional information. Instead, Tamma's change in depreciable life was made only for its effect on the company's profitability.

Generally, the Department relies on a company's home country GAAP; the Department will not do so, however, if the use of a country's GAAP does not accurately recognize a company's actual costs. (*See, e.g.*, *Minivans from Japan; Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15479 (March 23, 1993).) Recording of depreciation expenses provides a systematic, rational method of recognizing the costs of fixed assets. This allocates the one-time expense of purchasing (or constructing) fixed assets over the longer time period

which these assets will benefit. In this case, the Department found that the basis used for the financial statement, even if stated in accordance with Italian GAAP, is contrary to sound accounting principles and the Department's practice. Tamma simply elected to change its depreciation rate (which, in effect, changed the useful lives of the company's production assets) without any change in the underlying economic assumptions and estimates on which its depreciation method was based. Without documentary evidence of such a change in the underlying assumptions, it is inappropriate for the respondent to recognize less than a full year's depreciation expense.

Comment 10 Foreign Exchange Losses Related to Debt: Tamma contends that its capitalization of foreign exchange losses realized in connection with loans used to purchase capital assets conforms to Italian law and Italian GAAP. It further argues that because the loss relates directly to the acquisition of capital assets, and is amortized over a period that is less than the useful lives of those assets, its capitalization of the exchange rate losses is reasonable and does not distort costs. *See, Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7039 (February 6, 1995) (''*Roses from Ecuador*'').

The petitioners contend that it is appropriate to recognize the entire exchange loss because the loss was incurred during the POI and the source of the loss is fungible in nature. They argue that a foreign exchange loss on debt owed is logically recognized at the end of the fiscal period. The petitioners also argue that the exchange loss cannot be related to the acquisition of the asset because it did not occur at the time of acquisition.

DOC Position: We disagree with Tamma. In determining COP for the POI, the Department includes all costs incurred during the POI. If current losses are deferred to some future time, the costs would not appropriately match to the sales of the company during the POI. The Department has recognized this principle in the past in dealing with capitalized foreign exchange gains and losses relating to loans. *See, Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15479 (March 22, 1993).

In this case, the extinguishment of debt caused a foreign exchange loss which represents a cost that provides no future benefit to Tamma. Tamma has argued that the exchange loss relates to the acquisition of assets and should be capitalized and amortized because this method was allowed in *Roses from Ecuador*. However, we note that in *Roses from Ecuador* the capitalized loss reflected an actual increase in the loan amount and the loss was amortized over the remaining life of the loan. The exchange loss in this case is also a cost of Tamma's borrowed funds but it is not an increase in the loan amount because it was incurred to extinguish the debt. Nor is the loss a cost of Tamma's equipment because this loss does not add to the utility of the equipment.

We also note that contrary to Tamma's claims, the company's method of capitalizing this cost is not a recommended method under Italian GAAP. We note that the Italian National Council of Accountants (''NCA'') which issues recommended ''Principles of Accounting'' in Italy states that ''a resulting exchange loss should be recognized immediately'' (See, Larry L. Orsini, John P. Mcallister and Rajeev N. Parikh, ''Italy,'' *World Accounting*'', Volume 2, (Matthew Bender & Co., Inc., New York, New York, 1995) p. ITA.37[1].) Also, Tamma's capitalization and amortization of this loss is not acceptable under U.S. GAAP which states that such losses must be recognized in the period in which they are incurred.

Comment 11 Subsidy Used to Offset G&A: Tamma claims that it properly reduced its G&A expenses by the amount of a grant from the Italian government which it received in 1994. Tamma argues that the grant effectively reduced its cost of producing subject merchandise and notes that the Department has previously allowed government grants as offsets against production costs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands*, 59 FR 22684, 22556 (May 8, 1994); and, *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33546 (June 28, 1995).

The petitioners contend that Tamma should not be allowed to offset G&A expenses by a grant received from the Italian government because it is not clear if the grant was received during the POI. Therefore the Department should view the grant simply as additional income and not an as offset to G&A costs.

DOC Position: We disagree with the petitioners. Tamma's management demonstrated that the purpose of the grant was to assist the company in improving the general operation of its pasta production facilities. Thus, we found that the grant related to the company's pasta operations and have allowed the amount received by Tamma during the POI as an offset to Tamma's G&A expenses.

Comment 12 G&A and Interest Expense Revisions: The petitioners state that the Department should correct Tamma and Delverde's combined G&A expense factor and financing expense factor for certain clerical errors found or reported during verification.

Tamma and Delverde agree with the petitioners.

DOC Position: We agree with both the petitioners and the respondents and have corrected the combined cost of sales figure used by Tamma and Delverde to compute their G&A and financial expense ratios. In computing COP and CV, the Department normally requires respondents to allocate G&A and financing expenses to subject merchandise based on the ratio derived by dividing total G&A and financing expenses by the respondent's cost of sales. Delverde and Tamma derived a combined cost of sales figure based on total production costs (*i.e.,* direct material and conversion costs) that was adjusted for the change in beginning and ending inventory values. However, this combined cost of sales did not include the scrap and byproduct revenue offset that the two companies used to reduce their cost of manufacturing. Nor did it exclude the intercompany transfers between the two companies. These omissions overstated the combined cost of sales figure which in turn understated the interest and financing expense allocated to subject merchandise.

De Matteis

Comment 1 Commission Expenses: The petitioners argue that the Department should adjust De Matteis' claimed home market commission expenses to correct for errors discovered at verification. Specifically, the petitioners argue that the Department should deny the commissions claimed by De Matteis for all sales through selling agents 3 and 4, and for 1994 sales made by selling agent 2.

De Matteis did not comment on this issue.

DOC Position: We agree with the petitioners. These payments were reviewed during verification and found to be salary expenses, not commissions.

Comment 2 Exchange Rates: De Matteis contends that the Department incorrectly used a mixture of weighted-average and daily exchange rates. Specifically, it argues that the Department used daily exchange rates to

convert Lire into dollars in calculating certain values for the foreign unit price in dollars (FUPDOL), normal value, packing, differences in merchandise (DIFMER), and U.S. direct selling expenses, while the Department converted U.S. price using a weighted-average rate.

The petitioners did not comment on this issue.

DOC Position: We agree with De Matteis that we inadvertently used the daily exchange rate in two lines of the computer program used to calculate the margins for the preliminary determination. These two lines of the computer program specifically dealt with matches to CV. Because no U.S. sales were matched to CV for De Matteis for the preliminary determination, there was no effect on the margin for the preliminary determination. We have corrected the computer programming language for the final determination.

Comment 3 G&A and Financial Expense Ratios: The petitioners argue that in calculating its G&A and financing expense ratios, De Matteis failed to reduce the cost of sales denominator by the amount of revenues received from the sale of byproducts. As a result of the miscalculation, petitioners contend that De Matteis understated its reported per-unit G&A and financing expenses.

De Matteis agrees with the petitioners.

DOC Position: We agree with both parties. De Matteis applied its G&A and financing expense ratios to per-unit cost of manufacturing amounts for pasta that were net of revenues received by the company from sales of certain byproducts. In computing these ratios, however, De Matteis did not reduce its cost of sales denominator for the byproduct revenue it received. This resulted in an understatement of G&A and financing expense which we have corrected for the final determination by subtracting byproduct revenues from De Matteis' cost of sales.

La Molisana

Comment 1 Arm's Length Test: La Molisana argues that the arm's length test utilized in the preliminary determination is methodologically unsound because it fails to take into account price differences that result from comparisons of sales to different customer categories. Specifically, La Molisana claims that the test leads to a distortion of price comparability because it compares affiliated distributor sales to unaffiliated sales to all customer categories without taking into account the fact that the prices charged to distributors (both affiliated and unaffiliated) are considerably lower than the prices charged to unaffiliated non-distributors. In addition, La Molisana asserts that the Department verified that the company maintains separate price lists for distributors and non-distributors and that the price lists reflect significantly different prices. In support of this argument La Molisana provided a table in its case brief depicting the weighted-average net prices for each control number, level of trade (based on the LOTCODE assigned by the Department in the preliminary determination), affiliated distributor, unaffiliated distributor and unaffiliated non-distributor. La Molisana asserts that this table clearly demonstrates that the prices charged to affiliated and unaffiliated distributors are considerably lower than the prices charged to non-distributors.

Finally, La Molisana contends that in previous investigations the Department has recognized that there may be other factors that should be taken into account in conducting the arm's length test. *See, e.g., Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Steel Plate from France,* 58 FR 37062, 37077 (July 9, 1993). (The Department agreed that modifying the arm's length test to take differences in quantity into account would ''fine-tune'' the arm's length test.) For all of these reasons La Molisana argues that the Department should revise the arm's length test by basing the test on customer category as well as control number and level of trade.

The petitioners argue that the Department should continue to base the arm's length test solely on control number and level of trade, without regard to customer category. The petitioners contend that La Molisana has failed to show clear and documented evidence of price distinctions between distributors and non-distributors and that the Department should not consider the class of customer in determining whether sales are made at arm's length prices.

DOC Position: We agree with La Molisana that the test used in the preliminary determination may have been distorted because it failed to take into account price differences that result from comparisons of sales to different customer categories. Section 353.403 of the Department's Proposed Regulations states that the Secretary may calculate normal value based on an affiliated party sale only if satisfied that the price is ''comparable'' to the price at which the producer sold the merchandise to an unaffiliated party. As noted in the ''Comparison Methodology'' section of this notice, above, it is the responsibility of the Department, not respondents, to determine which customers may be grouped together for product comparison purposes. In this instance, the record establishes that there are three distinct customer classes in the home market (*i.e.,* wholesalers, retailers and consumers) and that La Molisana offered significantly different prices, depending on the customer category. In addition, La Molisana made sales to both affiliated and unaffiliated customers within the same customer category during the POI. Consequently, in order to make a fair determination regarding the price comparability of the affiliated party sales, we have determined that it is appropriate to use customer categories in our arm's length test. We believe that the inclusion of customer category in the arm's length test conforms with the principle, found in both section 353.45(a) of the Department's existing regulations and section 351.403 of the proposed regulations, that affiliated prices must be comparable to unaffiliated party prices in order for the affiliated party prices to be used by the Department. Therefore, for the above reasons, we have modified the test used in this final determination to account for the customer category.

Comment 2 Home Market Advertising Expenses: A. ''TV Sponsors'': La Molisana argues that certain previously unreported home market advertising expenses discovered at verification should be considered direct advertising expenses in the final determination. Specifically, La Molisana asserts that the Department verified that the expenses discovered at verification related to La Molisana's sponsorship of a television program where, during one segment of the show, La Molisana's pasta and logo were prominently displayed. Therefore, La Molisana contends that the advertising expenses associated with sponsoring this show were directed at its customer's customer and should be considered part of its direct advertising expenses in the final determination.

The petitioners argue that the Department should not include the expenses associated with sponsoring the television show in the final determination because the expenses were not provided until verification.

DOC Position: We agree with La Molisana that the expenses included in the ''TV Sponsors'' account should be considered part of La Molisana's direct advertising expenses in the final margin

calculations. At verification we confirmed that the advertisements were directed at downstream customers (*i.e.*, the ultimate consumers). Therefore, we have treated these expenses as direct advertising expenses in the final determination.

B. Trade Promotion Expenses: La Molisana argues that certain trade promotion expenses (which were treated as indirect expenses in the preliminary determination) are direct advertising expenses and should be treated as such in the final determination. It contends that these expenses are incurred in order to make its pasta more visible to the retail shopper and to encourage retail shoppers to purchase La Molisana's pasta. Therefore, La Molisana argues that trade promotion expenses are directed at its customer's customer.

The petitioners argue that the Department should continue to treat trade promotion expenses as indirect selling expenses in the final determination because these expenses are paid directly to La Molisana's customers and therefore do not represent reimbursements for expenses its customers incurred in advertising La Molisana's products to downstream customers.

DOC Position: We agree with La Molisana. For expenses incurred in advertising to be considered direct expenses there must be an assumption by the seller of the purchaser's advertising costs. In instances where the respondent assumes the total cost of promoting the product to downstream customers, we recognize that it is inherently difficult to tie any form of advertising to a specific sale. Therefore, the Department generally does not make that a requirement before accepting a claimed advertising expense as a direct expense. Nevertheless, the advertising must be proven to be directed towards the customer's customer (*i.e.*, the ultimate consumer) and incurred on products under investigation. At verification we confirmed that trade promotion expenses are aimed at the ultimate consumers of La Molisana's pasta (*i.e.*, the retail shoppers). Therefore, we have treated these expenses as direct advertising expenses in the final margin calculations.

C. Introduction Incentive Fees: La Molisana argues that certain introduction incentive fees (which were initially reported as advertising expenses and were treated as indirect expenses in the preliminary determination) are direct selling expenses and should be treated as such in the final determination. Specifically, La Molisana claims that the Department verified that introduction incentives are paid in order to obtain shelving space in supermarkets. La Molisana claims that it must pay these fees in order to make the sale and that this fee is not paid unless it makes a sale. Therefore, the introduction incentive fees bear a direct relationship to the sales in question and should be treated as direct selling expenses in the final determination.

The petitioners argue that the Department should continue to treat introduction incentive fees as indirect selling expenses in the final determination. The petitioners assert that La Molisana should not be permitted to submit new or revised claims for direct expenses after verification. In addition, the petitioners contend that introduction incentive fees are not directly related to the merchandise under investigation because they are flat fees that are incurred whether or not any actual sale occurs.

DOC Position: We agree with the petitioners that introduction incentive fees should be treated as indirect selling expenses. As we stated in the DOC Position on Comment 5 concerning Arrighi, the Court of International Trade has explained that direct selling expenses ''are expenses which vary with the quantity sold,'' or that are ''related to a particular sale.'' In this instance, La Molisana did not demonstrate that these fees vary with the quantity of pasta sold or that they can be tied directly to particular transactions. Therefore, we have continued to treat this expense as an indirect selling expense in the final margin calculations.

Comment 3 A. U.S. Advertising Expenses: La Molisana argues that its U.S. advertising expenses should be treated as indirect selling expenses in the final determination because the advertisements are not directed at its customer's customer. Specifically La Molisana asserts that it reimburses its U.S. distributor for a portion of the advertising expenses the U.S. distributor incurs promoting La Molisana's products to its customer's customer in the United States. Therefore, La Molisana argues that the advertisements are aimed at La Molisana's customer's customer's customer, not its customer's customer. As such, La Molisana argues that these expenses are not direct selling expenses because it is the Department's practice to treat advertising expenses as direct selling expenses only if those expenses are directed at the customer's customer.

The petitioners argue that the Department should continue to treat La Molisana's U.S. advertising expenses as direct advertising expenses in the final determination because these expenses represent reimbursements La Molisana paid to its U.S. customer for expenses that the U.S. customer incurred to advertise La Molisana's products to downstream customers in the United States.

DOC Position: We agree with the petitioners. For advertising to be treated as a direct expense it must be assumed on behalf of the respondent's customer and be incurred on the products under investigation. It is the Department's policy to classify advertising expenses directed at the ultimate consumer as direct and to classify advertising directed towards intermediary customers as indirect. *See, e.g., Dynamic Random Access Memory Semiconductor's of One Megabyte or Above From the Republic of Korea, Final Results of Administrative Review*, 61 FR 20216 (May 6, 1996). *Antifriction (other than Tapered Roller Bearings) Bearings from France*, 60 FR 10909 (February 28, 1995). At verification it was confirmed that La Molisana reimburses its unaffiliated U.S. customer for a portion of the advertising expenses this customer incurs promoting La Molisana's products to the ultimate consumers in the United States. Consequently we have treated these expenses as direct advertising expenses in the final determination.

B. Alleged Error in the Treatment of Certain Advertising Expenses in the Preliminary Determination: La Molisana asserts that in its preliminary determination the Department treated trade promotion and introduction incentive fees as indirect expenses in the home market while the same expenses were treated as direct expenses in the U.S. market. La Molisana argues that regardless of whether the Department classifies trade promotion expenses and introduction incentive fees as indirect or direct expenses in the final determination, it should afford the expenses similar treatment in both the U.S. and home markets.

The petitioners did not comment on this issue.

DOC Position: We have reviewed La Molisana's assertion and agree that the preliminary determination failed to treat trade promotion expenses and introduction incentive fees similarly in the U.S. and home markets. This was an inadvertent error on the part of the Department. We have corrected this error by treating introduction incentive fees as indirect expenses and trade promotion expenses as indirect expenses in both the U.S. and home markets in the final margin calculations. (For a discussion of the classification of

these expenses *see,* Comments 2B and 2C, above.)

Comment 4 Home Market Rebate: The petitioners argue that the Department should deny La Molisana's claim for the second type of home market rebate reported in its questionnaire response (*i.e.,* the rebate based on a percentage of pre-determined sales targets) because La Molisana failed to provide support documentation for the reported amounts at verification.

La Molisana did not comment on this issue.

DOC Position: We agree with the petitioners. Section 782(i) of the Act states that: ''The administering authority shall verify all information relied upon in making a final determination in an investigation.'' At verification, company officials were unprepared to provide support documentation for this rebate and, as a result, the reported rebate amount was not verified. Accordingly, we have not made an adjustment for the second rebate in the calculation of normal value.

Comment 5 Cost Reporting Period: La Molisana reported its costs on a calendar year basis. The petitioners argue that the Department should use costs during the POI to calculate La Molisana's cost of production. They note that the Department's antidumping questionnaire provides that COP and CV data should be calculated based on the actual costs incurred during the POI. Moreover, the petitioners claim it is the Department's routine practice to require respondents to report their costs incurred during the POI. *See, Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66931, 66938 (December 28, 1994); *Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921, 66929 (December 28, 1994).

La Molisana counters that calculating cost on a calendar year basis was appropriate because the company only makes accruals when its accounting records are closed at year-end. It contends that the Department has a clear preference for respondents to use the accrual method of accounting when calculating costs. In this case, where La Molisana did not perform monthly closings, using the calendar year costs was appropriate because such costs included accruals and year-end adjustments.

DOC Position: We agree with petitioners that the Department generally examines the materials, labor, and overhead incurred during the POI. The questionnaire requests COP and CV data calculated based on the actual costs during the POI. *See, Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain,* 59 FR 66931, 66938 (December 28, 1994); *Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy,* 59 FR 66921, 66929 (December 28, 1994). In the instant case, the Department compared significant elements of the cost of manufacturing computed on a calendar year basis and on a POI basis. We adjusted La Molisana's reported wheat, labor, and electricity costs to reflect POI basis costs. Although the Department prefers costs reported on the accrual basis, we have determined, in this case, that cash basis costs for the first four months of 1995 were acceptable since the verification testing indicated these expenses reasonably reflected the costs associated with the production and sale of the merchandise. The eight months of 1994 costs were calculated on the accrual basis.

Comment 6 Total Cost Reconciliation: The petitioners urge the Department to increase La Molisana's reported costs to account for discrepancies between the unit costs in La Molisana's general ledger and the unit costs reported in La Molisana's questionnaire response. They state the Department found that La Molisana's finished goods inventory account showed an average unit cost higher than the average unit cost reported by La Molisana in its questionnaire response. They argue that the inventory value is probative evidence that the reported costs should be higher because the balance of the inventory account agreed to the audited financial statements. The petitioners also refer to the Department's analysis in the verification report that showed that average costs reflected in La Molisana's accounting ledgers for traditional pasta exported to third country markets was higher than the average costs reported by La Molisana in its questionnaire response, even though the average costs in the questionnaire response included traditional pasta and the more expensive nested pasta. These factors, combined with the fact that La Molisana declined to reconcile the total costs reported in the questionnaire response to the total costs in its accounting ledgers, should compel the Department to increase the unit costs reported by La Molisana so that they are consistent with the costs recorded in La Molisana's accounting ledgers which reconcile to its financial statements.

La Molisana argues that the Department's calculation of a higher cost for subject merchandise sold to third country markets has no significance for reported costs and no adjustment to reported costs is warranted. La Molisana does not dispute the fact that a reconciling difference exists but disagrees with the Department's attribution of this difference to third country merchandise. It declares that if the Department allocates the reconciling difference over all production or alternatively over Italian and U.S. production, the result is an insignificant adjustment to the reported costs. It states that the difference could have resulted from incorrect product mix assumptions made by the Department, arithmetic errors by the Department, or assumptions made about production quantities of various products. La Molisana contends that the difference could be explained by a higher proportion of spinach pasta and tomato pasta in the third country mix, as these products have a higher cost than plain pasta. Moreover, La Molisana claims that providing the reconciliation in the limited time available was not possible with a small staff. Finally, La Molisana contends that the reconciliation was not necessary for verification since the Department tied individual cost elements to the cost accounts which subsequently agreed to the income statement for 1994.

DOC Position: We agree with the petitioners that La Molisana's reported costs should be increased to account for the unreconciled difference between La Molisana's total production costs for 1994 and La Molisana's reported per-unit costs. Since La Molisana declined to prepare the reconciliation requested by the Department, the Department prepared a reconciliation of total production costs using information available from the record in this case. The reconciliation is necessary to establish that La Molisana captured and appropriately allocated all costs incurred for the period. Our analysis showed that an unreconciled difference remains.

Although La Molisana takes issue with the format of the reconciliation and the assumptions made, the Department provided La Molisana ample opportunity to provide this reconciliation. Such a reconciliation was specifically requested in the Department's supplemental Section D questionnaire and at verification. We believe that it is unacceptable in this situation to expect the Department to bear the responsibility of attempting to identify and perform the numerous and substantial recalculations necessary for the development of a completely accurate reconciliation. The Department's reconciliation provides a reasonable basis to identify costs that La Molisana may have failed to report, and

we have relied on this reconciliation in order to adjust the company's reported costs.

Comment 7 Difference in System Costs: The petitioners argue that the Department should adjust for differences in costs between La Molisana's cost accounting records and the company's financial accounting records. They suggest that the Department adjust La Molisana's reported costs so that these costs reconcile to the amounts shown in La Molisana's financial accounting system, since these costs are the most reliable and relate directly to La Molisana's financial statements.

La Molisana notes that general expenses reported elsewhere in its response account for much of the absolute difference between the costs recorded under its two accounting systems. La Molisana states that the remaining difference is immaterial and, thus, no adjustment is warranted.

DOC Position: The Department agrees, in part, with both petitioners and with La Molisana. La Molisana is correct in stating that its reported general expenses account for much of the absolute difference between the company's cost and financial accounting systems. Petitioners correctly point out, however, that COP and CV should reflect the actual costs reported under La Molisana's financial accounting system. We have, therefore, adjusted La Molisana's costs to reflect the company's financial accounting records. In this instance the company could not explain the difference between its financial and cost accounting systems.

Comment 8 Financial Expenses: The petitioners urge the Department to revise La Molisana's financial expenses to include the interest expense allocated to the flour mill and to exclude interest income earned on bonds with maturities of longer than one year. They cite the antidumping questionnaire which states that in calculating net interest expenses for COP, the respondent should include interest expense incurred for both long- and short-term borrowing, and that these interest expenses can be offset only by interest income earned on short-term investments of working capital. The petitioners state that short-term investments are investments of less than one year and, therefore, La Molisana should not have included income from bonds with maturities longer than one year in its net interest expense calculations.

In principal, La Molisana does not object to reclassifying the interest expense allocated to the flour mill, provided that the Department allows the corresponding decrease to the semolina costs. It disagrees that the Department should treat long-term interest income in any way different from long-term interest expense. La Molisana claims that, since investment activities receive cash from operations and lending activities use cash to fund operations, all funds generated from investment activities should be netted with interest expense to obtain the net financing expense of the company. La Molisana maintains that it demonstrated at verification its positive cash flow during prior years. This cash was used to invest in bonds. La Molisana cites to the Department's principle of fungible funds as articulated in the *Final Results of an Antidumping Duty Administrative Review: Titanium Sponge from Japan,* 55 FR 42227 (October 18, 1990).

DOC Position: We agree with petitioners. The Department considers interest expense to be the actual interest incurred by the company on both short- and long-term debt, reduced by the interest income earned on short-term assets. The Department has determined that the purchase and holding of long-term assets, such as bonds, that produce interest income represent investment activities that are wholly unrelated to the manufacturing business of the company. *See, Final Determination at Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France,* 59 FR 14136, 14147 (March 25, 1994). Although the source of the funds to purchase these bonds may have been company operations, the purpose of holding long-term investments is not to fund current manufacturing operations. Investing in long-term securities is a separate and distinct activity from manufacturing. (*See, e.g., Final Results of an Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65264, 65270 (December 19, 1995) and *Final Determination at Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea*; 55 FR 32659, 32667 (August 10, 1990).)

This approach was affirmed in *NTN Bearing Corp.* v. *United States,* Slip Op. 95–165 (CIT 1995) (''*NTN Bearing*''). Relying on its earlier decision in *Timken Co.* v. *United States,* 852 F. Supp. 1040, 1048 (CIT 1994) (''*Timken*''), the court clarified that to qualify for an offset, interest income must be related to the ''ordinary operations of a company.'' *NTN Bearing* at 32. While this standard does not require that interest income be tied directly to the production of the subject merchandise, a respondent must show ''a nexus between the reported interest income'' and its ''manufacturing operation.'' Id. at 33; *see also Timken* at 1048. Unlike interest income earned from the short-term investment of working capital, only rarely will interest income earned from a company's investment activities in bonds meet this standard.

Because La Molisana failed to show the necessary nexus between its bond interest income and manufacturing operations, the Department has denied the claimed offset. The Department did allow an offset for short-term interest income where La Molisana demonstrated that short-term assets from funds generated by the pasta manufacturing and selling operations of the company produced the income.

Finally, we reclassified interest expenses allocated to the flour mill to the interest expenses reported for the company as a whole because it is the Department's normal practice to calculate net interest expense based on the actual experience of the company, not each separate division or section. We agree with La Molisana that it is appropriate to reduce semolina costs for the amount of interest expense which was reclassified.

Comment 9 Foreign Exchange Gains and Losses: The petitioners argue that La Molisana incorrectly included foreign exchange gains and losses from sales transactions in its calculation of G&A expenses. They declare that the Department should exclude these foreign exchange gains and losses from the cost of production because La Molisana did not incur these amounts on purchases of raw materials or other inputs needed to produce the subject merchandise.

La Molisana argues that if the foreign exchange gains and losses from sales transactions are not included La Molisana's G&A then the Department should include them in home market indirect selling expenses.

DOC Position: We agree with petitioners. It is the Department's normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchases of production inputs. *See, e.g., Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy,* 60 FR 31981 (June 19, 1995) and *Silicomanganese from Venezuela.* Accordingly, the Department does not include in COP and CV exchange gains and losses on accounts receivable because the exchange rate used to convert home market or third-country

sales to U.S. dollars is that in effect on the date of the U.S. sale. The Department typically includes foreign exchange gains and losses in the cost of manufacture when a respondent realized these gains and losses to produce the subject merchandise (*e.g.*, acquisition of raw materials or other inputs needed to produce the subject merchandise). *See, Final Determination of Sales at Less Than Fair Value: Saccharin from Korea*, 59 FR 58826, 58828 (November 15, 1994). La Molisana does not dispute the fact that these foreign exchange gains and losses result from sales of finished products.

With respect to La Molisana's claim that these amounts should be treated as indirect selling expenses, the Department has determined that the gains and losses do not constitute an indirect selling expense. Under section 773A of the Act, the Department converts foreign currencies on the date of sale. Only where a company can demonstrate that a sale of foreign currency on forward markets is directly linked to a particular export sale will the Department use the rate of exchange in the forward currency sale agreement. La Molisana did not demonstrate that they could link any sale of foreign currency on a forward market to any particular export sale.

Comment 10 Calculation of G&A and Financial Expense Ratios: The petitioners argue that La Molisana should have followed the methodology in the antidumping questionnaire and allocated G&A and interest expenses based on cost of sales instead of sales revenue. The petitioners further argue that the company incorrectly applied its calculated ratio to a cost of manufacturing figure instead of a sales price.

La Molisana disagrees with petitioners and states that its total sales revenue was used in calculating the denominator only as the starting point for its calculation of production costs.

DOC Position: The Department has determined that the allocation basis La Molisana used in its calculation of the G&A and interest expense factors was incorrect. The company's calculation, which relied on sales revenue minus certain adjustments as the denominator, results in a ratio that understates the company's G&A and financial expense. We have recalculated these ratios on the basis of La Molisana's 1994 cost of sales.

Comment 11 Sales of Semolina: The petitioners allege that La Molisana understated reported semolina costs by reducing the amounts incurred by the revenue received from semolina sold to outside parties. They argue that revenue from sales of semolina should not be used to offset the cost of production for semolina. Instead, the petitioners advocate computing the per-unit cost of semolina by dividing total semolina costs incurred during the POI by the total semolina produced during the POI. They argue that semolina and water are the primary materials used to produce pasta and, therefore, semolina is a primary ingredient rather than a byproduct of pasta production.

La Molisana argues that semolina is a byproduct because semolina is an intermediate product in the production of pasta and has relatively minor value compared with pasta. Therefore, it was appropriate to offset semolina production costs with sales revenue from semolina. Moreover, La Molisana asserts that its treatment of semolina sales is consistent with its internal accounting.

DOC Position: We agree with petitioners. Contrary to La Molisana's claim, semolina production is not incidental to the production of pasta. In fact, the milling of durum wheat results in semolina, which is the raw material input into pasta production. In this case, La Molisana seeks to reduce its cost of semolina consumed in pasta production by profit earned on sales of finished semolina. The Department's normal practice does not allow respondents to claim revenues earned from other finished products as offsets in calculating the cost of producing subject merchandise, *see, e.g. Final Results of Antidumping Administrative Review: Titanium Sponge from Japan*, 555 FR 42227, (October 18, 1990).

With regard to La Molisana's claim that semolina is a byproduct, as stated above, semolina is an input to pasta production that can also be sold as a finished product. The Department has specific, objective criteria for identifying byproducts (see *Final Results of Antidumping Administrative Review: Elemental Sulphur from Canada*, 61 FR 8239, 8241 (March 4, 1996)). La Molisana has failed to explain how semolina meets this criteria. Therefore, we have recalculated per-unit semolina costs for the final determination by dividing total costs to produce semolina by the quantity of semolina produced.

Comment 12 Semolina Water Weight Gain: The petitioners argue that production yields for semolina should be calculated using the same basis for output and input and should not be inflated merely because water is added during the milling process. They advocate increasing semolina costs to account for the water weight gain.

La Molisana notes that with regard to water weight gain in the milling process, the reported semolina yields do not account for the water weight gain. However, La Molisana does consider the water weight gain in pasta production. Although the process starts with the relatively wet semolina, the cost of these materials correctly account for the yield to arrive at the cost of the finished pasta.

DOC Position: The Department agrees that it is appropriate to consider the change in weight resulting from the addition of water in the milling process. We noted a concern in our verification report that the water weight gain might understate semolina costs by overstating production quantities. However, after further review of this issue, we found that La Molisana's costs correctly accounted for this change by allocating the total input costs over the output tons of finished, dried pasta.

Comment 13 Initiation of the Cost Investigation: La Molisana argues that only those sales identified by petitioners as being below cost in their initial cost allegation are subject to elimination from normal value. Inasmuch as petitioners had failed to identify any control number as having had 20 percent or more of its sales below cost, La Molisana argues that the Department has no basis to eliminate any of the company's sales from normal value.

The petitioners respond that they need only to provide the Department with a reasonable basis to believe or suspect the existence of below-cost sales. They argue that they are not required to demonstrate that such below-cost sales account for more than 20 percent of the respondent's total sales volume. The petitioners state that it is the Department's responsibility after the initiation of a cost investigation to collect cost of production information and to analyze that information to determine whether or not below cost sales were made in substantial quantities.

DOC Position: The Department agrees with the petitioners that they are not required to demonstrate in their cost allegation that more than 20 percent of the home market or third country sales were made at prices below the cost of production. The Tariff Act specifies only that the Department must have ''reasonable grounds to believe or suspect'' that respondents have made sales below cost in their home or third country markets. (*See* section 773(b).) The CIT has affirmed the Department's position in *Huffy Corp.* v. *United States*, 632 F. Supp. 50 (1986) that the Act requires the petitioners to demonstrate only that sales, *not* substantial sales, have been made at below cost prices.

Comment 14 Constructed Value Offset: La Molisana notes that the Department did not apply the accounts

receivable offset to interest expense for purposes of constructed value. It argues it has been Departmental practice to apply such an offset.

The petitioners did not comment on this issue.

DOC Position: The Department has not applied the accounts receivable offset to interest expense in the calculation of constructed value for three reasons. First, the new statute directs Commerce to calculate selling, general and administrative costs, including interest expense, based upon the actual experience of the company. *See* section 773(b)(3)(B) and section 773(e)(2)(A) of the Tariff Act of 1930, as amended. Under our past practice, the accounts receivable offset was allowed as a reduction in interest expense to account for imputed credit expense which the Department included in constructed value. Because we base interest expense for constructed value on the actual amounts incurred by respondent, and do not include imputed credit expenses, it is no longer necessary to reduce the expense by the accounts receivable offset. Second, the Act defines the calculation of general expenses for cost of production and constructed value in the same way. Therefore, it would be inappropriate to calculate interest expense differently for cost of production and constructed value. Third, the Department computes profit under the statute as the ratio of profit earned on home market sales (*i.e.*, net sales price less the cost of production) to the cost of production. Applying this ratio to a constructed value inclusive of imputed offset would be mathematically incorrect when the ratio was based on a cost of production exclusive of imputed expenses.

Liguori

Comment 1 Whether Liguori's Home Market Advertising Expense is Overstated: The petitioners argue that Liguori's post-verification submission overstated its home market advertising expenses. They note that page 2 of the Department's sales verification report found that certain of these expenses had been incurred by an affiliate of Liguori' and urge that the Department disallow this amount of the home market advertising expenses.

The petitioners further assert that another portion of Liguori's reported advertising expenses had not been verified successfully by the Department and urged that this amount be excluded from Liguori's revised home market advertising expenses.

Liguori contends that its home market direct advertising expenses, as corrected, conform with the Department's verification findings. The first of these two amounts was incurred by Liguori's affiliate on behalf of Liguori; it was posted in its affiliate's general ledger account as a direct advertising expense. Liguori cites to page 26 of the sales verification report. With respect to the second aspect of the advertising expense, which petitioners classified as unverified, Liguori argues that the only reason the amount was not verified was because the Department did not devote the time to verify it.

DOC Position: We disagree with the petitioners that Liguori's home market advertising expense is overstated. We verified that the amount mentioned on page 26 of the sales verification report covers the actual expenses that were incurred by Liguori's affiliate on behalf of Liguori to pay for expenses that qualified as direct advertising expenses. The appearance of a conflict between the amounts described on page 2 and on page 26 of the sales verification report is attributable to differences in the time periods under consideration. The amount on page 2 of the verification report covers only the POI months during 1994, while the amount on page 26 covers the entire POI. Both figures refer to the same accounts in the general ledger of Liguori's affiliate and we are satisfied that both are direct advertising expenses. These figures are also consistent with the findings in Liguori's cost verification. *See*, Exhibit 1, at page 19, of the cost verification report. The Department considers this entire amount to qualify as direct advertising expenses.

With regard to the amount that was unverified, the Department does not verify every item reported or presented at verification. The Department exercised its discretion not to examine this amount on the grounds that it is small and that we had verified other aspects of these advertising expenses. Consequently, the Department considers this amount as being verified as a direct advertising expense.

Comment 2 Customer Categories: The petitioners note that the Department was not able to verify the reasons for Liguori's different classifications for its U.S. customers. They urge the Department not to rely on Liguori's reported customer categories or channels of distribution for any reason, including the use of averaging groups and/or level of trade comparisons.

Liguori asserts that its reported customer coding is the same coding that it uses in its internal accounting system, and that this was verified by the Department.

DOC Position: We agree with Liguori, in part. We verified that Liguori's reported customer coding was based on the customer classifications used in its internal accounting system in the ordinary course of business. Nevertheless, as discussed in the Level of Trade Section, above, the Department has reclassified Liguori's reported customer categories for use in our level of trade, arm's length pricing, and averaging group analyses.

Comment 3 Minor Changes Found at Verification: The petitioners state that the Department found, at verification, that Liguori had misidentified certain product codes and urge the Department to reclassify these pasta shapes for the final determination. Liguori contends that these pasta shapes were reclassified in its March 5, 1996, submission.

Liguori also states that certain minor changes to its sales responses are warranted in the final determination as a result of minor errors identified prior to, or in the course of, verification. Liguori notes that these changes were identified in the new sales tape submitted on March 5, 1996.

DOC Position: We agree with Liguori that these pasta shapes have been reclassified correctly in its March 5, 1996, submission. We confirm that most of these minor changes were incorporated in Liguori's March 5, 1996, submission.

Certain minor errors noted at verification were not incorporated in Liguori's March 5, 1996, submission. We have made the necessary revisions to one home market invoice and to one U.S. invoice concerning payment/shipment dates and credit expenses in Liguori's database for the margin calculation.

Comment 4 Resellers vs. End-users: Liguori notes that, in the preliminary determination, the Department stated incorrectly that: ''Liguori reported that {its} sales to {its} * * * affiliated resellers were made at arm's length.'' Liguori argues that the record clearly reflects that Liguori made no sales to, or through, affiliated *resellers*. It asserts that all of its home market sales to affiliates were to end-users that consumed the pasta in the course of their own commercial activities. These affiliated customers did not resell subject merchandise to unaffiliated parties.

DOC Position: We agree with Liguori that all its home market sales to affiliates were to end-users. At verification, we noted that these sales were to affiliated end-users which consumed the pasta in the course of their own commercial activities and that these affiliated customers did not resell subject merchandise to unaffiliated parties.

Comment 5 Allocation of Fuel Costs: The petitioners argue that pasta drying times and the resulting fuel costs are affected by the shape of the pasta. In particular, the wall thickness of pasta has the greatest effect on drying time. For example, thin spaghetti would incur less drying time and fuel costs than jumbo shells. As a consequence, according to the petitioner, Liguori's unsubstantiated method of allocating fuel costs on a short and long product basis is improper. The petitioners urge the Department to allocate fuel costs to production lines equally since Liguori does not maintain records that would enable the Department to base the allocation on line speed.

Liguori does not object to an equal allocation of fuel costs among production lines.

DOC Position: We agree with petitioners that Liguori was not able to provide support for its fuel allocation methodology. We reviewed the company's records to determine if Liguori maintained data that would enable the Department to base the allocation on a more accurate method. We found that Liguori did not maintain the type of detailed information that would allow for a specific allocation of these costs. We therefore allocated the fuel costs equally among pasta production lines.

Pagani

Comment 1 Facts Available: The petitioners contend that both Pagani's sales database and its cost of production database are unreliable and that the Department should assign Pagani a FA rate for the final determination.

Pagani contends that it has diligently reported its sales and cost data in compliance with each of the Department's requests during the investigation. With regard to its sales database, Pagani states that the Department thoroughly tested the accuracy and completeness of its sales data. The company asserts that the Department not only tested and reconciled the sales information used in the calculation of the preliminary margin, but also reconciled the total sales figure in the database into its financial statements. With regard to its cost information, Pagani argues that it properly allocated costs between subject and non-subject merchandise. In addition, Pagani contends that it appropriately valued raw materials and finished goods inventory pursuant to Italian GAAP.

DOC Position: We agree with Pagani. While Pagani has submitted different volume and value figures during the investigation, most of these changes were requested by the Department and verified. Although computer problems delayed the verification process, they did not prevent the Department from fully verifying Pagani's sales database. The differences between the figures submitted in the original home market and U.S. databases and those in the most recently submitted databases are not significant. On the basis of our sales and cost verifications, it is reasonable and appropriate to calculate a margin for the final determination based on information on the record.

Comment 2 Movement Expenses: The petitioners contend that the Department should treat the entire amount of Pagani's inland freight expenses as indirect selling expenses because some of the expenses were pre-sale expenses while others were post-sale expenses. The specific issue involves proprietary information and, therefore, cannot be discussed in any detail. See, petitioners' brief, at pages 126–127.

Pagani contends that the overwhelming majority of its inland freight expenses are direct selling expenses attributable to the post-sale delivery of its product from its factory or warehouse to its customers. At the very least, Pagani states that the Department should deduct from normal value the amount verified as being direct in nature.

DOC Position: Section 773(a)(6)(B)(i) of the Act directs the Department to reduce normal value by ''the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser * * *.'' Accordingly, the Department treats all movement expenses as direct expenses regardless of whether they are pre- or post-sale in nature. Therefore, we have treated Pagani's pre-sale and post-sale inland freight charges as direct expenses.

Comment 3 Sales to Employees: The petitioners state that the heavily discounted price for pasta that Pagani offers to its employees should not be included in normal value. They state that these sales were made at pre-agreed, discounted prices that were considerably lower than Pagani's prices to its regular customers. The petitioners further state that the discounted prices offered to Pagani's employees are a type of fringe benefit, and are made outside of the ordinary course of trade.

Pagani states that its sales of pasta to its employees constitute a regular practice, pursuant to an agreement with the Italian government and provincial trade unions. Pagani further states that these sales are made in ordinary wholesale quantities and in the ordinary course of trade. Pagani states that the ''customer'' can be relied upon to take delivery of a regular quantity on a regular basis, pursuant to an agreement that operates as a requirements contract, subject to a maximum purchase level.

DOC Position: We agree with petitioners. Because these sales are made pursuant to an agreement with the Italian government and provincial trade unions, we do not consider them to have been made in the ordinary course of trade. Rather, these sales are in the nature of an employee benefit.

Comment 4 Disallowing Certain Home Market Expenses: The petitioners contend that the Department should continue to disregard certain home market expenses when calculating weighted-average normal values. Any further discussion of this issue is not possible because of the proprietary nature of the expense. Pagani did not comment on this issue.

DOC Position: We agree with the petitioners. We will not deduct this expense from normal value.

Comment 5 U.S. Interest Rate: The petitioners state that the loan reviewed by the Department at verification is not representative of Pagani's normal financing experience. The petitioners argue several additional points as to why the interest rate from this loan should not be used. Further discussion of this issue is not possible because of the proprietary nature of the loan.

Pagani states that it has revised its U.S. interest rate to reflect the actual dollar borrowing rate incurred on its foreign currency loan.

DOC Position: We disagree with the petitioners. It is standard Department practice to rely upon the respondent's actual experience when this information has been verified. *See, e.g., Final Determination of Sales at Less than Fair Value: Polyvinyl Alcohol From the People's Republic of China,* 61 FR 14057, 14061–14062 (March 29, 1996). We used the U.S. dollar borrowing rate for the calculation of Pagani's U.S. credit expense.

Comment 6 Exclusion of Invoice 112: Pagani argues that this particular sale should be excluded from the Department's calculations because it was made at a ''salvage price'' owing to the product's limited remaining shelf-life. Pagani further contends that this transaction is unique in Pagani's experience with selling its product in the U.S. market. Finally, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* (57 FR 42942, September 17, 1992) and *Ipsco, Inc. v. United States,* 714 F. Supp. 1211,1217 (CIT 1989) (''Ipsco''), Pagani stresses the

Department's practice of excluding '* * * sales which are not representative of the seller's behavior * * *' *Id.*

The petitioners state that the sale in question was made through the usual distribution channels and that there was no indication that the goods sold were defective, or otherwise were of inferior quality. Based on these statements and citing to both the *Ipsco* case and to the *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695 (April 17, 1992), the petitioners contend that the Department should use this sale in its margin calculation for the final determination.

DOC Position: We agree with petitioners. The exclusion from the ordinary course of trade only applies to the calculation of normal value. Although the Department has excluded aberrant U.S. sales from price comparisons on occasion, these exclusions have been confined to situations where there were very few U.S. sales in the category excluded. See, *e.g., Preliminary Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 2734, 2737 (January 11, 1995). That is not the case here, where Pagani is requesting the exclusion of a material percentage of the U.S. database.

Comment 7 Exclusion of Certain U.S. Sales: Petitioners argue that the Department should not have excluded certain sales from Pagani's margin calculations for the preliminary determination. Further discussion of this issue is not possible because of the proprietary nature of these sales. See petitioners' brief, at 134–135. Pagani did not address the issue.

DOC Position: The Department used its standard computer programming language at the preliminary determination. Those programming instructions isolated the sales at issue in the calculation of the dumping margin in the preliminary determination. The program did not, however, exclude the sales described by the petitioners. The Department used this standard programming language for the final determination.

Comment 8 Freight-in Costs of Semolina: Petitioners argue that the Department should increase Pagani's reported cost of semolina to include freight-in costs of semolina purchased from unaffiliated suppliers. Petitioners believe that freight-in costs are an integral part of the acquisition cost of semolina.

Pagani did not comment on this issue.

DOC Position: We agree with petitioners. We increased Pagani's reported costs to include the freight-in cost of semolina purchased from certain unaffiliated suppliers. Freight-in costs are part of the acquisition cost of the material.

Comment 9 Depreciation Expense on New Production Line: The petitioners argue that Pagani's submitted depreciation expense was understated because Pagani used 1994 depreciation expense as a surrogate for the POI depreciation expense. They also argue that Pagani's submitted depreciation expense did not include two months of depreciation expense for a new production line which was placed in service during March 1995, and that the Department should increase Pagani's depreciation expense for the two months that this new line was in use. They suggest that the Department should also increase Pagani's 1994 depreciation expense to account for inflation between 1994 and 1995.

Pagani does not disagree with petitioners suggestion to increase depreciation expense for the new line. However, it argues that it is unnecessary to account for the effects of inflation since the petitioners supplied no evidence that inflating the costs would provide a more accurate cost of production.

DOC Position: We agree with both the petitioners and Pagani, in part. We increased Pagani's fixed overhead cost to include two months of depreciation expense for the new production line which began operating in March 1995. However, we did not increase Pagani's depreciation expense to reflect the effects of inflation as the petitioners suggested because it is not the Department's general practice to adjust for inflation at low levels such as those present in Italy during 1994 and 1995.

Comment 10 Subsidy Offset to G&A: The petitioners argue that the Department should disallow Pagani's offset to G&A expenses for European Union Export Restitution payments received for pasta sales made outside the European Union (''EU''). They argue that G&A expenses are part of the cost of production for products sold in Italy and that a reimbursement for sales outside the EU has no relationship to the cost of production in Italy. Further, they contend that it is improper to include these reimbursements as an offset to Pagani's 1994 G&A expense because the reimbursements may be for sales that occurred prior to 1994.

Pagani contends that it should be allowed to offset G&A expenses with the EU Export Restitution payments. It argues that it is the Department's normal practice to consider G&A expenses relating to the activities of the company as a whole and not merely those relating to a specific market. Pagani states that it based its G&A expenses on the full-year amount reported in its 1994 audited financial statements, the fiscal year that most closely corresponded to the POI.

DOC Position: We disagree with the petitioners. The EU Export Restitution payments are paid to pasta exporters who purchase and use EU wheat to produce pasta to compensate for the high price of EU wheat. In the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From India,* 60 FR 66915 (December 28, 1994), the *Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands,* 59 FR 22684, 22556 (May 8, 1995), and the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina,* 60 FR 33539, 33546 (June 28, 1995), the Department found that the receipt of similar governmental reimbursements could be used to offset production costs because they were found to be directly related to the production of subject merchandise. Therefore, in this case, the restitution payments Pagani received from the EU relate directly to the production of subject merchandise and represent an appropriate offset to the company's production costs.

As for the petitioners' concern that the restitution payments may relate to events that occurred prior to 1994, we note that Pagani obtained the amount of the restitution from its 1994 audited financial statements where it was reported as a part of miscellaneous income. It is the Department's normal practice to require respondents to report annual G&A expenses and any corresponding miscellaneous income offsets that are general in nature for the fiscal year that mostly corresponds to the POI.

Comment 11 Exchange Gains: The petitioners believe that the Department should exclude exchange gains from the calculation of G&A expenses because the amount of the exchange gains is related to accounts receivable. Pagani contends that it appropriately included the exchange gains as an offset to G&A expenses.

DOC Position: We agree with the petitioners that the exchange gains should not be used to offset G&A and, accordingly, have excluded this amount from the calculation of G&A expenses. It is the Department's normal practice to distinguish between exchange gains from sales transactions (i.e., accounts receivable) and exchange gains from purchase transactions. The Department

does not normally include exchange gains from sales transactions in G&A expenses. *See Silicomanganese from Venezuela.*

Comment 12 Egg Pasta Cost of Manufacturing: The petitioners argue that Pagani's submission methodology overstates the cost of manufacture for non-subject merchandise, *i.e.*, egg pasta. They argue that the only significant difference between egg pasta and non-egg pasta is the egg additive and that the cost of Pagani's egg additive is not as significant as the difference between the unit cost of egg and non-egg pasta. Additionally, the petitioners state that Pagani's conversion cost of both subject and non-subject merchandise should be the same because the production steps are similar and are performed on the same equipment. Therefore, subject and non-subject merchandise should have a similar cost of manufacturing.

Pagani argues that the different costs of manufacturing of subject and non-subject merchandise is reasonable. Egg pasta is more costly to produce because the egg additive is expensive and this type of pasta requires higher conversion costs to produce. Pagani explains that the egg pasta it produces is either a nested or soupette product that is manufactured on the production line with the highest operating costs. On the other hand, subject merchandise is mostly short and long cut pasta manufactured on production lines with lower operating cost.

DOC Position: We disagree with petitioners. We did not find Pagani's cost of egg pasta to be overstated. As noted in our verification report, Pagani's egg pasta had higher production costs than subject merchandise. (*See* Memorandum to Christian B. Marsh from Stan T. Bowen, April 17, 1996, at 15.) Our verification report also notes that we reviewed the cost of manufacturing of non-subject merchandise. We found that the egg additive, which is not used in subject merchandise, comprised a significant portion of the raw material weight of egg pasta. The egg additive had a higher per kilogram cost than the semolina used by Pagani. Additionally, we found that Pagani's egg pasta production consisted primarily of nested and soupette products, which incur the highest conversion costs of all of Pagani's product lines. We also note that Pagani's finished egg pasta was valued at a higher cost than non-egg merchandise in the company's finished goods inventory ledgers for the past several years. Therefore, Pagani's reported cost of manufacturing of egg pasta did not appear to deviate from the valuation method used by the company in its normal accounting records.

Comment 13 Inventory Valuation: The petitioners contend that Pagani's inventory valuation method (*i.e.*, higher of cost of acquisition or market price) overstates the value of Pagani's beginning and ending inventory. This in turn, distorts Pagani's current cost of production. The petitioners also contend that Pagani did not account for all of the semolina consumed in production. They argue that the impact on the cost of manufacturing of Pagani's flawed inventory valuation is significant.

Pagani states that its method of valuing inventory is authorized under Italian law and that it is the Department's well-documented practice to employ home market GAAP in calculating COP and CV. Additionally, Pagani argues that the petitioners give no reason why Pagani's inventory valuation method is inappropriate. Pagani argues that the difference in semolina consumption quantities is immaterial.

DOC Position: We agree with Pagani. We found that the company's method of valuing inventory has no significant affect on the production costs of subject merchandise. Pagani valued ending inventories of finished pasta based on the weighted-average cost of production for the period. The ending inventory of raw materials, other materials, and packing materials were valued based on the higher of acquisition cost or market price. (*See* Memorandum to Christian B. Marsh from Stan T. Bowen, April 17, 1996, at 9.) Although Pagani's ending inventory quantities and value changed between year-end 1993 and 1994, we noted that the per-unit inventory values of raw materials and finished merchandise did not fluctuate significantly between periods. Furthermore, we compared the value of finished goods reported in Pagani's inventory ledgers to the company's actual cost of manufacturing for the POI and noted no significant difference between the values. We also compared the value of the raw materials reported in Pagani's year-end inventory ledgers to Pagani's acquisition costs during the month of December 1994 and noted no significant difference between the values.

As for the petitioners' concern that Pagani understated its POI semolina consumption quantities, we note that the petitioners relied on a reconciliation schedule of semolina quantities which had several typographical errors. The dates reported on this schedule suggested that the reconciliation was for the POI but, in fact, the reconciliation covered the 1994 calendar year. Thus, the POI consumption quantities provided on the schedule of monthly semolina purchases and consumption quantities in the verification exhibit will not agree to the total quantities consumed during 1994 calendar years. In our judgement, the petitioners concern that Pagani understated its POI semolina consumption quantity is not supported by the record.

Industria Alimentare Colavita S.p.A. (Indalco)

Comment 1 Requirements for Voluntary Respondents are Unreasonable and Contrary to Law: Indalco asserts that the Department's policy toward accepting voluntary respondents is both unreasonable and fails to comply with the requirements of the Antidumping Agreement *(Agreement on Implementation of Article VI of GATT 1994).* Indalco had requested voluntary status and responded to section A of our questionnaire. When the Department informed Indalco that it would only accept voluntary respondents in this investigation if a mandatory respondent failed to participate and if the voluntary respondent complied with the same deadlines that the Department established for the mandatory respondents, Indalco requested both a commitment from the Department to be accepted as a respondent and a four-week extension for its responses to sections B and C of our questionnaire. When the Department denied these requests, Indalco withdrew its request to be a voluntary respondent. Now, Indalco insists that the Department either exclude it from the final antidumping determination and from the coverage of any antidumping duty order, should one be issued in this investigation. In the alternative, Indalco requests a sufficient period of time to submit responses to sections B and C of the questionnaire and that the Department calculate an individual margin for the company.

The petitioners argue that the Department properly denied the request of Indalco to participate as a voluntary respondent in this investigation because the number of respondents already involved was burdensome to the Department.

DOC Position: The Department communicated its policy toward voluntary respondents participating in this investigation and provided specific written guidance on the Department's criteria for including a voluntary respondent in the investigation. (*See* July 12, 1995, letter from Gary Taverman to Indalco.) Additionally, the

Department responded to Indalco's request that the Department make a formal decision to include Indalco in the investigation by explaining that it would make the decision after Saral had submitted certain documentation necessary to the Department for determining whether to exclude Saral from the investigation. The submission from Saral was due August 31, 1995, before Indalco's responses to sections B and C of the Department's questionnaire were due. The Department also stated in that letter that it ''{i}f Saral is not required to participate as a mandatory respondent * * * *the Department will include Indalco as a respondent* if it has met all filing deadlines.'' [Emphasis added.] As for its request for a four-week extension *from the time the decision is made* (not from the September 6, 1995, due date) to submit responses to sections B and C of the questionnaire on August 28, 1995, the Department granted a one-week extension of the B and C deadline to correspond with the latest response due date for any mandatory respondent. On August 29, 1995, Indalco withdrew its request to be included as a voluntary respondent in the investigation and did not state any reason for its withdrawal.

Neither the statute nor the Antidumping Agreement conflict with the Department's selection of mandatory or voluntary respondents in this investigation. Section 782(a) of the Act implements the obligations of the United States under Article 6.10.2 of the Antidumping Agreement. This section authorizes the Department to limit voluntary respondents where the number of respondents is so large that the calculation of individual dumping margins would be unduly burdensome and would prevent the timely completion of the investigation. Our determination as to which voluntary respondents to select is not limited to our consideration of the number of voluntary responses. The SAA, at page 873, explicitly permits the Department, under certain circumstances, to decline to accept any voluntary respondents.

Under Article 6.10.2 of the Antidumping Agreement, the antidumping authorities may take into account the total number of exporters and producers in determining whether to restrict the consideration of the number of voluntary responses; we are not limited in our consideration to the number of *voluntary* responses. (''Where the number of exporters and producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation.'')

Had the Department acquiesced in granting Indalco a one-month extension to complete its questionnaire response as a precondition for its further participation in the investigation, Indalco's participation would have prevented the timely completion of the investigation. Moreover, the Department has no authority now to delay its final determination so that Indalco can complete the questionnaire and no reason to excuse Indalco's failure to present the Department with its reasons for withdrawing its participation earlier in the investigation. Finally, Indalco has not provided the Department with any rationale for excluding the company from the coverage of the final determination or from an antidumping duty order, should one be issued as a result of this investigation. Should an antidumping order be issued in this investigation, Indalco can request that its sales be examined in an administrative review under section 751 of the Act.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pasta from Italy, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after January 19, 1996, the date of publication of our preliminary determination in the Federal Register. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' The Department has determined in its *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty (CVD) investigation, we would instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as shown below, minus the amount determined to constitute an export subsidy. (*See, Antidumping Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 46150 (October 7, 1992).) For Arrighi, Delverde, and La Molisana, we are subtracting for deposit purposes the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation. The ''all others'' deposit rate is based on subtracting the rate attributable to the export subsidies found in the CVD investigation for those companies that are respondents in the antidumping duty investigation and are found to have dumping margins.

In this investigation, De Cecco has not cooperated with the Department and has not acted to the best of its ability in providing the Department with necessary information. This has prevented the Department from making its normal determination of whether the subsidies in question may have affected the calculation of the dumping margin. Thus, as indicated above, De Cecco's margin is based on facts available, taken from the petition. Insofar as the dumping margin for De Cecco is not a calculated margin, there is no way to determine the portion of the antidumping duty which is attributable to the export subsidy. For that reason, and to prevent De Cecco from benefitting from its non-cooperation in this investigation, we have not subtracted the amount of any export subsidy from that margin.

This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Bonding percentage
Arrighi	20.24	17.99
De Cecco*	46.67	46.67
Delverde	2.80	1.68
De Matteis	0.67 (de minimis)	0.00
La Molisana	14.78	14.73
Liguori	12.41	12.41
Pagani	12.90	12.90
All Others	11.21	10.38

* Facts Available Rate.

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If

the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14736 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–489–806]

Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Kristin Mowry, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4105 and 482–3798, respectively.

Final Determination

The Department determines that countervailable subsidies are being provided to manufacturers, producers, or exporters of pasta in Turkey. For information on the countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the preliminary affirmative determination in the Federal Register (60 FR 53747, October 17, 1995), the following events have occurred.

On October 21, 1995, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of certain pasta from Turkey (60 FR 54847, October 26, 1995). Subsequently, the final determinations in the antidumping and countervailing duty determinations were postponed until June 3, 1996 (61 FR 1351, January 13, 1996).

Verification of the responses of the Government of Turkey (GOT), Filiz Gida Sanayi ve Ticaret (Filiz), Maktas Makarnacilik ve Ticaret (Maktas), Andas Gida Dagitim ve Ticaret A.S. (Andas), Dogus Holding A.S. (Dogus), and Aytac Dis Ticaret Yatirim Sanayi A.S. (Aytac) was conducted between October 30, 1995, and November 10, 1995. We verified that Aytac did act as the exporter of record for certain of Maktas'' sales of pasta to the United States during 1994 and that Aytac had transferred its rights to benefits with respect to those exports to Maktas. Furthermore, we verified that Aytac received no benefits during the POI. Based on this information, we have not calculated an individual countervailing duty rate for Aytac. If this company exports to the United States, it will be subject to the all others rate.

On February 14, 1996, we terminated the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that date (61 FR 3672, February 1, 1996) (*see* Suspension of Liquidation section, below).

Petitioners and respondents filed case and rebuttal briefs on April 17, 1996 and April 22, 1996. The hearing in this case was held on April 25, 1996.

Scope of Investigation

The product covered by this investigation is certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this investigation is typically sold in the retail market in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this investigation are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. In the companion countervailing and antidumping duty investigations involving pasta from Italy, we have excluded imports of organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB). The Department has determined that AMAB is legally authorized to certify foodstuffs as organic for the Government of Italy (GOI). If certification procedures similar to those implemented by the GOI are established by the GOT for exports of organic pasta to the United States, we would consider an exclusion for organic pasta at that time.

The merchandise under investigation is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTS).* Although the *HTS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), which have been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Petitioners

The petition in this investigation was filed by Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc.

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is calendar year 1994.

Facts Available

Section 776(a)(2)(A) of the Act requires the Department to use the facts available ''if an interested party or any other person withholds information that has been requested by the administering authority or the Commission under this title.'' One of the companies included in this investigation, Oba, did not respond to our questionnaire. Section 776(b) of the Act provides that the administering authority may use an inference that is adverse to the interests of such a party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record. Because the petition did not provide subsidy rates, we were unable to use the petition as a source for facts available.

In the absence of verified data concerning benefits received by Oba during the POI, we have determined that rates based on record data obtained from similarly situated firms constitute the most appropriate data available. Therefore, we have used as the facts available for Oba the sum of the highest

rate calculated for each program used by any of the companies.

Based upon the responses to our questionnaires and the results of verification, we determine the following:

I. Programs Determined to be Countervailable

A. Pre-Shipment Export Loans

The Export Credit Bank of Turkey (Turk Eximbank) provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program was commenced in March 1989 in order to meet the financing needs of exporters and overseas contractors. Loans are made available to certified exporters who commit to a certain value of exports within a specified time period. Generally, loans are extended for 180 days, covering between 50 and 75 percent of the FOB value of the committed export value. During the POI, the food sector (including pasta) was eligible for pre-shipment export loans amounting to 75 percent of the committed FOB value of exports, for a maximum of 180 days. These loans were denominated in Turkish lira (TL).

Of the companies investigated, only Maktas received Eximbank Pre-Shipment Export Loans.

Short-term Loan Benchmark: Due to an average inflation rate in Turkey of 91 percent during the POI, interest rates have fluctuated significantly. Hence, we have calculated monthly benchmarks. (*See* section 355.44(b)(3)(iii) of the *Proposed Regulations*.)

As illustrated by section 355.44(b)(3) of our *Proposed Regulations,* the Department's practice is to use as its short-term benchmark the interest rate on the predominant alternative source of short-term financing in the country in question. Typically, we use national average benchmarks and not company-specific interest rates. However, the GOT responded that there is no predominant source of short-term financing in Turkey and that it does not maintain statistics concerning short-term interest rates. Moreover, our review of the *Annual Report of the Central Bank of Turkey* did not reveal any national average short-term interest rates.

Therefore, in the absence of our preferred benchmark, we have turned to company-specific interest rates. Specifically, we have used the average cost of Maktas' short-term commercial loans outstanding during each of the months it received Pre-Shipment Export Loans as our benchmark. We note that because of the way in which Maktas kept its records we were not able to calculate monthly benchmarks based only on loans taken out in each month. However, given the information available, we believe this monthly average cost of borrowing provides the most accurate measure of what Maktas would pay on a comparable commercial loan that it could actually obtain on the market. (*See* section 771(5)(E)(ii) of the Act.)

Based on our comparison of the benchmark interest rate to the rate paid by Maktas on its export loans, we have determined that these loans provide a countervailable subsidy within the meaning of section 771(5) of the Act. The loans are a direct transfer of funds from the GOT through commercial banks. They provide a benefit because the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. Finally, the loans are specific because their receipt is contingent upon export performance.

We calculated the countervailable subsidy as the difference between actual interest paid on loans for shipments to the United States during the POI and the interest that would have been paid using the benchmark interest rates. This difference was divided by Maktas' total exports to the United States during the POI. On this basis, we determine the countervailable subsidy from this program to be 8.82 percent *ad valorem* for Maktas.

Respondents argue that the Department should use as its benchmark the interest rate on Central Bank Rediscount Loans. They point to the fact that Maktas received such loans during the POI and that this type of loan was available throughout the POI. Moreover, respondents argue, if the Department elects to use this benchmark, it must find that Eximbank Pre-Shipment Export Loans are not countervailable because, in two of nine months that Maktas received Pre-Shipment Export Loans, the interest rate on Central Bank Rediscount loans was lower than the rate for commercial loans obtained by Maktas.

We have not used the Central Bank Rediscount Loan rates as our benchmark, nor have we included Central Bank Rediscount Loans received by Maktas in calculating Maktas' average monthly cost of outstanding loans. Information obtained at verification indicates that the Central Bank Rediscount Loans are offered to increase liquidity in the economy. In light of the policy objectives of these loans, and the lack of any information that would support the conclusion that they were made as part of the Central Bank's commercial operations (if any), we have concluded that these loans should not be viewed as commercial loans. Moreover, while we have information on the terms of the Central Bank Rediscount Loans (90 days), we do not have information on the lengths of the other short-term loans Maktas had outstanding. Therefore, we have no basis to say that the Central Bank Rediscount Loans are more comparable to the Pre-Shipment Export Loans taken out by Maktas.

Petitioners urge the Department to rely on adverse facts available and use the highest rate per month from the various sources on the record (this includes Maktas' own rates, the overnight rates, the sale of government securities, etc.) as the benchmark rate. Petitioners believe adverse facts available is justified because they claim Maktas ''manipulated its rates'' and failed to cooperate with the Department's attempts to find the appropriate company-specific rates.

We disagree that adverse facts available are warranted in this situation. In seeking short-term loan benchmarks, it is our practice to request this information of the government. Companies are not asked to provide any short-term benchmark data. In this case, Maktas provided its own borrowing rates. As we learned at verification, those rates included the interest rate on the Eximbank Pre-Shipment Export loans. We have since verified the correct company specific interest rates and have used them in our calculation.

B. Pasta Export Grants

During 1994, the Central Bank of Turkey provided cash grants and government promissory notes or bonds to exporters of pasta. According to the GOT, the purpose of the program was to develop Turkey's export potential. In order to receive the grants, exporters were required to submit applications (including proof of exportation and payment from the customer) to the local office of the Central Bank. The exporter received a specified percentage of the FOB U.S. dollar price, subject to a cap.

We have determined that these export grants and bonds are countervailable subsidies within the meaning of section 771(5) of the Act. The grants and bonds are a direct transfer of funds from the GOT providing a benefit in the amount of the grant. Also, the grants and bonds are specific because their receipt is contingent upon export performance.

We have also determined that the benefits under this program are bestowed when the cash is received, in the case of grants, and on maturity date, in the case of promissory notes or

bonds. Regarding the bonds, although we note that there are no restrictions on their transfer or sale, markets have not developed that would allow exporters to convert their bonds to cash. Therefore, we have treated the subsidy as being received at the first point in time when the exporter knows with certainty the amount being received, which is the date of maturity.

We have further determined that the benefits under the Pasta Export Grant program are ''recurring.'' Once a company has exported and provided documentation to the local office of the Central Bank it becomes eligible for the Pasta Export Grants. The receipt of benefits is automatic and continues from year to year. (*See General Issues Appendix in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria* (58 FR 37217, 37268–69, July 9, 1993) (''General Issues Appendix'').)

To calculate the countervailable subsidy, we divided the total amount of cash grants received and the value of bonds maturing during the POI for exports to the United States (denominated in Turkish lira) by the total exports to the United States denominated in Turkish lira. On this basis, we determine the countervailable subsidy from this program to be 1.17 percent *ad valorem* for Filiz and 3.79 percent *ad valorem* for Maktas.

The GOT has stated that this program was terminated for pasta exports made on or after January 1, 1995, by a confidential government decree. However, we saw at verification that while this program had expired, it was reinstated with a new formula for determining the subsidy amount and a new time line for implementation. This reinstatement was effective September 29, 1995. Therefore, we do not view this program as having been terminated.

Respondents further argue that, should the Department value the benefits on an earned basis, it should then treat this program as having undergone a program-wide change, and benefits should be adjusted to reflect the newly-announced formula. As discussed above, we are not valuing the benefits on an earned basis. Moreover, we are not aware of any change in the reinstated program that would lead us to value the benefits on an earned basis. Therefore, because the benefits of the Pasta Export Grant Program are being valued on a received basis which, in the case of bonds is the date of maturity, the changes effectuated in September 1995 are not measurable and do not qualify as a program-wide change. (*See* section 355.50 of the *Proposed Regulations.*)

C. Free Wheat Program

During our verification of Filiz, we discovered that the company received free wheat under a GOT program. The program, established by Decree 93/4534, provides free wheat to companies that agree to export flour, pasta, semolina, or biscuits. The companies sign contracts with the Turkish Grain Board (TMO) committing to export a certain amount of their product in return for a pre-determined amount of durum wheat. Once the company has exported the product, it provides the TMO with copies of its export documents. The TMO examines the documents, and upon TMO approval, wheat is delivered to the company. We verified that the price of wheat is determined on the date of the TMO invoice and Filiz received seven invoices during 1994.

Filiz argues that it did not receive a benefit under the Free Wheat Program during the POI. Although the company received wheat in 1994, Filiz contracted with the TMO in 1993, and knew at the time of the contract precisely how much wheat it would receive for each ton of pasta exported. Filiz cites to section 355.48(b)(7) of the *Proposed Regulations* in support of its claim that the benefit of the Free Wheat Program was received in 1995. Petitioners assert that the applicable section of the *Proposed Regulations* is 355.48(b)(2), which discusses the governmental provision of goods or services. According to section 355.48(b)(2), the benefit for governmental provision of goods or services occurs ''at the time a firm pays, or in the absence of payment would have paid for the good or service.''

Section 355.48(b)(7) states that, in the case of an export benefit provided as a percentage of the value of the exported merchandise, the cash flow effect of the subsidy is deemed to occur on the date of export. Because the benefit from the Free Wheat program is not provided as a percentage of the value of the exported merchandise, we agree with petitioners that section 355.48(b)(7) does not apply to this program. The benefit from the GOT's provision of free wheat occurred when Filiz actually received the wheat. Therefore, pursuant to section 355.48(b)(2) we have determined that Filiz benefitted from the Free Wheat Program during the POI.

We have determined that the provision of free wheat to exporters of pasta is a countervailable subsidy within the meaning of section 771(5) of the Act. The program provides goods for less than adequate remuneration and is specific because its receipt is contingent upon export performance. To calculate the countervailable subsidy, we divided the total value of the free wheat provided to Filiz during the POI by the total value of the company's exports during the POI. On this basis, we determine the countervailable subsidy from this program to be 1.99 percent *ad valorem* for Filiz.

We have further determined that the benefits under the Free Wheat Program are ''recurring.'' Once a company has exported and provided documentation to the TMO it becomes eligible for the free wheat. The receipt of benefits is automatic and continues from year to year. (See Allocation section of the General Issues Appendix.)

Respondents argue that if the Department finds that Filiz received benefits during the POI, then the Department should treat the program as terminated and adjust the deposit rate accordingly. They assert that the GOT's statement that ''the subsidy program that was supposed to end on October 31, 1993 will be extended until November 28, 1993,'' and the statement that ''the wheat subsidy program will be terminated'' constitute clear evidence that the program has been terminated.

Petitioners disagree that the Department should consider the Free Wheat program terminated. They state that the only documentation on the record refers to the possible termination of the program. As such, the Department has insufficient evidence on the record to treat the program as terminated. We agree with petitioners and have not adjusted the deposit rate.

Respondents further assert that exporters were not allowed to receive benefits from the Free Wheat and Pasta Export Grant programs for the same exportation. Consequently, if countervailed, the Free Wheat program should not be subject to a deposit rate above the rate for the Pasta Export Grant program. Petitioners rebut respondents' claim that the Pasta Export Grant program and the Free Wheat program are mutually exclusive. They claim that respondents have provided no documentation to that effect.

We agree with respondents that Turkish pasta exporters cannot claim Pasta Export grants and Free Wheat on the same exportation. (Contrary to petitioners' assertions, the record evidence is clear on this point.) We further believe that our methodology appropriately accounts for this. Regarding Pasta Export grants, we have divided the total amount of benefit received on U.S. shipments in the POI by the total U.S. exports during the same period. The fact that export grants were not received on every shipment is reflected in this calculation. For the Free Wheat program, we divided the

value of free wheat received as a consequence of exports to all markets by total exports. The two rates, when added together, reflect the total grants and free wheat that were received on exports to the United States.

D. Payments for Exports on Turkish Ships/State Aid for Exports Program

At verification, GOT officials explained that the Payments for Exports on Turkish Ships program was instituted to aid industries producing processed goods. Under the program, exporters applied to the Central Bank for cash grants or bonds based on the number of tons of product transported by sea. As with the Pasta Export Grant program, payments are made to companies in the form of cash grants or bonds.

Filiz reported in its questionnaire response that it did not apply for, use, or benefit from this program during the POI. However, we discovered during verification that Filiz had applied for benefits on shipments made in both 1993 and 1994. We further verified that the company received payment during 1994 in the form of both cash grants and maturing bonds for certain of its 1993 applications, and was still waiting for payment in 1995 for applications filed in both 1993 and 1994. Additionally, contrary to the explanation provided by the GOT, Filiz officials explained that the program provided the company 15 U.S. dollars per ton for its exports made using Turkish ships and 7.50 U.S. dollars per ton for its exports made on non-Turkish ships.

We have determined that these export grants and bonds are countervailable subsidies within the meaning of section 771(5) of the Act. The grants and bonds are a direct transfer of funds from the GOT providing a benefit in the amount of the grant and bonds. Also, the grants and bonds are specific because their receipt is contingent upon export performance.

We have further determined that the benefits under the Payments for Exports on Turkish Ships program are ''recurring.'' Once a company has exported and provided documentation to the Central Bank it becomes eligible for the cash grants or bonds. The receipt of benefits is automatic and continues from year to year. (*See* Allocation section of the General Issues Appendix.)

To calculate the countervailable subsidy we divided the total amount of grants received and bonds maturing during the POI by Filiz's total exports. On this basis, we determine the countervailable subsidy from this program to be 0.45 percent *ad valorem* for Filiz.

Petitioners assert that in light of Filiz's failure to report these benefits in its questionnaire response, the Department should calculate an adverse facts available rate by including all transportation subsidy amounts on the record, regardless of when the amounts were received. They also state that the benefit should be divided by exports of the subject merchandise to the United States. We disagree with petitioners. Although we agree that these benefits should have been included in the questionnaire response, we collected and verified all of the necessary data required to calculate a benefit under this program. Therefore, there is no basis for applying an adverse facts available rate.

Respondents assert that the Freight Premium for Distance Program should not be countervailed because it has been modified to exclude pasta products. However, respondents argue if the Department determines that the program is countervailable, then the benefit should be treated as having been bestowed when the cash was received (for grants) and on the maturity date (for bonds). In their view, the benefit should be allocated over total exports.

We agree with respondents that the program was terminated. We verified that this program was terminated by confidential government decree. Although a new transportation program entitled ''State Aid for Exports'' was instituted on September 29, 1995, we verified that this program differs from the former program in that it covers sea, air, and truck transportation, and specifically excludes exports of pasta. We are calculating the benefit as of the time the cash grant was received or the date on which the bond matures. Filiz has still not received all of its payments from applications made in 1993 and 1994. Based on the fact that residual benefits continue to be bestowed under the program, we are not adjusting the cash deposit rate for the termination. (*See* section 355.50 of the *Proposed Regulations*.)

E. Incentive Premium on Domestically Obtained Goods

The Incentive Premium on Domestically Obtained Goods is part of the General Incentives Program (GIP), which is discussed further below. Although we have analyzed certain of the benefits provided under the GIP within the context of the GIP as a whole, two types of benefits merit separate consideration. These are the Incentive Premium on Domestically Obtained Goods and the Resource Utilization Support Fund, discussed below. In both instances, the benefit is tied to the purchase of domestic over imported goods. Therefore, because receipt of both of these benefits is contingent upon the use of domestically-sourced inputs, these particular benefits are specific pursuant to section 771(5A)(C) of the Act.

The Incentive Premium program provides companies holding investment incentive certificates under the GIP with rebates of the 15 percent VAT paid on locally-sourced machinery and equipment plus a 10 percent premium. We verified that imported machinery and equipment is subject to the VAT and is not eligible for the rebate.

Respondents argue that we should not countervail the Incentive Premium because VAT paid on imported equipment may be deferred, which, in a hyperinflationary economy, results in the amount of VAT ultimately paid having a present value substantially less than the amount of VAT originally incurred. Hence, they argue, there is essentially no difference between exempting domestically-sourced goods from the VAT and deferring payment of the VAT on imported goods. Petitioners argue that the complementarity of the two programs does not eliminate the benefit provided by the Incentive Premium program. They assert that the two types of benefits are not identical and that hyperinflationary pressures would not necessarily nullify the difference between these two benefits. Additionally, they argue that not all companies receive the same GIP benefits and, therefore, not all companies would receive both the Incentive Premium VAT rebates and the VAT deferral.

Despite respondents' assertions, the benefit is not related to the treatment of imported merchandise. The VAT rebates constitute revenue foregone by the GOT and provide a benefit in the amount of the rebates.

We have determined that these VAT rebates are countervailable subsidies within the meaning of section 771(5) of the Act. As stated above, the rebates constitute revenue foregone by the GOT and provide a benefit in the amount of the VAT savings to the company. Also, as discussed above, they are specific because their receipt is contingent upon the use of domestic goods rather than imported goods. Maktas received incentive premiums in 1991 and Filiz received incentive premiums in 1993 and 1994.

We have further determined that the benefits under the Incentive Premium program are ''recurring.'' Once a company has received an investment incentive certificate it becomes eligible for the Incentive Premium benefits. The receipt of benefits is automatic and continues from year to year. (*See*

Allocation section of the General Issues Appendix.)

For the rebates received by Filiz during the POI, we divided the amount received by the total value of the company's sales during the POI. On this basis, we determine the countervailable subsidy to be 0.0022 percent *ad valorem* for Filiz.

F. Resource Utilization Support Fund (GIP)

Filiz reported that it received Resource Utilization Support Fund (RUSF) rebates during the POI, but failed to identify the nature of the benefit. Because RUSF payments are made under the GIP, we treated RUSF benefits like other GIP benefits and we did not consider them to be countervailable in the preliminary determination. However, during verification of Filiz, we learned that the RUSF program actually operates like the Incentive Premium program in that it provides rebates of the 15 percent VAT paid on domestically-sourced machinery and equipment.

We have determined that the RUSF rebates are countervailable subsidies within the meaning of section 771(5) of the Act. The rebates represent revenue foregone by the GOT and provide a benefit in the amount of the VAT savings to the company. Also, they are specific because their receipt is contingent upon the use of domestic goods over imported goods. Filiz received RUSF rebates during 1993 and 1994.

We have further determined that the benefits under the RUSF program are ''recurring.'' Once a company has received an investment incentive certificate it becomes eligible for the RUSF benefits. The receipt of benefits is automatic and continues from year to year. (*See* Allocation section of the General Issues Appendix.)

For the rebates received by Filiz during the POI, we divided the amount received by the total value of the company's sales during the POI. On this basis, we determine the countervailable subsidy to be 0.27 percent *ad valorem* for Filiz.

G. Tax Exemption Based on Export Earnings

Corporate Tax Law 3946, dated December 25, 1993, provided that companies exporting industrial products valued in excess of U.S.$250,000 (or the equivalent) were entitled to deduct five percent of total export revenues from taxable profit. We verified that tax returns for fiscal year 1993 filed in 1994 provided the last opportunity for companies to benefit from this program.

We have determined that this tax exemption is a countervailable subsidy within the meaning of section 771(5) of the Act. The exemption represents revenue foregone by the GOT and provides a benefit in the amount of the tax saving to the company. Also, the subsidy is specific because its receipt is contingent upon export performance. Of the exporters investigated, only Maktas claimed this tax exemption on the tax return it filed in 1994.

Petitioners argue that the Department does not have sufficient evidence on the record to consider this program terminated. They assert that the GOT is required to do more than just show that the current law is silent regarding a previous subsidy in order for the Department to treat the program as terminated. Furthermore, given the GOT's practice of revising, renaming, and reinstating subsidy programs, petitioners argue that the Department should treat the program as a suspended subsidy rather than as a terminated subsidy.

We disagree with petitioners. Although the GOT did not publish a specific decree describing the termination of this program, through a detailed review of the Budget Laws (Tax Code) and an examination of the tax return for fiscal year 1994 filed in 1995, we were able to verify that the GOT had abolished the Tax Exemption for Export Earnings program for tax returns for fiscal year 1994 (filed in 1995). Therefore, based on this information, we have determined that the termination of the program qualifies as a program-wide change. (*See* section 355.50 of the *Proposed Regulations*.) Moreover, there is no evidence on the record which would indicate that residual benefits are being bestowed or that a substitute program has been implemented. Therefore, we have adjusted the cash deposit rate to account for this change.

To calculate the countervailable subsidy, we divided the tax savings realized during the POI by the company's export sales during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.50 percent *ad valorem* for Maktas. For cash deposit purposes the subsidy rate for Maktas is zero.

II. Benefits Determined to be Not Countervailable

Certain GIP Benefits to Filiz

The GIP is designed to eliminate the developmental differences between regions in Turkey and to support investments in industry sectors where the country is lacking investment. The regions and sectors targeted by the GIP are generally selected by the Undersecretariat of the Treasury (UT). The UT is also responsible for issuing investment incentive certificates under the GIP. Investment incentive certificates identify the types of GIP benefits for which certificate holders are eligible.

In deciding whether to issue investment incentive certificates, the UT considers whether the proposed investment project meets certain criteria and financial thresholds set by the Council of Ministers. These criteria include whether the project: (1) Provides international competitiveness; (2) incorporates appropriate advanced technology; and (3) satisfies at least a minimum of economic capacity or scale determined on a sectoral basis. We verified that exportation was not a prerequisite for receiving benefits under this program. Each application for an investment incentive certificate must be accompanied by a feasibility study and detailed financial projection. The GOT stated that approximately 99 percent of the applications for investment incentive certificates are approved. Those applications which are rejected are generally revised, resubmitted, and eventually obtain approval.

For purposes of the GIP, Turkey is divided into four types of regions: (1) Developed; (2) normal; (3) priority regions of the second degree; and (4) priority regions of the first degree. The level of investment needed to obtain an investment incentive certificate for the priority regions is lower than the level needed for normal and developed regions (*e.g.*, the minimum investment requirement during 1994 in priority regions was 1 billion TL and the minimum investment in normal and developed regions was 5 billion TL). Moreover, we learned on verification that companies located in the developed region are required to utilize a greater percentage of their own funds and less bank financing in connection with the investment than companies located in any of the other three regions. Finally, we discovered that there are distinctions between the amounts granted in the different regions for the Fund-Based Credit and Investment Allowance benefits.

Filiz, located in a normal region, received the following benefits under the GIP during the POI: (1) Customs duty exemptions on imported machinery and equipment, (2) VAT deferrals on imported machinery and equipment, (3) Resource Utilization Support Fund Rebates, and (4) Incentive Premiums on Domestically-Obtained

Goods. Maktas, located in a developed region, only received Incentive Premiums on Domestically-Obtained Goods. As discussed above, we have determined that the Incentive Premiums on Domestically-Obtained Goods and RUSF rebates are countervailable. Therefore, the following analysis is limited to customs duty exemptions and VAT deferrals on imported machinery and equipment.

For these two types of benefits, the amount does not vary by region. Hence the issues before us are: (1) Whether the different eligibility requirements for each region render the program regionally specific, and (2) if not, whether the benefits received by Filiz under the GIP are otherwise specific. Regarding the first issue, although Filiz is located in the normal region and, thus, is subject to more lenient eligibility requirements than the developed region (which has the strictest requirements), Filiz surpassed the eligibility requirements for the developed region. Hence, Filiz's location did not affect its eligibility for benefits during the POI and we need not reach the issue of whether differing eligibility criteria by region make these benefits under the GIP specific.

Since Filiz would have qualified to receive benefits under the strictest eligibility requirements, we went on to analyze whether the customs duty exemptions and VAT deferrals granted under the GIP are being provided to a specific industry or enterprise or group thereof within the meaning of section 771(5A)(D) (i)–(iii).

In our original questionnaire, we asked the GOT to provide specificity information for each type of GIP benefit. In response to this request, the GOT stated that it did not maintain its records in such a way as to easily provide the requested information. Accepting their claim about the difficulty posed by our request, we asked the GOT to provide instead the total number of qualified applicants for investment incentive certificates by region. We relied on this data for our preliminary determination. At verification, we examined the GIP database and confirmed the enormous burden of retrieving the specificity information by type of benefit. Therefore, we have continued to rely on program-wide information for purposes of analyzing the specificity of customs duty exemptions and VAT deferral benefits under the GIP.

There are no *de jure* limitations on the types of industries that are eligible for benefits under the GIP. Regarding *de facto* specificity, we consider the following four factors, in accordance with section 771(5A)(D)(iii) of the Act: (1) The number of enterprises, industries or groups thereof which actually use a subsidy; (2) predominant use of a subsidy by an enterprise, industry, or group; (3) the receipt of disproportionately large amounts of a subsidy by an enterprise, industry, or group; and (4) the manner in which the authority providing a subsidy has exercised discretion in its decision to grant the subsidy.

We verified the statistics provided by the GOT for the period 1991–1994 concerning the awarding of investment incentive certificates to the various sectors of the economy. For 1994, these statistics indicate that during the POI, thirty-four industries, within the agriculture, mining, manufacturing, energy, and services sectors, received investment incentive certificates. We consider this distribution of industries sufficiently broad. We further verified that during the POI, the food and beverages industry received 7.5 percent of the investment incentive certificates issued. Pasta producers received less than 3.8 percent of the investment incentive certificates issued to the food sector. During the same period, the textiles and clothing industry received 24.6 percent and the transportation industry received 14.8 percent of the investment incentive certificates issued. Each of the thirty-one other industries accounted for 4.8 percent or less of the total investment incentive certificates issued. The statistics for the period 1991–1993 indicate a similar distribution of investment incentive certificates.

Based on this distribution of certificates (including the fact that pasta accounts for a fraction of the certificates issued to the food and beverage industry), we determine that the pasta industry was neither a dominant user of the program nor did it receive a disproportionate amount of the investment incentive certificates. Moreover, if the actual users of the subsidy are too large in number to reasonably be considered a specific group, and if there is no evidence of dominant or disproportionate use, the fact that a foreign authority administering a subsidy program may have exercised discretion in selecting the recipients of the subsidy is insufficient for a finding of *de facto* specificity. (*See*, SAA p. 261.) Therefore, we determine that customs duty exemptions and VAT deferrals on imported machinery and equipment are not specific and do not confer countervailable subsidies on Filiz.

Petitioners argue that because the Fund-Based Credit and the Investment Allowance programs provide different levels of benefits for each region, the Department cannot conclude that all GIP programs are not countervailable. They state further that the Department verified that GIP regulations issued in 1995 provide that no new investment certificates will be issued to companies located in developed regions. They conclude that because certain regions will no longer be able to receive benefits, a regional subsidy exists.

Because Filiz did not benefit from the Fund-Based Credit and Investment Allowance programs during the POI, we have not made a determination as to the countervailability of these programs. With respect to the new regulations, they pertain to investment incentive certificates issued after our POI and, hence, are not relevant to our analysis.

Petitioners also assert that for certain GIP programs, *e.g.*, the Tax, Duty, and Charge Exemptions program, companies cannot receive benefits without pledging to meet a certain export commitment. They cite *Extruded Rubber Thread from Malaysia (Rubber Thread)*, 57 FR 38,472, 38,476 (August 25, 1992), where the Department determined that a program may be ''two-faceted'' in the sense that certain companies receive benefits under any number of eligibility criteria, but others receive it based on less neutral criteria (*e.g.*, export). As with the Fund-Based Credit and the Investment Allowance, Filiz did not receive benefits under the Tax, Duty, and Charge Exemptions program. Therefore, we have not determined whether the Tax, Duty, and Charge Exemptions program is specific.

Finally, petitioners claim that the GOT uses discretion in its distribution of GIP benefits, by designating certain projects as ''particularly worthwhile.'' These are projects in sectors targeted by the GOT and that are not subject to the normal GIP requirements. Additionally, petitioners point out that companies do not always receive the same array of benefits under the GIP, as the GOT determines which benefits will be provided to which companies. Respondents claim that petitioners' assertion that government discretion is used in the distribution of GIP benefits is without merit, as the Department found no evidence at verification to this effect.

We verified that the GOT did not designate pasta as a ''particularly worthwhile'' industry during the POI. Furthermore, as stated above, and in the SAA, if the actual users of the subsidy are too large in number to reasonably be considered as a specific group, and if there is no dominant or disproportionate use of the program, the

fact that a government may have exercised discretion in selecting the recipients of a subsidy is insufficient to justify a finding of *de facto* specificity. Such is the case here. Moreover, we saw no evidence that the GOT in anyway used its discretion to award benefits to selected companies and to deny them to others.

III. Programs Determined to be Terminated

A. Support and Price Stabilization Program (SPSF)

Petitioners argue that despite the Department's preliminary determination that this program was not used, and the GOT's claim that the program was terminated in 1992, the Department should countervail Filiz's reported SPSF payment. Respondents assert that they did not benefit from the SPSF program during the POI. It is simply a matter of nomenclature that the SPSF appears on Filiz's application for pasta export grants.

During verification, we reviewed the Official Gazette dated August 20, 1991, which discusses the termination of the SPSF. The Gazette states that the SPSF program was terminated effective February 1, 1992. Furthermore, we are confident that the term SPSF on Filiz's application for pasta export grants was simply an error on the company's part. Because this program was administered pursuant to a confidential government decree, companies were not aware which agency was providing the grants. Filiz mistakenly believed that the SPSF was providing the grants. However, during verification, we confirmed that the Central Bank and not the SPSF was the provider of the pasta export grants. We found no evidence during the verification of Filiz that the company received benefits from the SPSF.

B. Wharfage Fee Exemption (GIP)

During verification, we reviewed the Official Gazette dated July 11, 1992, which discusses the termination of the Wharfage Fee Exemption. The Gazette states that the Wharfage Fee Exemption program was terminated effective January 1, 1993. We saw no evidence during verification that companies could receive residual benefits or that the program had been reinstated.

IV. Programs Determined to be Not Used

Based on the information provided in the responses and the results of verification, we determine that the following programs were not used.

1. *Advance Refunds of Tax Savings*
2. *Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility*
3. *Normal Foreign Currency Export Loans*
4. *Performance Foreign Currency Export Loans*
5. *Export Credit Insurance*
6. *Regional Subsidies*
   a. *Investment Allowances*
   b. *Mass Housing Fund Levy Exemptions*
   c. *Customs Duty Exemptions*
   d. *Rebate of VAT on Domestically-Sourced Machinery and Equipment*
   e. *Additional Refunds of VAT*
   f. *Postponement of VAT on Imported Goods*
   g. *Other Tax Exemptions*
   h. *Payment of Certain Obligations of Firms Undertaking Large Investments*
   i. *Corporate Tax Deferral*
   j. *Subsidized Turkish Lira Credit Facilities*
   k. *Subsidized Credit for Proportion of Fixed Expenditures*
   l. *Subsidized Credit in Foreign Currency*
   m. *Land Allocation*
7. *Exemption from Mass Housing Fund Levy (Duty Exemptions)*
8. *Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input Prices*
9. *Interest Spread Return Program (GIP)*

V. Programs Determined Not To Exist

Based on the information provided in the responses and the results of verification, we determine that the following programs do not exist.

1. *Export Promotion Program*
2. *Export Credit Program*
3. *Interest Rebates on Export Financing (GIP)*
4. *Foreign Exchange Allocation Program (GIP)*

Interested Party Comments

Comment 1: Petitioners argue that because there is no evidence on the record concerning certain tax programs discussed at verification, the Department should conclude that its subsidy calculations understate the tax benefits, and identify these other programs as subsidies to be examined in future proceedings. Petitioners also assert that the Department should not treat the Advanced Refund for Tax Savings program as terminated in the final determination. They state that the program is still in existence and that the Department verified this.

Respondents assert that the Department verified that neither Filiz nor Maktas received benefits under the Advance Refund of Tax Savings program. Hence, this program should not be included in any countervailing duty order issued in this case. Respondents also assert that the Department has no record evidence with which to conclude that the other tax exemptions listed on the Turkish corporate income tax form constitute countervailable subsidies.

DOC Position: We agree with petitioners that the Advanced Refund for Tax Savings program is still in existence and, therefore, should not be treated as a terminated program. However, we disagree with petitioners' contention concerning the other tax programs. We found no evidence during verification which would lead us to believe that these programs should be considered countervailable subsidies. Therefore, we are not including them in our final determination.

Comment 2: Petitioners assert that the Department should allocate the benefits from the Pasta Export Grants to pasta exports to the United States. Petitioners also assert that certain subsidies attributed to Maktas appear in the company's ''Other Income'' account, which is a component of total sales. These subsidies should be subtracted from total sales so that they are not included in the denominator. Finally, petitioners argue that the Department should exclude from the denominator Filiz's sales of bulk pasta, because pasta sold in bulk is not subject merchandise.

Respondents agree with petitioners that where it is clear that the benefit is tied to sales of pasta to the United States, the denominator should be total exports to the United States. However, they assert that for certain invoices, it was impossible for respondents to separate benefits between retail and bulk pasta sales. Therefore, the Department should not adjust for bulk sales.

DOC Position: We have followed our standard practice of allocating countervailable benefits according to whether the benefit is tied to a particular product or market, or is untied. *See*, section 355.47 of the *Proposed Regulations*. Consequently, we have allocated the export grants received by Filiz for shipments to the U.S. to the company's exports to the United States. Because we were unable to distinguish between the pasta export grants received on bulk and those received on retail sales, we have included both retail and bulk sales in Filiz's total export sales. Finally, only the amount of foreign exchange gains from Maktas' ''Other Sales'' is included in the Maktas denominators used to calculate the benefit of the used subsidy programs.

Comment 3: Petitioners assert that because Maktas reported that it applied for Normal Foreign Currency loans during the POI, the Department should not treat this program as not used, but rather as countervailable without benefit during the POI. Respondents state that Maktas did not apply for or use Normal Foreign Currency loans during the POI, and therefore, the Department should only consider this program in any future review.

DOC Position: We found no evidence during verification of Maktas that the company had benefitted from the Normal Foreign Currency Loan program during the POI. Therefore, we will follow our standard practice of categorizing the program as not used. We may consider this program in future reviews.

Comment 4: Petitioners argue that the Department should use effective interest rates when calculating the benefit in the Eximbank loan program.

DOC Position: We agree with petitioners and have calculated the benefit from this program by comparing the effective Eximbank rates to the effective benchmark rates. Both the Eximbank and benchmark rates include legally-mandated commissions and fund surcharges.

Comment 5: Petitioners argue that the Department should countervail the two additional grants received in 1994 that were discovered at the Filiz verification.

Petitioners also argue that Filiz failed to establish that it did not use the Eximbank loan program. Therefore, the Department should use adverse facts available and apply to Filiz the rate calculated for Maktas under this program. Respondents state that the Department did, in fact, verify that Filiz did not benefit from the Eximbank loan program.

DOC Position: The additional grants described by petitioners were Pasta Export Grants for shipments to third countries. As they can be tied to other markets, we have not included these two additional grants in our calculations.

With respect to the Eximbank loan program, we agree with respondents that there is no evidence on the record to support the claim that Filiz benefitted from the Eximbank loan program. We examined Filiz's Chart of Accounts, General Ledger, and various accounts within each of these records, and found no evidence that Filiz had received loans through any GOT programs.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an ''all others'' rate by weighting individual company subsidy rates by each investigated company's exports of the subject merchandise to the United States, if available, or pasta exports to the United States. The all others rate does not include zero or *de minimis* rates, or any rates based solely on the facts available.

Based on our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of pasta from Turkey which were entered, or withdrawn from warehouse, for consumption on or after October 17, 1995, the date of publication of our preliminary determination in the Federal Register. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to terminate the suspension of liquidation for merchandise entered on or after February 14, 1996, but to continue the suspension of liquidation of entries made between October 17, 1995, through February 13, 1996. We will reinstate suspension of liquidation under section 706(a)(1) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

Company	Ad valorem rate	Cash deposit rate
Filiz	3.87	3.87
Maktas	13.12	12.61
Oba	15.82	15.82
All Others	9.70	9.38

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: June 3, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–14737 Filed 6–13–96; 8:45 am]

BILLING CODE 3510–DS–P

Federal Register

Friday
June 14, 1996

Part III

Securities and Exchange Commission

17 CFR Part 228, et al.

Ownership Reports and Trading by Officers, Directors and Principal Security Holders; Extension of Phase-In Period for 16b–3; Disclosure Simplification: Phase One and Phase Two Recommendations of Task Force; Final and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 34–37260; 35–26524; IC–21997; File No. S7–21–94]

RIN 3235–AF66

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to its rules and forms regarding the filing of ownership reports by officers, directors, and principal security holders, and the exemption of certain transactions by those persons from the short-swing profit recovery provisions of section 16 of the Securities Exchange Act of 1934 (''Exchange Act'') and related provisions of the Investment Company Act of 1940 (''Investment Company Act'') and the Public Utility Holding Company Act of 1935. The revised rules are intended to streamline the Section 16 regulatory scheme, particularly with respect to transactions between an issuer and its officers and directors; simplify the reporting system; broaden exemptions from short-swing profit recovery where consistent with the statutory purposes; and codify several staff interpretive positions.

DATES: *Effective date*: August 15, 1996. The phase-in period for Rule 16b–3 is extended until November 1, 1996 pursuant to Release No. 34–37261. For a discussion of transition provisions, *see* Section VII.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Special Counsel, Office of Chief Counsel, or Elizabeth M. Murphy, Special Counsel, Office of Disclosure Policy, at (202) 942–2900, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 16a–1, 16a–2, 16a–3, 16a–4, 16a–6, 16a–8, 16a–9, 16b–3, and 16b–6 [1] promulgated under section 16 [2] of the Exchange Act.[3] The Commission also is amending Rule 16b–2 [4] and redesignating it as Rule 16a–11,[5] and adopting new Rules 16a–12 and 16a–13.[6] Finally, the Commission is adopting revisions to Item 405 of Regulation S–K [7] and Regulation S–B,[8] as well as to Forms 3, 4, and 5.[9]

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I. Executive Summary and Background

In February 1991, in response to developments in the trading of derivative securities, the growth of complex and diverse employee benefit plans, and substantial filing delinquencies, the Commission adopted comprehensive changes to the beneficial ownership and short-swing profit recovery rules and forms applicable to insiders [10] pursuant to section 16.[11] While many aspects of the new section 16 rules were favorably received, unanticipated practical difficulties arose in implementing the new rules, particularly with respect to thrift and similar employee benefit plans. In particular, issuers and insiders stated that the application of current Rule 16b–3 to these plans is cumbersome, presents significant record-keeping problems and discourages insiders from participation in plan funds holding employer securities.

In order to address these concerns, in 1994 the Commission proposed further rule changes designed to streamline the Section 16 regulatory scheme adopted in 1991. The proposals were designed to facilitate the operation of employee benefit plans; broaden exemptions from Section 16(b) [12] short-swing profit recovery where consistent with statutory purposes; and codify several staff interpretive positions.[13] Comment also was solicited on various suggested

[1] 17 CFR 240.16a–1, 16a–2, 16a–3, 16a–4, 16a–6, 16a–8, 16a–9, 16b–3, and 16b–6. Throughout this release, the term ''current Rule or Form'' refers to the regulation as in effect before today's amendments, while ''new Rule or Form'' refers to the regulations as amended or adopted in this release.

[2] 15 U.S.C. 78p.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.16b–2.

[5] 17 CFR 240.16a–11.

[6] 17 CFR 240.16a–12 and 16a–13.

[7] 17 CFR 229.405.

[8] 17 CFR 228.405.

[9] 17 CFR 249.103, 104 and 105.

[10] The term ''insider,'' as used in this release, refers to officers and directors of issuers with a class of equity securities registered pursuant to section 12 of the Exchange Act, and holders of more than ten percent of a class of equity securities so registered. When referring to an issuer with securities registered under section 12, this release includes securities of closed-end investment companies subject to section 30(f) of the Investment Company Act (15 U.S.C. 80a–29(f) (1988)) and public utility holding companies subject to Section 17 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q (1988)). The insiders of a closed-end investment company also include the adviser and any affiliated person of the adviser. Section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3) (1988)).

[11] Release No. 34–28869 (February 8, 1991) [56 FR 7242] (''Adopting Release''). The rules generally became effective on May 1, 1991, except for the phase-in period for compliance with the substantive conditions of new Rule 16b–3. The phase-in period previously was extended until September 1, 1996 or such different date as may be set in further rulemaking (Release 34–36063 (August 7, 1995) (60 FR 40994) (''1995 Phase-in Release'')). It is being further extended to November 1, 1996 to accommodate the transition to the new rules. Issuers may use new Rule 16b–3 for transactions on or after the August 15, 1996 effective date, but are not required to use the new rule until the end of the phase-in period. *See* Section VII, below.

Following the Adopting Release, the Commission issued two other releases relating to the revised rules; one set forth the Commission's views regarding shareholder approval for amendments to employee benefit plans under Rule 16b–3, as well as certain technical amendments (Release No. 34–29131 (April 26, 1991) (56 FR 19925)), while the other adopted a technical amendment to Form 4 (Release No. 34–28869B (April 10, 1991) (56 FR 14467)).

[12] 15 U.S.C. 78p(b).

[13] Release No. 34–34514 (August 10, 1994) (59 FR 42449) (''1994 Release'').

modifications to the section 16(a)[14] reporting requirements.

A follow-up release[15] solicited further comment on the treatment of compensatory cash-only instruments based on the value of the issuer's equity securities. Such instruments currently are not subject to Section 16 if they meet specified conditions. The Commission requested comment as to whether the current exclusion is appropriate in light of the fact that equity-based securities provide identical opportunities for profit predicated on the underlying stock price movement, whether settled exclusively in cash or stock, and whether, from the perspective of shareholders and analysts, cash-only instruments have the same section 16(a) informational value as instruments that may be settled in stock.

Finally, additional rule proposals were published in 1995[16] to provide a broader exemption from short-swing profit recovery for transactions between an issuer and its directors or officers, whether or not in the context of employee benefit plans; broaden the exemption for transactions in dividend and interest reinvestment plans; and revise the section 16(a) reporting scheme.

The 1995 proposals presented a simplified, flexible approach based on the premise that transactions between an issuer and its officers and directors are intended to provide a benefit or other form of compensation to reward service or to incentivize performance. Generally, these transactions do not appear to present the same opportunities for insider profit on the basis of non-public information as do market transactions by officers and directors. Typically, where the issuer, rather than the trading markets, is on the other side of an officer or director's transaction in the issuer's equity securities, any profit obtained is not at the expense of uninformed shareholders and other market participants of the type contemplated by the statute.[17] Based on its experience with the Section 16 rules, the Commission is persuaded that transactions between the issuer and its officers and directors that are pursuant to plans meeting the administrative requirements and nondiscrimination standards of the Internal Revenue Code[18] and the Employee Retirement Income Security Act of 1974 (''ERISA''),[19] or that satisfy other objective gate-keeping conditions, are not vehicles for the speculative abuse that section 16(b) was designed to prevent. Accordingly, these transactions are exempted by new Rule 16b–3 as adopted.[20]

As a corollary to this approach, it was proposed that cash-only instruments would be subject to section 16 to the same extent as other instruments that embody the opportunity for profit based on price movement in the issuer's stock. These instruments would be eligible for exemption from section 16(b), but reportable under section 16(a), to the same extent as other issuer equity securities in transactions between an issuer and its officers and directors. The Commission has determined to adopt this proposal as an integral part of its revised approach to transactions between an issuer and its officers and directors.

As a further corollary to the 1995 proposal, the Commission indicated that it contemplated simplifying the reporting system. Certain routine transactions were proposed to be exempted from reporting, while other transactions exempt pursuant to Rule 16b–3 would be reported on Form 4 within ten days after the end of the month in which the transaction occurred. The Commission has determined to revise the reporting system so that most transactions exempt pursuant to new Rule 16b–3 will be reported on an annual basis on Form 5, and to eliminate the class of transactions currently reportable on the earlier of the next required Form 4 or Form 5 by requiring that option exercises be reported on Form 4 and small acquisitions on Form 5. A number of exempt transactions of a routine nature, such as acquisitions pursuant to tax-conditioned plans and dividend and interest reinvestment plans, will not be required to be reported at all.[21]

Eighty-nine letters of comment were received in response to the 1994 Release and the Cash-only Release, and 38 letters were received in response to the 1995 Release.[22] In general, the commenters expressed strong support for the tenor of the proposals, with most preferring the 1995 version of Rule 16b–3 to the 1994 version. These commenters thought that the revisions would alleviate many of the practical issues and uncertainties that have arisen since adoption of the comprehensive section 16 amendments in 1991. Many commenters suggested modifications to the proposals, some of which are addressed in this Release, as discussed throughout.

The rules adopted today essentially implement the 1995 proposals, as well as the elements of the 1994 proposals not addressed in 1995.[23] Changes from the proposals are discussed in the release below. Highlights of changes from the current rules are as follows:

A. Transactions Between an Issuer and its Directors or Officers

- Generally, transactions between an issuer (including an employee benefit plan sponsored by an issuer) and its directors or officers will be exempt from section 16(b) if they satisfy the applicable conditions of new Rule 16b–3, as set forth below:
- Routine transactions pursuant to specified tax-conditioned plans (such as thrift plans, stock purchase plans and excess benefit plans) will be exempt from section 16(b) without further condition.
- Fund-switching transactions or volitional cash withdrawals from an issuer equity securities fund will be exempt if the election to engage in the transaction is at least six months after the last election to engage in such a transaction that was opposite-way (*i.e.*, a previous acquisition if the transaction to be exempted is a disposition, and vice versa).
- Other acquisitions by an officer or director from the issuer, including grants, awards and participant-directed transactions, will be exempt upon satisfaction of any one of three alternative conditions:
- Approval of the transaction by the board of directors of the issuer or a committee of two or more Non-Employee Directors;

[14] 15 U.S.C. 78p(a).

[15] Release No. 34–34681 (September 16, 1994) (59 FR 48579) (''Cash-only Release'').

[16] Release No. 34–36356 (October 11, 1995) (60 FR 53832), as corrected in Release No. 34–36356A (October 29, 1995) (60 FR 54823), (together, the ''1995 Release'').

[17] An insider's breach of fiduciary duty to profit from self-dealing transactions with the company is a concern of state corporate law. Generally, states have created potent deterrents to insider self-dealing and other breaches of fiduciary duty. *See* 3 Fletcher Cyc. Corp. § 837.60 (Perm. ed. 1994); D. Block, S. Radin and N. Barton, *The Business Judgment Rule: Fiduciary Duties of Corporate Directors* 124–37 (4th ed. 1993). There are also potential liability considerations under Rule 10b–5 [17 CFR 240.10b–5].

[18] 26 U.S.C. *et seq.* (1986) (''Internal Revenue Code'').

[19] 29 U.S.C. 1001 *et seq.* (1986).

[20] *See* Section II, below.

[21] *See* Section IV, below.

[22] These comment letters, together with two Summaries of Comments prepared by Commission staff, are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington DC 20549. Persons seeking these materials should make reference to File No. S7–21–94.

[23] Pursuant to Release 33–7300 issued today, the Commission also is rescinding Rules 16b–1(c) and 16b–4 and amending Rule 16a–3(i) to permit typed signatures, consistent with the recommendations of the Task Force on Disclosure Simplification.

• Approval or ratification of the transaction by the holders of the majority of the issuer's securities; or

• Satisfaction of a six-month holding period following the date of acquisition.

• Other dispositions by an officer or director to the issuer will be exempt if approved by the board of directors of the issuer, a committee of two or more ''Non-Employee Directors,'' as defined, or the holders of the majority of the issuer's securities.

B. Derivative Securities

• The current section 16 exclusion from the definition of ''derivative securities'' for instruments based on the value of the issuer's equity securities but settled exclusively in cash [24] is rescinded. However, these instruments are eligible for exemption pursuant to new Rule 16b–3.

• Options granted to an underwriter in a registered public offering to satisfy over-allotments are expressly excluded from the definition of ''derivative security.'' [25]

• Rights to withhold or surrender a security in satisfaction of the exercise price of a derivative security, or in satisfaction of the tax-withholding consequences applicable to the receipt, exercise or vesting of an issuer equity security (including a derivative security) are excluded from the definition of ''derivative security.'' [26]

C. Reporting

• A number of transactions exempt from Section 16(b) that currently must be reported on Form 5 no longer will be required to be reported at all, among them:

• Exempt transactions pursuant to tax-conditioned plans (other than fund-switching transactions and volitional cash withdrawals from an issuer equity securities fund);

• Transactions pursuant to dividend or interest reinvestment plans [27] and domestic relations orders; [28]

• Transactions that change only the form of beneficial ownership; [29]

• Certain transactions by a person who has ceased to be an insider; [30] and

• Expirations or cancellations of certain derivative securities. [31]

• Exercises and conversions of derivative securities, including employee stock options, whether or not exempt from Section 16(b), will be reported on Form 4.

• All other exempt transactions and small acquisitions [32] will be reported annually on Form 5, with earlier reporting on Form 4 permitted.

• Reporting will be permitted on a joint basis when more than one person subject to Section 16 is deemed to be a beneficial owner of the same issuer equity securities. [33]

• A trust will be subject to Section 16 only if the trust is the beneficial owner of more than ten percent of a class of issuer equity securities registered pursuant to Section 12 of the Act. [34]

• Item 405 of Regulations S–K and S–B [35] is revised to clarify the nature of the issuer's obligation to review insiders' filings in order to determine whether there are any delinquent reports that require disclosure. Item 405 disclosure will be required to be placed under a separate caption.

• Insiders' obligation to report equity swap transactions is reiterated and clarified, and a new reporting code is added for equity swaps.

D. Other Issues

• The exemption for the reinvestment of dividends and interest pursuant to dividend and interest reinvestment plans [36] is revised to eliminate the requirement that the plan be made available on the same terms to all holders of the class of securities.

• A new exemption is provided for transactions pursuant to domestic relations orders. [37]

• The exemption for stock splits, stock dividends and pro rata rights [38] is expanded to exempt stock dividends paid in the securities of a different issuer, such as spinoff distributions.

• A transaction that occurs after a person ceases to be an officer or director will be subject to section 16 only if it is not otherwise exempt from section 16(b) and is executed within six months of an opposite-way transaction subject to section 16(b) that occurred while the person was an officer or director. [39]

II. Transactions Between an Issuer and Its Directors or Officers

A. General Approach

The amendments to Rule 16b–3 adopted today implement the approach set forth in the 1995 proposal to align better the regulatory requirements under the rule with the statutory goals underlying section 16. [40] Moreover, since benefit plans and compensation payments and programs vary widely in design and purpose, the Commission is convinced that a ''one size fits all'' regulatory scheme is impractical. The proliferation of unique plan features over the last decade has led to legal uncertainty regarding the application of Rule 16b–3 to these innovations. Rather than react to present plan developments, the Commission intends to provide greater regulatory flexibility to accommodate future developments.

New Rule 16b–3 exempts from short-swing profit recovery any acquisitions and dispositions of issuer equity securities (including those that occur upon the exercise or conversion of a derivative security, whether in- or out-of-the-money) [41] between an officer or director and the issuer, subject to simplified conditions. [42] A transaction with an employee benefit plan sponsored by the issuer will be treated the same as a transaction with the issuer. [43] However, unlike the current

[24] Current Rule 16a–1(c)(3).

[25] New Rule 16a–1(c)(7), which will codify the interpretive positions set forth in *Video Technology (Overseas) Limited/Davis Polk & Wardwell* (June 17, 1992) and *Davis Polk & Wardwell* (July 16, 1992).

[26] New Rule 16a–1(c)(3) (proposed as Rule 16a–1(c)(8)).

[27] New Rule 16a–11 (current Rule 16b–2).

[28] New Rule 16a–12.

[29] New Rule 16a–13.

[30] New Rule 16a–2(b).

[31] New Rule 16a–4(d).

[32] These transactions, which do not exceed $10,000 in the aggregate, are eligible for deferred reporting pursuant to current and new Rule 16a–6.

[33] New Rule 16a–3(j).

[34] Current Rule 16a–8(a)(1)(ii), which makes a trust subject to Section 16 if the trustee otherwise is subject to section 16 and exercises or shares investment control of issuer securities held by the trust and the trustee or a member of the trustee's immediate family has a pecuniary interest in such issuer securities, is rescinded. Other obligations applicable to trusts, trustees, beneficiaries and settlors pursuant to current Rule 16a–8 are not affected by this change.

[35] 17 CFR 229.405 and 228.405.

[36] New Rule 16a–11 (current Rule 16b–2).

[37] New Rule 16a–12.

[38] Current and new Rule 16a–9.

[39] New Rule 16a–2(b).

[40] *See* Section I, above.

[41] As indicated in Note (1) to new Rule 16b–3, the exercise or conversion of a derivative security that does not satisfy the conditions of this rule will continue to be eligible for exemption from section 16(b) pursuant to Rule 16b–6(b) [17 CFR 240.16b–6(b)]. Similarly, a note is added to new Rule 16b–6(b) as a reminder that exercises or conversions also may be exempted by new Rule 16b–3.

[42] Like current Rule 16b–3, new Rule 16b–3 does not provide an exemption for persons who are subject to section 16 solely because they beneficially own greater than ten percent of a class of an issuer's equity securities. Officers and directors owe certain fiduciary duties to a corporation. *See* n. 17, above. Such duties, which act as an independent constraint on self-dealing, may not extend to ten percent holders. The lack of other constraints argues against making new Rule 16b–3 available to ten percent holders. However, new Rule 16b–3 is available to such a person who is also subject to section 16 by virtue of being an officer or director with respect to transactions with the issuer.

[43] New Rule 16b–3(a). Although some transactions between officers or directors and issuer-sponsored employee benefit plans technically are not transactions with the issuer, such transactions should be within the scope of an exemption premised on the nature of insiders' transactions with issuers. Employee benefit plans are the most common vehicle by which issuers provide for securities-based compensation of employees, including officers and directors, that

rule, a transaction need not be pursuant to an employee benefit plan or any compensatory program to be exempt, nor need it specifically have a compensatory element.

A transaction will be exempt if it satisfies the appropriate conditions set forth among four alternative categories: Tax-Conditioned and Related Plans; Discretionary Transactions; Grants, Awards and Other Acquisitions from the Issuer; and Dispositions to the Issuer.[44] New Rule 16b–3 eliminates many of the conditions of current Rule 16b–3, such as general written plan conditions,[45] the prohibition against transfer of derivative securities, shareholder approval as a general condition for plan exemption, the six-month holding period as a general condition for the exemption of grant and award transactions, the disinterested administration or formula plan requirements regarding grant transactions, and the window period requirement for fund-switching transactions and stock appreciation right exercises.

B. Tax-Conditioned Plans

The exemption for transactions pursuant to tax-conditioned plans[46] is adopted substantially as proposed in 1995. This exemption is premised on the view that an adequate safeguard against speculative abuse is provided when a plan satisfies certain conditions imposed by the Internal Revenue Code and ERISA.[47] Accordingly, any acquisition or disposition of issuer equity securities, except as discussed below, will be exempt without further condition if made pursuant to a plan that satisfies the definition of a ''Qualified Plan,''[48] an ''Excess Benefit Plan,''[49] or a ''Stock Purchase Plan.''[50] Thus, for example, routine acquisitions pursuant to thrift and stock purchase plans generally will be exempt under this provision. The tax code coverage and participation requirements provide readily accessible, objective standards for designing an exempt plan.

While most transactions pursuant to tax-conditioned plans may rely on this exemption, fund-switching and cash withdrawal transactions arising solely from an insider's volitional investment decision, defined as ''Discretionary Transactions,'' instead must satisfy a timing requirement.[51]

As proposed, the exemption for tax-conditioned plans would have exempted without further condition any acquisition pursuant to a plan or transaction that satisfied the conditions applicable to performance-based compensation imposed by section 162(m) of the Internal Revenue Code and the regulations thereunder.[52] Commenters expressed divergent views on whether this basis for exemption would be useful. The Commission is not adopting the section 162(m) provision, since it appears unnecessary in view of the expanded availability of the exemption for grants, awards and other acquisitions.[53]

C. Discretionary Transactions

Many contributory employee benefit plans permit a participant to choose one of several funds in which to invest (*e.g.*, an issuer stock fund, a bond fund, or a money market fund). Plan participants typically are given the opportunity to engage in ''fund-switching'' transactions, permitting the transfer of assets from one fund to another, at periodic intervals. Plan participants also commonly have the right to withdraw their investments in cash from a fund containing equity securities of the issuer. Fund-switching transactions involving an issuer equity securities fund and cash distributions from these funds[54] may present opportunities for abuse because the investment decision is similar to that involved in a market transaction. Moreover, the plan may buy and sell issuer equity securities in the market in order to effect these transactions, so that the real party on the other side of the transaction is not the issuer but instead a market participant.

In order to foreclose opportunities for abuse, the 1995 proposal contemplated that such transactions in a tax-conditioned plan would be exempt only if effected pursuant to an election made at least six months following the date of the most recent prior such election. As adopted, this provision has been made applicable to these transactions pursuant to *any* plan, whether or not tax-conditioned,[55] given that it is the nature of the transaction, without regard to the type of plan, that presents an opportunity for abuse. Accordingly, these transactions are defined separately as ''Discretionary Transactions,''[56] and the exemption is placed in a separate paragraph rather than included with the exemption for tax-conditioned plans.

As favored by many commenters, the six month condition will apply only to ''opposite way'' transactions; *i.e.*, elections that effect acquisitions and dispositions must be six months apart, but prior ''same-way'' elections within the preceding six months do not render the exemption unavailable.[57] The six month condition will apply if a prior election by the officer or director effecting an ''opposite way''

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otherwise would be satisfied through direct compensation from the issuer.

[44] In addition to the conditions for exemption, as discussed below, Note (2) has been added to new Rule 16b–3 to reference the reporting rules applicable to transactions exempted by the new rule. *See* Section IV, below.

[45] Because a plan no longer will be required to set forth in writing either the price at which securities may be offered and the amount of securities to be awarded, or the method by which such price and amount are to be determined, the manner in which shares are counted no longer will present interpretive issues. As noted at n. 69 to the 1994 Release, interpretive letters regarding this subject for purposes of the requirements of current Rule 16b–3(a)(1) no longer are required to be followed.

[46] New Rule 16b–3(c).

[47] The rule does not require the plan to be tax-qualified, but instead either to satisfy specified conditions applicable to tax-qualified plans, or, in certain circumstances, to be operated in connection with a plan that satisfies those conditions.

[48] New Rule 16b–3(b)(4). The definition of ''Qualified Plan'' is adopted as proposed, *i.e.*, an employee benefit plan that satisfies the coverage and participation requirements of Sections 410 and 401(a)(26) of the Internal Revenue Code of 1986, or any successor provisions thereof.

[49] New Rule 16b–3(b)(2). The definition of ''Excess Benefit Plan'' has been revised to eliminate references to specific I.R.C. Sections so as to ensure that plans qualifying for an exemption under section 201(2) of ERISA would be covered by the exemption. The revised definition requires that such a plan be operated in conjunction with a Qualified Plan, and provide only the benefits and contributions that would be provided under the Qualified Plan but for any benefit or contribution limitations set forth in the Internal Revenue Code. As was proposed, the amended rule does not require transactions pursuant to an Excess Benefit Plan to be in tandem with transactions in the related Qualified Plan to be eligible for exemption.

[50] New Rule 16b–3(b)(5). The definition of ''Stock Purchase Plan'' has been revised to indicate that satisfaction of the coverage and participation standards of Section 410 of the Internal Revenue Code is an alternative to satisfaction of Internal Revenue Code Sections 423(b)(3) and 423(b)(5), rather than an additional requirement. The purpose of including this alternative standard is to make the exemption available to stock purchase plans that do not satisfy the standards of Internal Revenue Code Section 423, but nevertheless are operated in a broad-based manner.

[51] *See* Section II.C, below.

[52] Internal Revenue Code Section 162(m) and Regulation § 1.162–27(e), which set forth the conditions pursuant to which an issuer may deduct compensation in excess of $1 million paid to its chief executive officer and four other most highly compensated officers for whom disclosure is required to be reported in Exchange Act filings.

[53] *See* Section II.D, below.

[54] No exemption has been provided in new Rule 16b–3 for a withdrawal in kind of issuer equity securities because such a transaction would be a change in form of beneficial ownership from indirect to direct, which will be exempt from Section 16 pursuant to new Rule 16a–13. *See* Section IV.B, below.

[55] New Rule 16b-3(f).

[56] New Rule 16b-3(b)(1).

[57] Because it is anticipated that the actual date on which such a plan transaction occurs may be outside the control of an insider participant, the rule is premised on a six-month interval between the date of subsequent ''opposite way'' elections. The rule does not require that such an election be made six months in advance of the related transaction.

Discretionary Transaction was made pursuant to *any* plan of the issuer in which the officer or director participates. Some commenters favored an exemption premised on transactions taking place during a window period. The Commission, however, prefers a more simple approach that is more consistent with the statutory purpose.

The definition of ''Discretionary Transaction'' excludes a number of transactions that are primarily for retirement planning.[58] Transactions resulting from an election to receive, or to defer the receipt of, securities and/or cash in connection with death, disability, retirement or termination of employment,[59] as well as transactions that effect a diversification or distribution which the Internal Revenue Code requires an employee benefit plan to make available to a participant,[60] need not comply with the six-month condition.[61] Thus, these transactions are eligible for exemption pursuant to other applicable provisions of the amended rule (most likely the exemption for tax-conditioned plans). Although such transactions have an element of volition, the insider's opportunity to speculate in the context of a death, disability, retirement or termination of employment would seem well circumscribed, as is also the case with regard to the specified diversification and distribution elections.

D. Grants, Awards and Other Acquisitions From the Issuer

1. General; Participant-Directed Acquisitions

Plans that authorize ''grant and award'' transactions provide issuer equity securities to participants on a basis that does not require either the contribution of assets or the exercise of investment discretion by the participants. For example, awards of bonus stock pursuant to a salary-based formula and grants of options or restricted stock are grant and award transactions. In contrast, a ''participant-directed transaction'' requires the participant to exercise investment discretion as to either the timing of the transaction or the assets into which the investment is made. For example, the exercise of an option and a participant's election pursuant to a thrift plan to invest either the employee or the employer contribution in issuer equity securities are participant-directed transactions.

Both the current and the new rules provide a specific exemption for the grant or award of issuer equity securities. The new rule makes the exemption more readily available, since only one of three alternative conditions need be satisfied.[62] Commenters responded favorably to this proposal. They expressed concern, however, that some participant-directed transactions (such as deferrals of bonuses into phantom stock and other deferred compensation programs) that are exempt under the current rule [63] would lack an exemption under the new rule.

The 1995 proposal was intended to permit such transactions, which ordinarily do not present opportunities for abuse, an opportunity for exemption.

Accordingly, as adopted, the proposed grant and award exemption has been retitled ''Grants, Awards and Other Acquisitions from the Issuer'' to make it clear that participant-directed acquisitions that are not pursuant to tax-conditioned plans may rely on this exemption.[64] However, if a participant-directed transaction is a ''Discretionary Transaction,'' as defined in the new rule, it must instead satisfy the conditions designed specifically for Discretionary Transactions in order to be exempt.[65]

2. Alternative Conditions

The new rule provides three alternative bases for exempting the acquisition of issuer equity securities (including derivative securities). The first two conditions exempt an acquisition that is either: (i) Approved in advance by the board of directors or a committee of the board composed solely of two or more ''Non-Employee Directors;'' [66] or (ii) approved in advance, or subsequently ratified not later than the date of the next annual meeting of shareholders, by shareholders.[67] If a transaction has satisfied more than one of the alternative approval conditions specified in the new rule (for example, if board approval is followed by shareholder approval) the issuer may rely on any condition that provides the basis for the exemption.

Alternatively, an acquisition that does not satisfy any of the approval conditions will be exempt if the securities acquired are held by the insider for six months following the date of acquisition, or in the case of a derivative security, at least six months elapse between the date of acquisition of the derivative security and the date of disposition of the underlying security.[68] The six-month holding period for dividend equivalent rights (''DERs'') and shares purchased pursuant to the automatic reinvestment of dividends will be deemed to commence on the date of acquisition of the shares on which the DERs or dividends are paid.[69]

Commenters who addressed this segment of the 1995 proposal favorably noted both its simplicity and flexibility. The Commission is persuaded that satisfaction of any of the three conditions is a sufficient basis to exempt an acquisition of issuer equity securities from the issuer.

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[58] The items enumerated are the same as those in the rule as proposed, although they were not set forth in a separate definition.

[59] Such transactions are exempted by current Rule 16b-3(d)(1)(ii).

[60] Such transactions include diversification elections and distributions provided for by Internal Revenue Code Section 401(a)(28), and distributions required by Internal Revenue Code Section 401(a)(9).

[61] A loan funded by the disposition of issuer equity securities will be considered a cash distribution involving a volitional disposition of an issuer equity security unless the insider continues to bear the risk of loss with respect to such issuer equity securities during the term of the loan. Involuntary distributions of cash for the purpose of satisfying the limitations on employee elective contributions and employer matching contributions imposed by the Internal Revenue Code will be exempt without condition because such transactions do not occur at the insider's volition.

[62] New Rule 16b–3(d).

[63] Many such transactions are now exempt pursuant to the six month advance election provided by current Rule 16b–3(d)(1)(i).

[64] Participant-directed dispositions are eligible for the ''Dispositions to the Issuer'' exemption, discussed in Section II.E, below.

[65] *See* Section II.C, above.

[66] New Rule 16b–3(d)(1).

[67] New Rule 16b–3(d)(2). Like current Rule 16b–3(b), this standard would require the affirmative vote of the holders of the majority of the issuer's securities present or represented and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated, or the written consent of the majority of the issuer's securities entitled to vote, solicited in compliance with Section 14 of the Securities Exchange Act (15 U.S.C. 78n).

[68] New Rule 16b–3(d)(3). The 1995 Release solicited comment as to whether a grant or award that satisfies any of the three alternative conditions should be exempt only if the officer or director to whom the grant is made had not disposed of issuer equity securities on a non-exempt basis during the previous six months at a price higher than that at which the grant is made. New Rule 16b–3(d), as adopted, does not require satisfaction of this condition with respect to any acquisition.

[69] This position is consistent with the amendment to current Rule 16b–3(c)(1) proposed in 1994, which would have reversed current interpretation providing that the six-month holding period is deemed to commence on the date the dividend or DER is granted or allocated to the participant. *See Hewitt Associates* (Apr. 30, 1991) Q. 2(b); and *Davis Polk & Wardwell* (Aug. 23, 1991). Under new Rule 16b–3, DERs and shares purchased pursuant to the receipt of dividends will need to satisfy a six-month holding period only if the securities on which the dividends or DERs are paid rely on a six-month holding period as the basis for exemption. Moreover, *pro rata* dividends paid in stock with respect to all securities of a class will continue to be exempt pursuant to Rule 16a–9.

3. Scope of Approval Required

When the rule requires ''Non-Employee Director,'' [70] full board or shareholder approval, the Commission intends that the approval relate to specific transactions rather than the plan in its entirety. However, approval of a plan pursuant to which the specific terms and conditions of each acquisition are fixed in advance, such as a formula plan,[71] will satisfy this condition, and the exemption also will be available for a plan with an appendix providing for specific grants to specific individuals. Note (3) has been added to the new rule, making the specific nature of the approval required clear.

The note also provides that where the terms of a subsequent transaction are provided for at the time a transaction is initially approved, the subsequent transaction will not require further specific approval. If the terms of an award as approved provide for a subsequent participant-directed election, that election will be exempt without further condition if effected pursuant to those terms. For example, if an award of restricted stock as approved permits an insider awardee to defer receipt pursuant to a related deferred compensation plan, the insider's election to defer will be exempt without further condition. In the same manner, the acquisition of underlying issuer equity securities that occurs upon the exercise or conversion of a derivative security will be exempt, provided that the exercise is pursuant to terms provided in the derivative security originally approved in its acquisition.[72] Similarly, if an award as originally approved specifically provided for the automatic grant of reload options, each resultant grant of reload options pursuant to those terms will not require subsequent approval.

[70] This term is defined in new Rule 16b–3(b)(3). *See* Section II.D.4, below.

[71] A plan that constitutes a ''formula plan'' under staff interpretations of current Rule 16b–3(c)(2)(ii) will be considered a formula plan for this purpose.

[72] The disposition of the derivative security that occurs upon exercise similarly will be exempt pursuant to new Rule 16b–3(e). *See* Section II.E, below.

A derivative security that did not satisfy the Non-Employee Director committee, board of directors or shareholder approval conditions (such as a derivative security issued in reliance on the six-month holding period of new Rule 16b–3(d)(3) or a derivative security acquired other than directly from the issuer) could be exercised or converted and the underlying issuer equity securities acquired on an exempt basis pursuant to Rule 16b–6(b), if the conditions of that rule are met (fixed exercise price and exercise not out-of-the-money unless necessary to comport with the sequential exercise provisions of Internal Revenue Code Section 422A).

4. Non-Employee Director Definition

With respect to committee approval as a basis for exemption, ''Non-Employee Director'' as proposed in 1995 was defined as a director who is not currently an officer of, or otherwise employed by or a consultant to, the issuer, its parent or its subsidiary. The 1995 Release further elaborated that, for this purpose, ''consultant'' would include attorneys, accountants or others who indirectly receive compensation from the issuer through firms that provide services to the issuer.

However, commenters criticized the ''Non-Employee Director'' definition to the extent that it would prohibit any consulting arrangement with the issuer. These commenters cited definitional uncertainty, the special expertise provided by retired senior executives and other consultants, and the absence of problems stemming from such persons' service as disinterested directors under the current rules [73] as reasons for not imposing an absolute ban on consulting arrangements.

The Commission is persuaded that the reasoning supporting these comments justifies permitting directors with limited consulting relationships with the issuer to serve as Non-Employee Directors. Under the rule as adopted,[74] a ''Non-Employee Director'' will be a director who is not currently an officer or otherwise employed by the issuer, or a parent or subsidiary of the issuer; does not receive compensation directly or indirectly from the issuer, its parent or subsidiary for services rendered as a consultant or in any capacity other than as a director, except for an amount for which disclosure would not be required pursuant to Item 404(a) of Regulation S–K;[75] does not possess an interest in any other transaction for which disclosure would be required pursuant to Item 404(a) of Regulation S–K; and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S–K. [76] With respect to a closed-end investment company, a ''Non-Employee Director'' [77] will be a director who is not an ''interested person'' of the issuer, as that term is defined in section 2(a)(19) of the Investment Company Act.[78]

Although the new rule would not prohibit Non-Employee Directors or the full board from awarding themselves grants of issuer equity securities, such grants would be subject to state laws governing corporate self-dealing. [79] The Commission believes that traditional state law fiduciary duties facilitate compliance with the underlying purposes of section 16 by creating effective prophylactics against possible insider trading abuses.

E. Dispositions to the Issuer

Both as proposed in 1995 and as adopted, the new rule exempts any transaction involving a disposition of issuer equity securities to the issuer, provided that such disposition is approved in advance by the board of directors, a committee of Non-Employee Directors, or the shareholders.[80] However, if a disposition is a Discretionary Transaction, as defined in the new rule, it must instead satisfy the conditions specifically applicable to Discretionary Transactions to be exempt.[81]

The 1994 Release proposed amendments to current Rule 16b-3(f) to exempt exercise withholding rights and the surrender or withholding of issuer equity securities in satisfaction of a tax-withholding obligation. These proposed amendments are not adopted because the same transactions will be exempted pursuant to the broad scope of the new rule.[82] For example, the new rule will exempt dispositions of issuer equity securities to the issuer pursuant to: (1) The right to have securities withheld, or to deliver securities already owned, either in payment of the exercise price of an option or to satisfy the tax withholding consequences of an option exercise or the vesting of restricted securities, (2) the expiration, cancellation, or surrender to the issuer of a stock option or stock appreciation right in connection with the grant of a replacement option or right, or (3) the election to receive, and the receipt of, cash in complete or partial settlement of a stock appreciation right. Additionally, the new rule will give the issuer the

[73] Current Rule 16b–3(c)(2)(i).

[74] New Rule 16b–3(b)(3)(i).

[75] 17 CFR 229.404(a). This item generally requires disclosure of related party transactions where the amount involved exceeds $60,000. For purposes of the definition of ''Non-Employee Director,'' each test that refers to S–K Item 404 will be measured by reference to the Regulation S–K disclosure Item, whether the disclosure requirements applicable to the issuer are governed by Regulation S–K or S–B.

[76] 17 CFR 229.404(b). This item generally requires disclosure of business relationships with the registrant where the amount involved exceeds greater than five percent of the consolidated gross revenue of either the registrant or the other entity.

[77] New Rule 16b–3(b)(3)(ii).

[78] 15 U.S.C. 80a–2(a)(19).

[79] *See* n. 17, above.

[80] New Rule 16b-3(e).

[81] *See* Section II.C, above.

[82] Like most other exempt transactions, these transactions will be reportable on Form 5. *See* Section IV.C, below. However, where the surrender or withholding transaction is in connection with the exercise or conversion of a derivative security, it should be reported on the same Form 4 as the exercise or conversion. *See* Section IV.D, below.

flexibility to redeem its equity securities from insiders in connection with non-exempt replacement grants, and in discrete compensatory situations such as individual buy-backs in connection with estate planning.

The exemption, which was favorably received by commenters, is adopted substantially as proposed.[83] A note has been added to the new rule to clarify that if the terms of a subsequent transaction are provided for in the transaction as initially approved, the subsequent transaction does not require further specific approval.[84] For example, the exemption will apply to the disposition to the issuer of a derivative security upon its exercise or conversion, if such exercise is pursuant to the terms provided in the derivative security as initially approved in its acquisition.

In the context of a merger, the new rule will exempt the disposition of issuer equity securities (including derivative securities) solely to the issuer, provided the conditions of the rule are satisfied.[85] Dispositions of such securities to parties other than the issuer, such as an acquiror, are not covered by the rule and consequently would not be eligible for exemption under the rule. The specific terms of the disposition, including price, will require prior approval of either the full board, the committee of Non-Employee Directors or shareholders. If shareholder approval is solicited and is to be the condition relied upon for exemption, the proxy card and proxy statement both should provide that a vote to approve the merger also shall constitute a vote to approve insiders' exempt dispositions of issuer equity securities to the issuer.[86]

[83] The 1995 Release solicited comment as to whether a disposition that satisfies either condition should be exempt only if the officer or director making the disposition had not acquired issuer equity securities on a non-exempt basis during the previous six months at a price lower than that at which the disposition was made. New Rule 16b-3(e), as adopted, does not require satisfaction of this condition with respect to any disposition.

[84] Note (3) to new Rule 16b–3. *See* Section II.D.3, above.

[85] If such securities were acquired in reliance on new Rule 16b-3(d)(3), the six-month holding period will need to be satisfied prior to such disposition in order for the acquisition to be exempt.

[86] Any such proxy statement should describe the security holdings of each officer and director as to which approval of an exempt disposition is solicited. *See* Item 5 of Schedule 14A (17 CFR 240.14a-101), which requires, in a solicitation made on behalf of the registrant, a brief description by security holdings of any direct or indirect substantial interest in any matter to be acted upon of each person who has been a director or executive officer of the registrant at any time since the beginning of the last fiscal year, unless such interest gives rise to a benefit that is shared on a *pro rata* basis by all other holders of the same class. *See also* Item 3 of Schedule 14C (17 CFR 240.14c-101).

III. Derivative Securities

A. Compensatory Cash-Only Instruments

The proposal to apply Section 16 and the rules thereunder to compensatory instruments that can be redeemed or exercised solely for cash (''cash-only instruments'') elicited divergent views. Cash-only instruments provide performance-based cash compensation to employees, using stock price as a measure of company performance. Although such instruments do not provide employees with an equity interest in the employer that may be traded in securities markets, they do provide the equivalent opportunity to profit based on an increase in market price.

Currently, a cash-only instrument whose value is derived from the market value of an issuer equity security[87] is excluded from the definition of derivative security if it: (i) Is awarded pursuant to an employee benefit plan that satisfies specified provisions of Rule 16b-3,[88] or (ii) may be redeemed or exercised only upon a fixed date or dates at least six months after award, or upon death, retirement, disability or termination of employment.[89] The 1994 Release included a proposed modification of the derivative security definition that would have excluded all cash-only instruments issued in the context of an employer-employee compensation arrangement, including compensation arrangements between a company and its non-employee directors. As discussed above,[90] the subsequent Cash-Only Release solicited comment as to whether the existing exclusion for cash-only instruments is overly broad in light of the purposes of Section 16.

Most commenters responding to the Cash-Only Release favored an unconditional exemption for cash-only instruments, stressing that such instruments are not transferable and hence do not give rise to market transactions. However, the 1995 Release indicated that, as a corollary to broadening the Rule 16b-3 exemption, the Commission contemplated rescinding the exclusion for cash-only instruments. Such instruments thus would be on a par with stock options and other instruments settled in stock, and would be both reportable and eligible for exemption under Rule 16b-3 to the same extent. This approach is consistent with the purpose of the 1995 proposals to eliminate bias toward compensation paid in cash by exempting from the short-swing profit recovery provisions of section 16(b) virtually all compensatory transactions between an issuer and its officers and directors. Commenters addressing this aspect of the 1995 proposals divided in their views; some indicated that the exclusion should be eliminated because the insider retains the same opportunity to profit as presented by an equity-settled instrument, while most favored retention of the exclusion because transactions in these instruments do not affect securities markets.

As an integral aspect of the 1995 approach, the Commission has determined to rescind Rule 16a-1(c)(3) as contemplated. The Commission believes that because the opportunity for profit based on price movement in the underlying stock embodied in a cash-only instrument is the same as for an instrument settled in stock, cash-only instruments should be subject to Section 16 to the same extent as other issuer equity securities. However, the Commission also recognizes that cash-only instruments generally are not traded in market transactions by insiders. Accordingly, transactions in these instruments are made eligible for exemption on the same basis as other transactions in issuer equity securities between an issuer and its officers and directors.

This change renders uniform the application of a simplified set of rules applying to all compensatory instruments that provide an opportunity to profit based on issuer equity performance. It is anticipated that, by eliminating the more burdensome aspects of Rule 16b-3 and bringing cash-only instruments within its scope, the rules adopted today will reduce the regulatory complexity and uncertainty that has discouraged the use of equity as compensation. Accordingly, although transactions in cash-only instruments will be reportable following effectiveness of the amended rules,[91] such instruments will be eligible, and should usually qualify, for exemption from section 16(b) pursuant to new Rule 16b-3.[92] Commenters' concerns

[87] An instrument whose value is not derived from the value of an issuer equity security is not currently and, under the rules as adopted, will not be subject to section 16.

[88] Current Rule 16a-1(c)(3)(i), which references the provisions of Rules 16b-3(a)(1) (written plan requirements), 16b-3(a)(2) (transferability restriction) and 16b-3(c)(2) (disinterested administration or formula plan).

[89] Current Rule 16b-3(c)(3)(ii).

[90] *See* Section I, above.

[91] *See* the discussion of reporting at Section VII.A, below, concerning the transition to the new rules.

[92] Most of these instruments are acquired from the issuer and meet the other conditions of the new Rule. Of course, the acquisition of a cash-only instrument from a party other than the issuer would not be within the scope of the Rule.

regarding the lack of an exemption for participant-directed transactions in cash-only instruments, such as the deferral of salary or fees into phantom stock, have been addressed by expanding the proposed exemption for grants and awards to cover participant-directed acquisitions of issuer equity securities.[93]

B. Over-Allotment Options

Over-allotment options (sometimes referred to as ''Green Shoe options'') facilitate public offerings and do not lend themselves to the speculative abuse Section 16 was designed to prevent. Accordingly, in 1994 the Commission proposed codification of staff interpretive relief[94] that would specifically exclude from the definition of ''derivative security'' options granted to an underwriter in a registered public offering for the purpose of satisfying over-allotments.

In response, some commenters suggested that the exclusion should not be limited to over-allotment options granted in registered public offerings, as proposed. Other commenters differed in their responses to the request for comment as to whether the exclusion should be limited specifically to those over-allotment options that comply with the National Association of Securities Dealers (''NASD'') regulation stating that it is ''unfair and unreasonable'' for an over-allotment option in connection with a firm commitment undertaking to exceed 15 percent of the amount of securities offered, exclusive of the over-allotment option.[95] However, given that the primary need for the exclusion relates to over-allotment options granted in registered public offerings, which as a practical matter generally are subject to the NASD regulation, the rule is adopted in the form proposed,[96] without a specific requirement for compliance with the NASD regulation.

C. Surrender and Withholding Rights in Connection With Exercise or Tax Withholding

As discussed above,[97] the exercise of a right to surrender or withhold securities in connection with the exercise of a derivative security or satisfaction of a tax obligation will be an exempt disposition of issuer equity securities to the issuer. Whether such a right, when granted, constitutes a derivative security is a separate issue.

Currently, the right to withhold securities in satisfaction of a tax obligation is treated as a derivative security separate from the equity or derivative security to which it relates.[98] However, this right, as well as the right to have securities withheld in satisfaction of an exercise price, properly may be viewed as an integral feature of the related security.[99] Accordingly, the 1994 Release proposed a new rule that would exclude from the definition of ''derivative security'' these withholding rights, as well as rights to surrender previously owned securities in satisfaction of either an exercise price or a tax obligation incurred upon the exercise of derivative securities or the vesting of restricted shares.

Commenters suggested that the proposed rule's reference to ''restricted shares'' circumscribed too narrowly the class of securities, other than derivative securities, to which withholding and surrender rights apply. Commenters indicated that the receipt of a security also could be a taxable event. In response to these comments, the rule as adopted[100] has been broadened to exempt also withholding and surrender rights that apply to ''equity securities'' rather than only ''restricted shares,'' and that arise with respect to the receipt as well as the exercise or vesting of a derivative or equity security. With respect to a tax-withholding right, the exclusion from the definition of ''derivative security'' is not limited to the insider's marginal tax rate with respect to the underlying transaction. However, the amount withheld must be applied to the tax obligation generated by the underlying transaction.

D. Value Derived from Market Price of an Equity Security

In the 1994 Release the Commission proposed an amendment to the definition of ''derivative security''[101] to codify the staff interpretive position that an instrument is not within the scope of Section 16 if it includes a material non-market price based condition (such as return on equity) to exercise or settlement.[102] Although the Commission endorses the application of this analysis to date, the Commission also recognizes the advantage in retaining the interpretive role of the staff to modify or develop further this analysis as may be appropriate with respect to new instruments that may be developed in the future. Accordingly, the proposed amendment is not adopted, and questions regarding this analysis should continue to be addressed to the staff. For purposes of this interpretive analysis, a condition will be considered ''material'' only if it possesses substance independent of the passage of time or continued employment.

Most importantly, the Commission believes that under the new rule much of the incentive to characterize these instruments one way or the other will evaporate. In almost all cases, they will be exempt from Section 16(b) because they will be able to satisfy easily one of the simplified approval conditions. Consequently, the only effect of a particular characterization is on the need for and timing of any reporting under section 16(a). The Commission does not believe that relief generally will be needed for this purpose.

IV. Revisions to Reporting System

A. Overall Approach

In the 1994 Release, the Commission stated that it was reconsidering its approach to the reporting of transactions pursuant to the Section 16 regulatory scheme. The release, without endorsing a specific proposal, solicited comment on five alternative proposals seeking to simplify reporting through the following three different basic approaches: (1) Deleting or substantially reducing the reporting of exempt transactions; (2)

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[93] *See* Section II.D.1, above.

[94] *See Video Technology (Overseas) Limited/Davis Polk & Wardwell* (June 17, 1992), and *Davis Polk & Wardwell* (July 16, 1992). Absent this relief, an over-allotment option written by an insider could be characterized as the establishment of a put equivalent position and deemed sale of the underlying stock. Subsequent expiration of the unexercised option arguably could constitute a purchase of the underlying security, matchable with the over-allotment option grant or other sales by the insider within a six-month period.

[95] Paragraph (c)(6)(B)(ix) of Article III, Section 44 of the NASD Rules of Fair Practice (the Corporate Financing Rule).

[96] New Rule 16a-1(c)(7).

[97] *See* Section II.E, above.

[98] As an alternative to separate reporting, a tax withholding right currently may be noted as a feature of the equity or derivative security to which it relates. *See The Clorox Company* (Mar. 27, 1992). An insider's failure to report such right does not give rise to a disclosure obligation under Item 405 of Regulation S–B or Regulation S–K. *See Skadden, Arps, Slate, Meagher & Flom* (June 8, 1992).

[99] *Cf. Xerox Corporation* (Jul. 7, 1992) (the staff reached this conclusion with respect to a mandatory tax withholding feature).

[100] New Rule 16a-1(c)(3) (proposed as Rule 16a-1(c)(8)).

[101] Proposed Rule 16a-1(c)(9).

[102] This is an interpretation of current Rule 16a-1(c), which requires a derivative security to have ''an exercise or conversion privilege at a price related to an equity security, or * * * a value derived from the value of an equity security.'' *See General Mills, Inc.* (Jan. 31, 1992); and *Certilman Balin Adler & Hyman* (Apr. 20, 1992). *See also Boston Edison Company* (Mar. 19, 1992); *Merrill Lynch & Co.* (Aug. 28, 1992) Q. 4. (Registrant discretion to adjust the applicable performance measure, as to either duration or level of performance, excludes a performance unit from being a derivative security.)

reducing the flexibility currently provided insiders with respect to use of Form 4 or 5 to report a number of exempt transactions; and (3) requiring issuer annual reporting of insider holdings and information as to transactions during the fiscal year.

These varied approaches highlighted several questions as to what extent, if at all, investors need information with respect to exempt transactions and whether investors need a reconciliation of insiders' equity holdings from year to year. The 1994 Release also requested comment on whether exercises and conversions of derivative securities exempt from section 16(b), as well as small acquisitions, should continue to be reported on an insider's next required Form 4 or 5, whichever is earlier.

As a corollary to the amendments to Rule 16b-3 proposed in 1995, the 1995 Release requested comment on an additional reporting approach. Pursuant to the scheme contemplated by the 1995 Release, several types of transactions, such as routine acquisitions in broad-based employer plans, would not need to be reported at all. The remaining transactions, including grants and awards exempt under Rule 16b–3, generally would be reported on a Form 4 no later than ten days following the end of the month in which the transaction occurred. Exempt option exercises either would have remained reportable on an insider's next required Form 4 or 5, or would have been reported on Form 4.

The approach selected by the Commission is based on the 1995 approach, but includes elements from the 1994 Release. As outlined in Sections IV.B through D below, the revisions simplify the reporting framework by providing that several types of transactions exempt from section 16(b) no longer will be required to be reported at all. Transactions exempt from short-swing profit recovery that still must be reported will be reported on Form 5, and non-exempt transactions will be reported on Form 4, except that exercises and conversions of derivative securities (whether or not exempt) will be reported on Form 4, and small acquisitions will be reported on Form 5. There no longer will be a category of transactions reported on a ''next required Form 4 or Form 5, whichever is earlier'' basis, which commenters have criticized as being confusing and possibly leading to inadvertent late filings. The Commission believes that this new approach simplifies insiders' reporting obligations without adversely affecting the timing and amount of information that is significant to investors.

The 1994 Release solicited comment on whether the Commission should eliminate the ''total holdings'' column in Forms 4 and 5 or simplify the data provided by insiders to reconcile their total holdings. Alternatively, commenters were asked to consider whether a new column should be added to Forms 4 and 5 requiring insiders to reconcile their current holdings with those reported in a previous filing, particularly if exempt transactions no longer were to be reported.

Although several commenters supported elimination of the total holdings columns, they are being retained. Form 4 disclosure of total holdings assists users of Section 16 information in evaluating the significance of a transaction to a particular insider, and Form 5 total holdings provide a useful reconciliation of changes in holdings resulting from exempt and other types of transactions permitted to be reported on a deferred basis.

The Commission also has decided not to impose any new reconciliation requirements on insiders. Instead, as currently, the requirement to report total holdings on Forms 4 and 5 will remain limited to the class of securities to which a transaction is reported, and changes in holdings associated with transactions eligible for deferred reporting on Form 5 will not have to be reflected in the month-end total holdings reported on Form 4, unless the transaction voluntarily has been reported earlier on Form 4.[103]

Also in keeping with current practice, insiders will reflect changes in holdings resulting from transactions that are exempt from section 16 reporting in the holdings column of the next otherwise required Form 4 or 5 filed to report a transaction involving the same class of securities. Insiders may choose, but are not required, to include footnote disclosure indicating the date and nature of transactions not required to be reported. To the extent that information about a transaction not required to be reported under the revised rules is not readily available, the insider should provide a ''best estimate'' of the change in holdings resulting from the transaction.[104] The purpose of the best estimate is not indirectly to require insiders to report transactions exempt from Section 16(a), but rather, to provide users of section 16 information with holdings information that is as accurate as reasonably possible.[105]

In a separate effort to facilitate the filing of Section 16(a) reports and encourage the speedy dissemination of information considered valuable by many members of the investment community, the Commission has expanded the capacity of the EDGAR system to accommodate the electronic filing of those reports.[106] Insiders have been able to electronically file their section 16 reports on a voluntary basis since December 18, 1995.[107]

B. Transactions No Longer Reported at All

- ''Spinoff'' or other dividend transactions in which equity securities of a different issuer are distributed to insiders of an issuer[108]
- Acquisitions pursuant to a dividend or interest reinvestment plan[109]
- Transactions in a tax-conditioned plan,[110] except for discretionary intra-plan transfers and cash distributions[111]

[103] Instruction 4(a)(i) to Form 4.

[104] There may not be sufficient information available concerning certain types of transactions that are not required to be reported under the revised rules, *e.g.*, periodic purchases in tax-conditioned employee benefit plans, to establish a best estimate regarding changes in holdings. In those cases, the holdings column will not be updated until the information becomes available.

[105] When accurate information concerning holdings that were estimated by an insider becomes available, it should be reflected on the next otherwise required Form 4 or 5 that references the same class of securities. Modifications in holdings information to reflect variances in actual holdings from estimated holdings will not trigger the disclosure requirements of Item 405 of Regulations S–K and S–B.

[106] *See* Release Nos. 33–7231 (October 5, 1995) (FR) and 33–7241 (November 13, 1995) (60 FR 57682). At the same time, the EDGAR system was expanded to accommodate the electronic filing of reports pursuant to Rule 144 [17 CFR 230.144] under the Securities Act (15 U.S.C. 77a *et seq.*).

[107] Instruction 3 to Form 3 and Instruction 2 to Forms 4 and 5 have been amended to add a reference to electronic filing.

[108] New Rule 16a-9(a). The current exemption for stock splits and dividends has been expanded to include specifically a stock dividend in which equity securities of a different issuer are distributed. *See* Section V.C, below.

[109] New Rule 16a-11. *See* Section V.A, below.

[110] New Rules 16a–3(f)(1)(i)(B) and 16b–3(c). Current Instruction 4(a)(ii) to Form 5 sets forth information regarding the reporting of transactions and holdings in ongoing securities acquisition plans. Among other things, it states that transactions and holdings may be reported as of the most recent date for which information is available, and that acquisitions may be reported on an aggregate basis. The 1994 Release proposed amendments to Instructions 4(a) (ii) and (iv) to Form 5 and the Note to Instruction 4(a)(ii) to Form 4 to codify interpretations regarding aggregated reporting. Because these acquisitions no longer are required to be reported under the revised rules, the proposed amendments are not adopted. Further, current Instruction 4(a)(ii) to Form 5 is rescinded since the transactions addressed will not be reported under the revised rules.

[111] Defined as ''Discretionary Transactions'' pursuant to new Rule 16b–3(b)(1). *See* Section II.C, above. These transactions will continue to be reported on Form 5, as discussed in Section IV.C below.

- Post-termination transactions by a former officer or director that are exempt from section 16(b) or that do not occur within six months of an opposite non-exempt transaction [112]
- Acquisitions or dispositions of securities pursuant to a domestic relations order meeting certain conditions of the Internal Revenue Code [113]
- Transactions reflecting a mere change in form of beneficial ownership [114]
- Exempt cancellations or expirations of a long derivative security where no value is received [115]

The above are transactions that must be reported under current rules, but will not be reported under the revised rules.[116] In addition to providing a means for enforcing section 16(b) short-swing profit liability, section 16(a) reporting serves the separate purpose of informing the market of transactions that reflect insiders' views of their companies' prospects. Because the transactions listed above generally do not provide investors meaningful information consistent with this purpose, the Commission deems it appropriate to relieve insiders from unnecessary burdens by exempting these transactions from reporting. There was nearly unanimous support among the commenters for these revisions, which are adopted substantially as proposed.

The revised rules provide a specific exemption from section 16 for changes in the form of beneficial ownership (but not in the extent of an insider's pecuniary interest in the subject securities).[117] Although commenters generally supported the proposal to add a new transaction code to Form 5 to facilitate the reporting of these transactions, several commenters suggested eliminating any reporting requirement regarding changes in the form of beneficial stock ownership. Since these transactions do not reflect any change in an insider's pecuniary interest in an issuer's equity securities, reporting seems to serve little purpose, and the Commission has determined that they should be exempt from reporting.[118]

C. Transactions To Be Reported on Form 5

- Transactions exempt from section 16(b), except for: (1) Transactions listed in Section IV.B above that are not required to be reported at all pursuant to the changes being adopted; and (2) exempt exercises and conversions of derivative securities [119]
- Small acquisitions [120]

A substantial number of commenters supported an alternative reporting approach described in the 1994 Release involving elimination of the requirement to report transactions exempt from section 16(b) liability, and many also supported the elimination of Form 5. In contrast, however, a number of commenters thought that the requirement to report exempt transactions should be retained, and indicated that Form 5 is a useful document.

As discussed above, the Commission is eliminating the reporting of several classes of exempt transactions, including non-volitional transactions in tax-conditioned plans. The Commission expects that elimination of reporting of these routine plan transactions will greatly alleviate insiders' burden of reporting exempt transactions without resulting in any significant loss of information that users of Section 16 information find valuable.

The Commission believes, however, that the reporting of other types of exempt transactions, such as option grants and other acquisitions and dispositions of securities in plans that are not tax-conditioned, may provide the marketplace with useful information. These transactions typically are less automatic and may reflect insiders' views of their companies' prospects. The Commission also believes that continued annual reporting of these transactions on Form 5 is appropriate.

In view of the change discussed above concerning the treatment of cash-only instruments that derive value from the market value of equity securities of the issuer,[121] transactions involving such instruments will be reported on Form 4 or 5, depending on whether they are exempt. It is anticipated that most of these will be exempt pursuant to new Rule 16b–3 and thus reportable on Form 5.

Pursuant to the reporting scheme contemplated by the 1995 Release, exempt grants, awards and dispositions of securities in plans that are not tax-conditioned, as well as intra-plan transfers and cash distributions in tax-conditioned plans, would have been reported on Form 4 no later than ten days after the close of the month in which the transaction occurred. The Commission has determined to require reporting of these transactions on Form 5 rather than Form 4, in view of the remarks of many commenters who felt that the accelerated reporting of exempt transactions on Form 4 would prove unworkable as the result of the necessary plan information not being available in sufficient time to meet Form 4 filing deadlines. Further, while some commenters expressed a preference for reporting transactions on Form 4 rather than waiting until year-end to file a Form 5 and possibly overlooking a transaction, others expressed a need for flexibility and indicated that annual reporting is preferable. Those who prefer voluntarily to report exempt transactions on Form 4, of course, may continue to do so, as is currently permitted.

The 1995 Release also proposed elimination of the requirement that gifts be reported. Since some commenters find gift activity to be a useful indication of an insider's view of the company's prospects (for example, where a large charitable gift effects a significant disposition) the requirement to report gifts on Form 5 is retained.

Small acquisitions, which currently are reported on a next required Form 4 or Form 5 basis, will be reported on Form 5.[122] The 1994 Release solicited

[112] New Rule 16a–2(b).

[113] New Rule 16a–12. *See* Section V.B below for further discussion of this new rule, which expands the existing exemption relating to Qualified Domestic Relations Orders.

[114] New Rule 16a–13.

[115] New Rule 16a–4(d).

[116] Under the current and revised requirements, stock splits, stock dividends with respect to the same issuer and the acquisition of certain pro rata rights do not have to be reported pursuant to Rule 16a–9. Further, transactions by odd-lot dealers in odd-lots are exempt from current and revised reporting requirements pursuant to Rule 16a–5. Cash-only instruments also are not now reported since they are excluded from the definition of ''derivative securities'' under current Rule 16a–1(c)(3) if they meet certain conditions, but they will be reported under the new rules.

[117] New Rule 16a–13. For example, distributions of equity securities from an employee benefit plan to an insider participant would be a mere change in the form of beneficial ownership from indirect to direct where the securities previously had been attributed to the insider.

[118] Accordingly, the proposed transaction code is not adopted. The new rule makes it clear that exercises and conversions of derivative securities and the deposit or withdrawal of shares into or from a voting trust are not to be regarded as mere changes in the form of beneficial ownership, and will continue to be reported. If a deposit or withdrawal of shares into or from a voting trust satisfies the conditions of Rule 16b–8 (17 CFR 240.16b–8), the transaction is exempt from section 16(b).

[119] New Rule 16a–3(f)(1)(i).

[120] New Rule 16a–6.

[121] *See* Section III.A, above.

[122] New Rule 16a–6, like the current rule, provides only a deferral, not an exemption, from reporting. All small acquisitions, unless otherwise exempt, must be reported on Form 5. As is currently the case, if an acquisition no longer qualifies for the reporting deferral in paragraph (a) of Rule 16a–6, all such acquisitions that have not yet been reported will continue to be reported on Form 4 within ten days after the close of the calendar month in which the conditions of that

Continued

comment as to whether reporting could be made more convenient for insiders, consistent with the informational needs of the investing public, by permitting small acquisitions to be reported solely on Form 5, and the majority of commenters favored this approach.[123]

Additionally, as proposed in the 1994 Release, the small acquisitions reporting rule is revised to exclude from the $10,000 threshold acquisitions occurring within the prior six months of the current acquisition that were exempted by rule from Section 16(b), or previously reported on Form 4 or 5. The revised rule also clarifies, as proposed, that the current acquisition cannot be disregarded in calculating the $10,000 threshold. All the commenters remarking on these clarifications supported them.

D. Transactions to be Reported on Form 4

- Transactions not exempt from Section 16(b), except for small acquisitions [124]
- Exercises or conversions of a derivative security, whether or not exempt from Section 16(b) [125]

Transactions not exempt from short-swing profit recovery that currently are reported on Form 4 generally will continue to be reported on Form 4, including non-exempt exercises and conversions of derivative securities. In addition, as a change from the current system, exercises and conversions of derivative securities exempt from short-swing profit recovery under either new Rule 16b–3 or Rule 16b–6(b) always will be reported on Form 4,[126] since the Commission is eliminating the current method of reporting these transactions on a next Form 4 or Form 5 basis. Reporting of these transactions has been shifted to Form 4 rather than Form 5 due to concerns expressed by commenters that the timing of option exercises represents an important indication of insiders' views of their companies' prospects.

E. Joint and Group Reporting

Currently, when more than one person subject to Section 16 is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners and file separate reports. To reduce this duplicative reporting, the Commission is adopting rules that permit such persons to file their reports either separately or jointly, as proposed in the 1994 Release.[127]

Under the new reporting scheme, where persons in a group have reporting obligations, the filing of collective reports on behalf of all group members is permitted.[128] Such joint and group filings, and any amendments, may be submitted by any designated constituent beneficial owner. Required information must be given for each beneficial owner, and such filings must be signed by, or on behalf of, each beneficial owner by an authorized person, with statements confirming the delegation of signature authority attached to the filing.

Beneficial owners making a joint or group filing may authorize one of the beneficial owners or a third party to sign on their behalf, provided that confirming statements are attached to the filing, or are provided by amendment as soon as practicable, with respect to each owner delegating signature authority, unless such a confirmation still in effect is on file with the Commission.[129] Of course, to the extent a sufficiently broad power of attorney previously was filed, such as with a Schedule 13D, that power of attorney may be incorporated by reference in a Section 16(a) filing. Each beneficial owner will retain individual liability for compliance with the filing requirements, including the obligation to assure that the filing is timely and accurately made.[130]

Comment was solicited in the 1994 Release as to whether, in the alternative, authority to make a group Section 16 filing could be presumed based on the filing of a group Schedule 13D, such that all group members thereby would be deemed to have granted authority to any group member to file a Section 16 form. The commenters rejected the creation of such a presumption under any circumstances other than a sufficiently broad power of attorney, *i.e.*, one that specifically authorizes the beneficial owner to file Section 16 reports on his or her behalf. One of the commenters noted that a Schedule 13D group member could file Section 16 reports on behalf of another group member who may not even be aware that he or she has become subject to Section 16, or who may file duplicative reports. Therefore, authority to make a group Section 16 filing will not be presumed based upon the filing of a group Schedule 13D.

F. Trust Transactions

Under the revised rules, and as proposed in the 1994 Release, a trust is subject to section 16 only if it beneficially owns more than ten percent of a class of registered equity securities of an issuer.[131] The Commission has rescinded the provision imposing section 16 reporting obligations on a trust that does not own more than ten percent of an issuer's securities if it has an insider trustee with investment control over the issuer's securities held by the trust, and the trustee or a member of the trustee's immediate family has a pecuniary interest in the securities.[132] Since the primary effect of the current dual reporting standard is to create duplicative reporting obligations, particularly with respect to family trusts, the imposition of independent Section 16 obligations on the trusts does not appear necessary.

There will continue to be some instances where a trust and a trust beneficiary that both are subject to Section 16 must report separately with respect to the same transaction because they share investment control. The 1994 Release proposed adding a new note to the reporting rules to provide that transactions attributed to a trust beneficiary may be reported by the trustee on behalf of the beneficiary. A

paragraph no longer are met. *See* Rule 16a–6(b) (17 CFR 240.16a–6(b)).

[123] As discussed below, exempt exercises and conversions of derivative securities will be reported on Form 4 under the revised rules.

[124] New Rule 16a–3(g)(1).

[125] *Id.*

[126] If a derivative security is exercised or converted before its exempt grant otherwise must be reported, the grant should be reported at the same time as the exercise or conversion.

[127] New Rules 16a–3(j) and 16a–1(a)(3) reflect this change. Forms 3, 4 and 5 and the Instructions thereto also are modified to permit joint and group filings. In response to a commenter's request for clarification, the revised instructions to the forms indicate that, for their convenience, joint filers may reflect transactions in separately owned securities either in an individually filed or jointly filed report.

[128] Joint and group filings can be used, for example, by parents and subsidiaries, trusts and trust beneficiaries, partnerships, or Schedule 13D groups (17 CFR 240.13d–101). The group itself is not a reporting person for section 16 purposes, but under the revised rules, group members may choose to file collective reports to satisfy their individual filing obligations. A group member is not required to report transactions by another group member, however, unless he or she has or shares a pecuniary interest in the securities held by such other member.

[129] Currently, General Instruction 7 to Forms 3, 4 and 5 permits a form filed for an individual to be signed on behalf of the individual by an authorized person. This instruction remains the same. General Instruction 5 to Form 3 and General Instruction 4 to Forms 4 and 5 are amended to specify the means of reporting pecuniary interest of multiple beneficial owners. A corresponding amendment also has been made to General Instruction 6 to each Form.

[130] *Cf. In the Matter of Bettina Bancroft*, Release No. 34–32033, AP 3–7999 (Mar. 23, 1993).

[131] New Rule 16a–8(a)(1). *See Proskauer Rose Goetz & Mendelsohn* (Apr. 29, 1991) (a trust that holds more than ten percent of a class of equity securities registered under section 12 is the beneficial owner of those securities for purposes of section 16).

[132] Current Rule 16a–8(a)(1)(ii) (17 CFR 240.16a–8(a)(1)(ii)). A conforming amendment to Rule 16a–2(d)(2) (17 CFR 16a–2(d)(2)) reflects the rescission of Rule 16a–8(a)(1)(ii).

commenter objected to the proposed note on grounds that a trustee should not report on behalf of a trust beneficiary unless formally authorized to do so. Therefore, the note has been modified to indicate that, as currently, a trustee may file a separate report on behalf of a beneficiary if a statement confirming the delegation of signature authority is filed with the Commission.[133] The trustee also may file a consolidated report on behalf of the trust and one or more trust beneficiaries if authorized to do so by the beneficiaries. Regardless of whether the trustee reports on behalf of a beneficiary or the beneficiary personally files reports, the beneficiary subject to a reporting requirement retains individual liability for compliance with that requirement.

G. Compliance With the Reporting Requirements

Under the revised rules, as proposed, registrants will be required to set off any disclosure required by Item 405 of Regulation S–K or S–B of insider non-compliance with Section 16(a) reporting obligations under an appropriate and discrete caption.[134] In response to commenters' remarks, this new caption will read ''Section 16(a) Beneficial Ownership Reporting Compliance'' rather than ''Section 16(a) Reporting Delinquencies,'' as proposed in the 1994 Release. The new caption should enable interested parties readily to locate this disclosure, which often consists of only a sentence or two, and prevent the information from being buried among unrelated disclosure.

In addition, Item 405 is revised to clarify the nature of the issuer's obligation to review insiders' filings in order to determine whether there are any delinquent reports that must be disclosed. The issuer is entitled to rely on the Forms 3, 4 and 5 furnished to it, as well as written representations by the insider that no Form 5 is required.

New language has been added, as proposed, to make it clear that the issuer is obligated to consider the absence of certain forms.[135] The absence of a Form 3 is an indication that disclosure is required. Similarly, the absence of a Form 5 is an indication that disclosure is required, unless the issuer has received a written representation that no Form 5 is required, or otherwise knows that no such filing is required.[136] While some commenters objected to this clarification on grounds that it would place an inappropriate burden of investigation on issuers to determine that a form is not required, the Commission views it merely as a codification of previous Commission guidance concerning issuers' obligations.

The 1994 Release solicited comment on whether Item 405 should require issuers to include in their filings an affirmative statement that no section 16(a) delinquencies were required to be reported, if such was the case. It had been suggested that an affirmative statement requirement would prevent issuers from overlooking the Item 405 disclosure requirement. Since most of the commenters addressing the issue opposed an affirmative statement requirement, and there is little evidence that issuers are overlooking Item 405 disclosure, the Commission is not adopting such a requirement.

Finally, as noted in the 1994 Release, the Commission is aware of and encourages the practice of many issuers to assist their officers and directors in complying with their section 16(a) reporting obligations. [137] Since the use of powers of attorney is permitted, it is also possible for an issuer to coordinate the filing of its officers' and directors' reports by having the corporate secretary or other agent obtain powers of attorney from these reporting persons, collect information every month about their transactions subject to Section 16, and file required reports by the due date.[138]

H. Equity Swaps

The 1994 Release contained a section analyzing Section 16 issues relating to equity swaps, and soliciting comments upon the analysis and related issues.[139] Equity swaps are individually negotiated contracts in which the specific terms may vary from agreement to agreement. For instance, an equity swap may take the form of an agreement in which one party holding shares of equity securities agrees to pay, or ''swap,'' the return [140] on those securities in exchange for the return on an equity index, basket of equities, or an interest rate-based cash flow. Generally, commenters agreed that the Commission's analysis of equity swaps as involving the economic equivalent of tandem stock appreciation and depreciation rights reflects economic reality. Some, however, suggested simplified approaches to analysis and reporting.

The Commission reiterates that Section 16 consequences arise from an equity swap transaction where either party to the transaction is a Section 16 insider with respect to a security to which the swap agreement relates.[141] The Commission agrees with commenters, however, that any manner of reporting an equity swap, or an instrument with similar characteristics, that provides an adequate description is appropriate. The specific method of reporting described in the 1994 Release is not the only acceptable method. However, there are certain items of information that must be set forth for an adequate presentation. To provide an adequate description, an insider must report the entry into and termination of the equity swap, as well as any interim events to the extent such events change the insider's call or put equivalent position.[142] To be adequate, each report must provide the following information: (1) The date of the transaction; (2) the term; (3) the number of underlying shares; (4) the exercise price (*i.e.*, the dollar value locked in); (5) the non-

[133] Note to new Rule 16a–8(b)(3).

[134] New Item 405(a)(1) of Regulations S–K and S–B. Additionally, a technical amendment has been made to Item 405 of Regulation S–B to correct the reference to Rule 16a–3(d) (17 CFR 240.16a–(d)) by replacing it with a reference to Rule 16a–3(e) (17 CFR 240.16a–3(e)).

[135] New Item 405(a)(2) of Regulations S–K and S–B. This obligation was set forth in the 1991 Adopting Release, n. 231 and surrounding text.

[136] A ''safe harbor'' from disclosure is available for an issuer who receives a written representation and keeps it for two years. *See* Item 405(b)(2).

[137] On February 14, 1996, the Commission included in the SEC News Digest and posted on the Commission's Internet Web Site an announcement encouraging the electronic filing of Forms 3, 4 and 5 (as well as Form 144) and providing guidance on how companies that choose to do so may assist filers in the electronic filing process.

[138] Of course, insiders giving powers of attorney would still retain individual liability for compliance. *See* n. 130, above.

[139] *See* Section III.G of the 1994 Release for the Commission's detailed analysis.

[140] For purposes of this analysis, ''return'' may include dividends paid on the equity instrument, as well as the change in market value.

[141] This analysis addresses solely the application of Section 16 to equity swaps to the extent that they are engaged in by insiders. The discussion does not analyze the status of these transactions or the parties thereto under any other provision of the federal securities laws.

However, as stated in the 1994 Release, no Section 16 consequences would flow from an equity swap to the extent that the equity swap relates solely to interests in securities comprising part of a broad-based, publicly traded market basket or index of stocks, approved for trading by the appropriate federal governmental authority, that are deemed not to confer beneficial ownership for purposes of section 16 pursuant to Rule 16a–1(a)(5)(iii) (17 CFR 240.16a–1(a)(5)(iii)) and/or are excluded from the definition of ''derivative securities'' pursuant to current Rule 16a–1(c)(4).

[142] *See* 1994 Release n. 106, which stated that to the extent settlement of the parties' obligations occurs on an interim basis during the term of the swap the insider's section 16 obligations would arise with respect to each settlement, commenters expressed concern over the need to report interim events. As noted above and consistent with the section 16 reporting scheme in general, such events need be reported only to the extent that they cause a change in an insider's call or put equivalent position.

exempt disposition (acquisition) of shares at the outset of the term; (6) the non-exempt acquisition (disposition) of shares at the end of the term (and at such earlier dates, if any, where events under the equity swap cause a change in a call or put equivalent position); (7) the total number of shares held after the transaction; and (8) any other material terms.[143]

Some commenters suggested that equity swaps in general or certain aspects of them should be regarded as excluded or exempt from Section 16. The Commission is not persuaded, however, that any exclusion or exemption currently is available or that equity swaps should be so excluded or exempted.

Numerous issues are raised under the federal securities laws by equity swaps and other instruments that shift some or all of the economic interests and risks of an equity security. Since record and beneficial ownership does not necessarily reflect who holds the voting, investment or income interests of a security, it may be appropriate in areas other than Section 16 to assure that the regulatory structure reflects the economic realities of these transactions. The Commission is continuing to consider the legal and disclosure issues raised by these arrangements under the federal securities laws, including Schedule 13D reporting, Rule 144,[144] Rule 144A, Regulation S,[145] and disclosure of security holdings and executive compensation.[146]

I. Changes in Forms and Reporting Codes

As proposed in the 1994 Release, when an insider exercises an option acquired pursuant to a Rule 16b-3 plan and immediately sells a portion of the shares to pay the exercise price under a cashless exercise program, the insider will be able to reflect the sale of the portion of shares necessary to satisfy the exercise price by using the transaction code for payment of an option exercise price by delivery or withholding of securities,[147] rather than the general sale of security code,[148] provided that the sale is to the issuer. Commenters agreed that it was appropriate to use the same code for these transactions since they all constitute cashless exercises.

A new transaction code also has been included in Forms 4 and 5 to be used for transactions in equity swaps and instruments with similar characteristics.[149] This will be in addition to whatever other codes are used to describe the transaction.[150] The new code will assist the Commission and users of Section 16 information in identifying these transactions.

Additionally, the Instructions to Forms 3, 4 and 5 are revised to state that the forms may be submitted to the Commission in electronic format at the option of the reporting person.[151] The Instructions also are modified to indicate that insiders may attach a page of 8½ by 11 inch white paper to reflect additional comments to the forms, if the space provided on the forms is insufficient.[152] The current rules require insiders to reflect supplemental information on additional copies of the forms.

Several transaction codes have been modified or deleted from the Instructions to Forms 4 and 5 in accordance with the revisions.[153] Finally, Forms 3, 4 and 5 have been revised to accommodate joint and group filing.[154]

V. Additional Exemptions and Revisions

A. Dividend or Interest Reinvestment Plans

Current Rule 16b–2 exempts from the short-swing profit recovery provisions of section 16(b) the acquisition of issuer equity securities resulting from reinvestment of dividends or interest on securities of the same class, if made pursuant to a plan, available on the same terms to all holders of that class of securities, providing for regular reinvestment of dividends or interest. Concerns have been expressed that the requirement that the plan be made available to all holders of the class (the ''all-holders requirement'') can impose significant burdens, such as the outlay of significant sums to comply with laws governing securities offerings in foreign jurisdictions, on companies that wish to allow for insider participation.

Accordingly, in 1995 the Commission proposed to modify this requirement, noting that such a stringent participation requirement did not appear necessary to preclude the opportunity for speculative abuse by insiders. The rule was proposed to be amended to exempt acquisitions resulting from reinvestment of dividends or interest on securities of the same class if made pursuant to a plan that meets three conditions: First, it must provide for the regular reinvestment of dividends or interest. Second, the plan must be broad-based and not discriminate in favor of employees of the issuer.[155] Third, the plan must operate on substantially the same terms for all plan participants.[156]

Commenters agreed that the proposed modification is appropriate and serves the goal of reducing administrative burdens while protecting against possible speculative abuse by officers and directors. Commenters noted particularly that the ''all-holders'' provision is not essential to eliminate abuse, and that modification of this provision would substantially reduce the costs imposed by the requirement that such plans be made available to

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[143] New Code K is added to Forms 4 and 5 for reporting equity swaps and instruments with similar characteristics. *See* Section IV.I, below.

[144] *See* Release No. 33–7187 (June 27, 1995) (60 FR 35645).

[145] *See* Release No. 33–7190 (June 27, 1995) (60 FR 35663).

[146] *See* the Commission's *Report of the Task Force on Disclosure Simplification*, Part III.A.3.b.

[147] Transaction code ''F.'' The sale of shares to pay the exercise price of an option under a cashless exercise program is exempt from Section 16(b) if the issuer is the purchaser, but not if the shares are sold on the open market by a broker or other third party. Code ''F'' may be used to reflect only exempt transactions. The amendments clarify that code ''F'' also should be used to report the withholding of securities incident to satisfaction of tax liability incurred upon the receipt, exercise or vesting of a security.

[148] Transaction code ''S.''

[149] New transaction code ''K'' and General Instruction 8 to Forms 4 and 5.

[150] For example, an equity swap transaction reported as a disposition will be reported as S/K, using the codes for ''sale'' and ''equity swap.''

[151] General Instruction 3(a) to Form 3, and General Instruction 2(a) to Forms 4 and 5.

[152] General Instruction 6 to Forms 3, 4 and 5. Specified information must be included at the top of the page so that the filing can be identified if the page is detached.

[153] Transaction codes ''A,'' ''F,'' ''H,'' ''I,'' and ''M'' have been modified and codes ''B,'' ''N,'' ''Q,'' ''R'' and ''T'' have been deleted.

[154] Item 1 of the forms has been revised to explain how the names and addresses of more than one reporting person should be indicated, and a new Item 7 has been added to the forms to indicate whether the form is being filed by one or more reporting persons.

[155] This standard would be evaluated by reference to all shareholders of the class. For example, the requirement would not be satisfied merely by making the plan available to all employees of the issuer.

[156] Consistent with current interpretation, the rule as amended would exempt only the reinvestment of dividends or interest. Additional securities acquired through voluntary cash contributions to such plans will not be exempt pursuant to this rule, but may be exempt under new Rule 16b–3, assuming other conditions are met. *See* Release No. 34–28869, n. 89. The amended rule also continues to exempt the acquisition of issuer equity securities pursuant to a dividend reinvestment feature of an employee benefit plan so long as the company maintains a separate dividend reinvestment plan that satisfies the conditions of the rule. *See Simpson Thacher & Bartlett* (Jun. 19, 1991) and Release No. 34–18114, Q. 76. Finally, consistent with current interpretations, the amended rule will continue to be available to exempt the reinvestment of dividends in the securities of a publicly traded parent or subsidiary, and will exempt the reinvestment of all *pro rata* distributions to security holders, not just dividends and interest. *See Middle South Utilities, Inc.* (Aug. 21, 1982) and *Investment Company Institute* (Sept. 18, 1992).

odd-lot holders and shareholders domiciled abroad. The amendment is adopted as proposed, with minor clarifying changes.[157]

B. New Exemption for Domestic Relations Orders

The current rules limit the exemption for the disposition of securities pursuant to a qualified domestic relations order (''QDRO''), as defined in the Internal Revenue Code or Title I of ERISA, and the rules thereunder, to employee plan securities.[158] Since such dispositions are unlikely to be influenced by access to inside information, this limitation appears unnecessary. Accordingly, the 1994 proposal included a general exemption for such dispositions.

By interpretation, the current exemption has been construed to permit the transfer of securities, issued under a plan that is not subject to Section 401(a) of the Internal Revenue Code, pursuant to a ''domestic relations order'' that satisfies certain conditions of the Internal Revenue Code,[159] but does not satisfy QDRO standards.[160] Comment was requested as to whether the proposed exemption should require satisfaction of the QDRO standards in all circumstances, or whether satisfaction of the Internal Revenue Code ''domestic relations order'' standards would suffice.

Commenters who addressed this proposal supported it overwhelmingly, noting that these dispositions are unlikely to give rise to the types of abuse of inside information that the section 16 rules are designed to prevent and that satisfaction of the ''domestic relations order'' standards should suffice. Commenters also suggested that the rule should exempt acquisitions as well as dispositions. The Commission is persuaded that the likelihood of abuse is equally remote whether the transaction is an acquisition or disposition, so long as the ''domestic relations order'' standards are satisfied. The rule as adopted reflects these modifications.[161]

C. Exemption for Stock Dividend Transactions

The Commission proposed in 1994 to expand the exemption for stock splits and stock dividends to include specifically a stock dividend in which equity securities of a different issuer are distributed. The primary application of this exemption would be to ''spinoff'' transactions, in which assets previously owned by the issuer are distributed *pro rata to shareholders in the form of equity securities of another issuer.*

The Division has interpreted the current rule to apply to stock splits or stock dividends involving the issuance, on a *pro rata* basis, of a different class of equity securities of the same issuer.[162] Commenters addressing this proposal expressed support, noting that this type of dividend involves the distribution of an ownership interest already held indirectly through the distributing entity, and thus involves a change in the form of ownership from indirect through the distributing entity to direct by the recipient. Commenters also noted that since there is no purchase or sale, there is no significant opportunity for abuse. The proposal is adopted substantially as proposed, with minor technical revisions.[163]

VI. 1995 Solicitation of Comment Regarding the On-Going Merit of the Short-Swing Profit Recovery Provisions of Section 16

The 1995 Release solicited comment as to whether the Commission should recommend that Congress rescind the short-swing profit recovery provisions of section 16(b). Commenters were asked to address whether insider trading and market manipulation would be deterred adequately by Rule 10b–5, as interpreted by case law, and whether state laws establishing a fiduciary duty on the part of officers and directors would protect adequately the interests of public company shareholders.

Although the majority of commenters addressing this issue favored the legislative rescission of section 16(b), the Commission is of the view that the short-swing profit recovery provisions continue to fulfill a useful and effective role in maintaining investor confidence in the integrity of United States securities markets and accordingly should be retained. Instead, the Commission has attempted to craft the amended rules in a manner that retains the market protections provided by section 16(b) while curtailing compliance costs, thereby striking an appropriate balance between benefits and costs.

VII. Transition to New Rules

A. General Application

All of the rules adopted today, except for new Rule 16b–3, become effective August 15, 1996 (the ''Effective Date''). Accordingly, the section 16 treatment of all transactions effected on or after the Effective Date will be governed by the new rules. As discussed below, a phase-in period until November 1, 1996 is provided for new Rule 16b–3. Of course, to the extent that the new rules codify current interpretive positions,[164] those positions continue to be valid before the Effective Date. Trusts currently subject to section 16 that will be relieved of section 16 obligations under the new rules will not be subject to any post-termination reporting obligations or required to file a final Form 4 or Form 5. The amendments to Item 405 of Regulations S–K and S–B will apply to documents containing Item 405 disclosure that are filed after the Effective Date. The new Forms should be used for filings made on and after the Effective Date.

Cash-only instruments excludable from the definition of ''derivative security'' under current Rule 16a–1(c)(3) originally issued before the Effective Date will remain exempt from the reporting requirements of section 16(a) after the Effective Date. With respect to such cash-only securities, a transaction on or after the Effective Date that is consistent with the conditions of the exclusion pursuant to which the security was issued also will not to be subject to Section 16.[165]

Transactions not exempt from section 16(b) under the current rules that are conducted prior to the Effective Date will continue to be matchable with non-exempt transactions conducted after the Effective Date for short-swing profit recovery purposes.

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[157] New Rule 16a-11. The rule has been renumbered as a Section 16(a) rule, since reporting of these transactions no longer will be required, as discussed above.

[158] Current Rule 16b–3(f)(3).

[159] I.R.C. Sections 414(p)(1)(A) and (B). Among other things, the order must create or recognize an alternate payee's right to receive all or a portion of the benefits payable to a participant under a plan; relate to the provisions of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of the participant; and be made pursuant to a state domestic relations law (including a community property law).

[160] The order need not satisfy, among other things, conditions applicable to payments made after the participant's earliest retirement age, and requirements to treat the former spouse as surviving spouse for purposes of determining survivor benefits. *See Premark International, Inc.* (Mar. 6, 1992), which further provides that the plan may permit such transfers consistent with the transferability restriction of current Rule 16b–3(a)(2).

[161] New Rule 16a–12, which replaces current Rule 16b–3(f)(3). This amendment was proposed in the 1994 Release as proposed Rule 16b–5(b), but instead is adopted as a section 16(a) rule since reporting of these transactions no longer will be required, as discussed above.

[162] *See Emergent Group, Inc.* (Apr. 6, 1992).

[163] New Rule 16a–9(a).

[164] *E.g.,* new Rule 16a–1(c)(7) and Item 405(a)(2) of Regulations S–K and S–B.

[165] Post-Effective Date transactions in cash-only securities that were originally issued prior to May 1, 1991 will continue not to be subject to section 16 to the extent provided in *Cravath, Swaine & Moore* (Oct. 22, 1991).

B. New Rule 16b–3

In extending the phase-in date for current Rule 16b–3, the Commission stated that this period would continue until September 1, 1996.[166] However, given the timing of the adoption of new Rule 16b–3, the Commission is extending the phase-in date until November 1, 1996.[167] While new Rule 16b–3 will become available for issuers that wish to use it on August 15, 1996, current and former Rule 16b–3[168] will remain available for transactions effected prior to November 1, 1996. When an issuer adopts a plan that complies with new Rule 16b–3 or converts one of its existing plans to the new rule, all plans must be converted,[169] provided that any transaction between an issuer and its officers or directors that occurs outside the scope of a formal plan or pursuant to a plan that permits only the issuance of cash-only instruments may rely on new Rule 16b–3 without triggering this conversion requirement. Current and former Rule 16b–3 may not continue to be relied on by issuers and insiders after November 1, 1996. Transactions exempt under current and former Rule 16b–3 should be reported as provided by the new rules during the phase-in period.[170]

As stated above, the new Forms should be used for filings made on and after the Effective Date. Since the new transaction codes are keyed to transactions exempted by new Rule 16b–3, insiders reporting transactions under the former or current rule may either use the new code most analogous to the transaction or code ''J'' (for ''other'' transactions) with an explanatory footnote.

VIII. Cost-Benefit Analysis

The amendments adopted herein are expected to decrease significantly the compliance burden imposed on persons subject to Section 16 and attendant costs without undercutting the statutory objectives of disclosing information concerning insider trading and discouraging speculative short-term insider trading.

The simplified treatment of transactions between an issuer and its officers and directors, whether or not pursuant to a formal employee benefit plan, will constitute the most important reduction in compliance burden. With respect to these transactions, the conditions that must be met for an exemption to be available have been substantially simplified. The amended rules also will simplify issuers' administration of dividend and interest reinvestment plans, and expand the exemption for stock splits and stock dividends to include stock dividends in which securities of a different issuer are distributed.

The rules also will reduce compliance costs by: providing that many transactions no longer need be reported at all; permitting joint and group reporting where more than one person is deemed to be a beneficial owner of the same securities; providing that section 16 applies to a trust only if the trust beneficially owns more than ten percent of a class of registered equity securities; and limiting officers' and directors' post-termination reporting obligations. Where the amendments may increase compliance costs, such as by requiring reporting with respect to transactions in cash-only securities and by accelerating the reporting of option exercises, such costs should be outweighed by the benefit of having additional information available to the public on an accelerated basis, as well as the ease of compliance with a simplified reporting scheme. The amendments also will eliminate regulatory complexity and uncertainty that discourages the use of equity as compensation.

IX. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a final regulatory flexibility analysis in accordance with 5 U.S.C. 604 regarding the adoption of new Rules 16a–11, 16a–12 and 16a–13, and the changes to Rules 16a–1, 16a–2, 16a–3, 16a–4, 16a–6, 16a–8, 16a–9, 16b–3 and 16b–6, Forms 3, 4 and 5, and Item 405 of Regulations S–B and S–K. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the 1994 Release and the 1995 Release. A copy of the final regulatory flexibility analysis may be obtained by contacting Anne M. Krauskopf, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 at (202) 942–2900.

As more fully discussed in the analysis, since 1994 the Commission has been engaged in rulemaking to modify the Rules under Section 16, particularly to alleviate unanticipated practical difficulties that arose since adoption of the 1991 amendments, simplify section 16 requirements applicable to employee benefit plans, and codify several staff interpretive positions. The amendments to Rule 16b–3 adopted today will significantly expand the exemption as it applies to broad-based non-discriminatory plans, will impose different conditions applicable to grants, awards and other acquisitions from the issuer, and will provide new exemptions for the disposition of issuer equity securities to the issuer.

Other rule amendments will modify the section 16(a) reporting system to provide that most exempt transactions and small acquisitions will be reported annually on Form 5, with earlier reporting on Form 4 permitted. Exercises and conversions of derivative securities, whether or not exempt from section 16(b), will be reported on Form 4. However, routine transactions pursuant to tax-conditioned plans, dividend or interest reinvestment plan transactions, transactions pursuant to domestic relations orders and transactions that change only the form of beneficial ownership will be exempt from reporting. The exemption for reinvestment transactions pursuant to dividend and interest reinvestment plans is amended to replace the requirement that such a plan must be available to all holders of the class of securities with a condition that the plan require both wide participation and equal treatment of all participants.

No significant issues were raised by public comment in response to the initial regulatory flexibility analysis.

The amendments adopted today primarily will affect individuals who are corporate insiders, the majority of whom may fall within the definition of ''small business'' under the Exchange Act. To the extent that these persons are affected, it is expected that the proposals will reduce their compliance burdens associated with section 16.

It is expected that the amendments adopted today will result in a material decrease in reporting and compliance requirements since they will streamline the requirements applicable to employee benefit plans. Although exercises and conversions of derivative securities will be reported earlier than previously required, and certain types of cash-only instruments will become

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[166] *See* the 1995 Phase-in Release.

[167] *See* Release No. 34–37261, issued today.

[168] Former Rules 16a–8(b) and 16a–8(g)(3) also remain available for purposes of providing an exemption from Section 16(b). *See* the 1991 Adopting Release at Section VII.C.

[169] Following conversion of an existing plan to new Rule 16b–3, the amendment of outstanding derivative securities to permit their transfer will not be deemed a cancellation of such securities and a grant of new securities for Section 16 purposes. *Compare Time Warner* (Dec. 18, 1992) Q.3 and *Jesse M. Brill* (Mar. 25, 1994) Q.4, where following amendment outstanding options no longer were exempt pursuant to current and former Rule 16b–3, respectively.

[170] The new reporting exemption for tax-conditioned plans will not be available until new Rule 16b–3 is used because that reporting exemption applies only to transactions exempted by new Rule 16b–3(c).

reportable, many other transactions no longer will be reported at all, and the overall reporting scheme will be simplified as a result.

The amendments adopted today will benefit corporate insiders by simplifying the section 16 rules and eliminating unnecessary requirements. Separate requirements for small issuers are inappropriate because most of the corporate insiders subject to the section 16 rules are individuals who meet the small business definition. The use of performance rather than design standards for small issuers is inconsistent with the Commission's mandate of investor protection. Other proposals to further reduce the compliance requirements were considered but rejected on grounds that they would be inconsistent with the section 16 statutory objectives.

X. Statutory Basis

The amendments to Regulation S–B, Regulation S–K, and the section 16 rules and forms are adopted by the Commission pursuant to Exchange Act sections 3(a)(11),[171] 3(a)(12),[172] 3(b),[173] 9(b),[174] 10(a),[175] 12(h),[176] 13(a),[177] 14,[178] 16, and 23(a). As the Section 16 rules and forms relate to the Investment Company Act and the Public Utility Holding Company Act, they also are adopted pursuant to Investment Company Act sections 30 [179] and 38,[180] and Public Utility Holding Company Act Sections 17 [181] and 20,[182] respectively.

List of Subjects in 17 CFR 228, 229, 240, and 249

Reporting, Recordkeeping requirements, and Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.405 by revising the reference to ''Rule 16a–3(d)'' in paragraph (a) to read ''Rule 16a–3(e)'' and by revising paragraphs (a)(1) and (a)(2) before the Note to read as follows:

§ 228.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

* * * * *

(a) * * *

(1) Under the caption ''Section 16(a) Beneficial Ownership Reporting Compliance,'' identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to section 12 (''reporting person'') that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(2)(i) of this section, unless the registrant otherwise knows that no Form 5 is required.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By amending § 229.405 by revising paragraphs (a)(1) and (a)(2) before the Note to read as follows:

§ 229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

* * * * *

(a) * * *

(1) Under the caption ''Section 16(a) Beneficial Ownership Reporting Compliance,'' identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to section 12 of the Exchange Act, or any other person subject to section 16 of the Exchange Act with respect to the registrant because of the requirements of section 30 of the Investment Company Act or section 17 of the Public Utility Holding Company Act (''reporting person'') that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(2)(i) of this section, unless the registrant otherwise knows that no Form 5 is required.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

6. By amending § 240.16a–1 by revising paragraphs (a)(3) and (c)(3), removing the word ''or'' at the end of paragraph (c)(5), replacing the period at the end of paragraph (c)(6) with a semi-colon followed by the word ''or'', and adding paragraph (c)(7) to read as follows:

§ 240.16a–1 Definition of terms.

* * * * *

(a) * * *

(3) Where more than one person subject to section 16 of the Act is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities, either separately or jointly, as provided in § 240.16a–3(j). In such cases, the amount of short-swing profit recoverable shall not be increased above

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[171] 15 U.S.C. 78c(a)(11).
[172] 15 U.S.C. 78c(a)(12).
[173] 15 U.S.C. 78c(b).
[174] 15 U.S.C. 78i(b).
[175] 15 U.S.C. 78j(a).
[176] 15 U.S.C. 78*l*(h).
[177] 15 U.S.C. 78m(a).
[178] 15 U.S.C. 78n.
[179] 15 U.S.C. 80a–29.
[180] 15 U.S.C. 80a–37.
[181] 15 U.S.C. 79q.
[182] 15 U.S.C. 79t.

the amount recoverable if there were only one beneficial owner.

* * * * *

(c) * * *

(3) Rights or obligations to surrender a security, or have a security withheld, upon the receipt or exercise of a derivative security or the receipt or vesting of equity securities, in order to satisfy the exercise price or the tax withholding consequences of receipt, exercise or vesting;

* * * * *

(7) Options granted to an underwriter in a registered public offering for the purpose of satisfying over-allotments in such offering.

* * * * *

7. By amending § 240.16a–2 by revising paragraphs (b) and (d)(2) to read as follows:

§ 240.16a–2 Persons and transactions subject to section 16.

* * * * *

(b) A transaction(s) following the cessation of director or officer status shall be subject to section 16 of the Act only if:

(1) Executed within a period of less than six months of an opposite transaction subject to section 16(b) of the Act that occurred while that person was a director or officer; and

(2) Not otherwise exempted from section 16(b) of the Act pursuant to the provisions of this chapter.

Note to Paragraph (b): For purposes of this paragraph, an acquisition and a disposition each shall be an opposite transaction with respect to the other.

* * * * *

(d)(1) * * *

(2) Transactions by such person or entity acting in a capacity specified in paragraph (d)(1) of this section after the period specified in that paragraph shall be subject to section 16 of the Act only where the estate, trust or other entity is a beneficial owner of more than ten percent of any class of equity security registered pursuant to section 12 of the Act.

8. By amending § 240.16a–3 by revising paragraph (f)(1)(i), redesignating paragraphs (f)(1)(ii) and (f)(1)(iii) as (f)(1)(iii) and (f)(1)(iv), adding paragraph (f)(1)(ii), revising paragraph (g), and adding paragraph (j) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(f)(1) * * *

(i) All transactions during the most recent fiscal year that were exempt from section 16(b) of the Act, except:

(A) Exercises and conversions of derivative securities exempt under either § 240.16b–3 or § 240.16b–6(b) (these are required to be reported on Form 4);

(B) Transactions exempt from section 16(b) of the Act pursuant to § 240.16b–3(c), which shall be exempt from section 16(a) of the Act; and

(C) Transactions exempt from section 16(a) of the Act pursuant to another rule;

(ii) Transactions that constituted small acquisitions pursuant to § 240.16a–6(a);

* * * * *

(g) (1) A Form 4 shall be filed to report all transactions not exempt from section 16(b) of the Act and all exercises and conversions of derivative securities, regardless of whether exempt from section 16(b) of the Act.

(2) At the option of the reporting person, transactions that are reportable on Form 5 may be reported on Form 4, provided that the Form 4 is filed no later than the due date of the Form 5 with respect to the fiscal year in which the transaction occurred.

* * * * *

(j) Where more than one person subject to section 16 of the Act is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities, either separately or jointly. Where persons in a group are deemed to be beneficial owners of equity securities pursuant to § 240.16a–1(a)(1) due to the aggregation of holdings, a single Form 3, 4 or 5 may be filed on behalf of all persons in the group. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person.

9. By amending § 240.16a–4 by revising paragraphs (b), (c) and (d) and the Note to read as follows:

§ 240.16a–4 Derivative securities.

* * * * *

(b) The exercise or conversion of a call equivalent position shall be reported on Form 4 and treated for reporting purposes as:

(1) A purchase of the underlying security; and

(2) A closing of the derivative security position.

(c) The exercise or conversion of a put equivalent position shall be reported on Form 4 and treated for reporting purposes as:

(1) A sale of the underlying security; and

(2) A closing of the derivative security position.

(d) The disposition or closing of a long derivative security position, as a result of cancellation or expiration, shall be exempt from section 16(a) of the Act if exempt from section 16(b) of the Act pursuant to § 240.16b–6(d).

Note to § 240.16a–4: A purchase or sale resulting from an exercise or conversion of a derivative security may be exempt from section 16(b) of the Act pursuant to § 240.16b–3 or § 240.16b–6(b).

10. By amending § 240.16a–6 by revising paragraph (a) and removing paragraph (c) to read as follows:

§ 240.16a–6 Small acquisitions.

(a) Any acquisition of an equity security not exceeding $10,000 in market value, or of the right to acquire such securities, shall be reported on Form 5, subject to the following conditions:

(1) Such acquisition, when aggregated with other acquisitions of securities of the same class (including securities underlying derivative securities, but excluding acquisitions exempted by rule from section 16(b) or previously reported on Form 4 or Form 5) within the prior six months, does not exceed a total of $10,000 in market value; and

(2) The person making the acquisition does not within six months thereafter make any disposition, other than by a transaction exempt from section 16(b) of the Act.

* * * * *

11. By amending § 240.16a–8 by revising paragraph (a)(1) and adding a note at the end of paragraph (b)(3) to read as follows:

§ 240.16a–8 Trusts.

(a) *Persons subject to section 16.*—(1) *Trusts.* A trust shall be subject to section 16 of the Act with respect to securities of the issuer if the trust is a beneficial owner, pursuant to § 240.16a–1(a)(1), of more than ten percent of any class of equity securities of the issuer registered pursuant to section 12 of the Act (''ten percent beneficial owner'').

* * * * *

(b) *Trust holdings and transactions.* * * *

(3) *Beneficiaries.* * * *

Note to Paragraph (b)(3): Transactions and holdings attributed to a trust beneficiary may be reported by the trustee on behalf of the beneficiary, provided that the report is signed by the beneficiary or other authorized person. Where the transactions and holdings are attributed both to the trustee and trust beneficiary, a joint report may be filed in accordance with § 240.16a–3(j).

* * * * *

12. By amending § 240.16a–9 by revising paragraph (a) to read as follows:

§ 240.16a–9 Stock splits, stock dividends, and pro rata rights.

* * * * *

(a) The increase or decrease in the number of securities held as a result of a stock split or stock dividend applying equally to all securities of a class, including a stock dividend in which equity securities of a different issuer are distributed; and

* * * * *

13. By adding § 240.16a–11 to read as follows:

§ 240.16a–11 Dividend or interest reinvestment plans.

Any acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from section 16 of the Act if the acquisition is made pursuant to a plan providing for the regular reinvestment of dividends or interest and the plan provides for broad-based participation, does not discriminate in favor of employees of the issuer, and operates on substantially the same terms for all plan participants.

14. By adding § 240.16a–12 to read as follows:

§ 240.16a–12 Domestic relations orders.

The acquisition or disposition of equity securities pursuant to a domestic relations order, as defined in the Internal Revenue Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder, shall be exempt from section 16 of the Act.

15. By adding § 240.16a–13 to read as follows:

§ 240.16a–13 Change in form of beneficial ownership.

A transaction, other than the exercise or conversion of a derivative security or deposit into or withdrawal from a voting trust, that effects only a change in the form of beneficial ownership without changing a person's pecuniary interest in the subject equity securities shall be exempt from section 16 of the Act.

§ 240.16b–2 [Removed and reserved]

16. By removing and reserving § 240.16b–2.

17. By revising § 240.16b–3 to read as follows:

§ 240.16b–3 Transactions between an issuer and its officers or directors.

(a) *General.* A transaction between the issuer (including an employee benefit plan sponsored by the issuer) and an officer or director of the issuer that involves issuer equity securities shall be exempt from section 16(b) of the Act if the transaction satisfies the applicable conditions set forth in this section.

(b) *Definitions.*

(1) A *Discretionary Transaction* shall mean a transaction pursuant to an employee benefit plan that:

(i) Is at the volition of a plan participant;

(ii) Is not made in connection with the participant's death, disability, retirement or termination of employment;

(iii) Is not required to be made available to a plan participant pursuant to a provision of the Internal Revenue Code; and

(iv) Results in either an intra-plan transfer involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security.

(2) An *Excess Benefit Plan* shall mean an employee benefit plan that is operated in conjunction with a Qualified Plan, and provides only the benefits or contributions that would be provided under a Qualified Plan but for any benefit or contribution limitations set forth in the Internal Revenue Code of 1986, or any successor provisions thereof.

(3) (i) A *Non-Employee Director* shall mean a director who:

(A) Is not currently an officer (as defined in § 240.16a-1(f)) of the issuer or a parent or subsidiary of the issuer, or otherwise currently employed by the issuer or a parent or subsidiary of the issuer;

(B) Does not receive compensation, either directly or indirectly, from the issuer or a parent or subsidiary of the issuer, for services rendered as a consultant or in any capacity other than as a director, except for an amount that does not exceed the dollar amount for which disclosure would be required pursuant to § 229.404(a) of this chapter;

(C) Does not possess an interest in any other transaction for which disclosure would be required pursuant to § 229.404(a) of this chapter; and

(D) Is not engaged in a business relationship for which disclosure would be required pursuant to § 229.404(b) of this chapter.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, a *Non-Employee Director* of a closed-end investment company shall mean a director who is not an ''interested person'' of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940.

(4) A *Qualified Plan* shall mean an employee benefit plan that satisfies the coverage and participation requirements of sections 410 and 401(a)(26) of the Internal Revenue Code of 1986, or any successor provisions thereof.

(5) A *Stock Purchase Plan* shall mean an employee benefit plan that satisfies the coverage and participation requirements of sections 423(b)(3) and 423(b)(5), or section 410, of the Internal Revenue Code of 1986, or any successor provisions thereof.

(c) *Tax-conditioned plans.* Any transaction (other than a Discretionary Transaction) pursuant to a Qualified Plan, an Excess Benefit Plan, or a Stock Purchase Plan shall be exempt without condition.

(d) *Grants, awards and other acquisitions from the issuer.* Any transaction involving a grant, award or other acquisition from the issuer (other than a Discretionary Transaction) shall be exempt if:

(1) The transaction is approved by the board of directors of the issuer, or a committee of the board of directors that is composed solely of two or more Non-Employee Directors;

(2) The transaction is approved or ratified, in compliance with section 14 of the Act, by either: the affirmative votes of the holders of a majority of the securities of the issuer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated; or the written consent of the holders of a majority of the securities of the issuer entitled to vote; *provided that* such ratification occurs no later than the date of the next annual meeting of shareholders; or

(3) The issuer equity securities so acquired are held by the officer or director for a period of six months following the date of such acquisition, *provided that* this condition shall be satisfied with respect to a derivative security if at least six months elapse from the date of acquisition of the derivative security to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security.

(e) *Dispositions to the issuer.* Any transaction involving the disposition to the issuer of issuer equity securities (other than a Discretionary Transaction) shall be exempt, *provided that* the terms of such disposition are approved in advance in the manner prescribed by either paragraph (d)(1) or paragraph (d)(2) of this section.

(f) *Discretionary Transactions.* A Discretionary Transaction shall be exempt only if effected pursuant to an election made at least six months following the date of the most recent election, with respect to any plan of the issuer, that effected a Discretionary Transaction that was:

(1) An acquisition, if the transaction to be exempted would be a disposition; or

(2) A disposition, if the transaction to be exempted would be an acquisition.

Notes to § 240.16b–3

Note (1): The exercise or conversion of a derivative security that does not satisfy the conditions of this section is eligible for exemption from section 16(b) of the Act to the extent that the conditions of § 240.16b–6(b) are satisfied.

Note (2): Section 16(a) reporting requirements applicable to transactions exempt pursuant to this section are set forth in § 240.16a–3(f) and (g) and § 240.16a–4.

Note (3): The approval conditions of paragraphs (d)(1), (d)(2) and (e) of this section require the approval of each specific transaction, and are not satisfied by approval of a plan in its entirety except for the approval of a plan pursuant to which the terms and conditions of each transaction are fixed in advance, such as a formula plan. Where the terms of a subsequent transaction (such as the exercise price of an option, or the provision of an exercise or tax withholding right) are provided for in a transaction as initially approved pursuant to paragraphs (d)(1), (d)(2) or (e), such subsequent transaction shall not require further specific approval.

18. By amending § 240.16b–6 by adding a note following paragraph (b) to read as follows:

§ 240.16b–6 Derivative securities.

* * * * *

Note to Paragraph (b): The exercise or conversion of a derivative security that does not satisfy the conditions of this section is eligible for exemption from section 16(b) of the Act to the extent that the conditions of § 240.16b–3 are satisfied.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

19. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

20. By amending Form 3 (referenced in § 249.103) and the General Instructions thereto by adding a sentence at the end of paragraph (a) to General Instruction 3 after the note, adding paragraph (b)(v) to General Instruction 5, by revising General Instruction 6, and by revising Item 1 and adding Item 7 to the information preceding Table I to read as follows:

Note: The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

3. Where Form Must be Filed

(a) * * * Alternatively, this Form is permitted to be submitted to the Commission in electronic format at the option of the reporting person pursuant to § 232.101(b)(4) of this chapter.

* * * * *

5. Holdings Required to be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one person beneficially owns the same equity securities, such owners may file Form 3 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Holdings of securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate only the name and address of the designated filer in Item 1 of Form 3 and attach a listing of the names and IRS or social security numbers (or addresses in lieu thereof) of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. If the space provided for signatures is insufficient, attach a signature page. Submit any attached listing of names or signatures on another Form 3, copy of Form 3 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (Form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 4 of the Form on the attachment.

* * * * *

6. Additional Information

If the space provided in the line items of this Form or space provided for additional comments is insufficient, attach another Form 3, copy of Form 3 or a separate page of 8½ by 11 inch white paper to Form 3, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 4 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3). If additional information is not provided in this manner, it will be assumed that no additional information was provided.

* * * * *

1. Name and Address of Reporting Person*

(Last) (First) (Middle)
(Street)
(City) (State) (Zip)

* If the Form is filed by more than one Reporting Person, *see* Instruction 5(b)(v).

* * * * *

7. Individual or Joint/Group Filing

(Check applicable line)

_____ Form filed by One Reporting Person
_____ Form Filed by More than One Reporting Person

* * * * *

21. By amending Form 4 (referenced in § 249.104) and the General Instructions thereto by adding a sentence at the end of paragraph (a) of General Instruction 2 after the note; by revising paragraph (a)(i) of General Instruction 4; by revising the Note following General Instruction 4(a)(ii) and adding paragraph (b)(v) to General Instruction 4; by revising General Instruction 6; in General Instruction 8 by adding a sentence at the end of the paragraph appearing under the ''Transaction Codes'' caption and revising the Transaction Codes; and by revising Item 1 and adding Item 7 to the information preceding Table I to read as follows:

Note: The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. Where Form Must be Filed

(a) * * * Alternatively, this Form is permitted to be submitted to the Commission in electronic format at the option of the reporting person pursuant to § 232.101(b)(4) of this chapter.

* * * * *

4. Transactions and Holdings Required to be Reported

* * * * *

(a) General Requirements

(i) Report, in accordance with Rule 16a–3(g), all transactions not exempt from section 16(b) of the Act and all exercises and conversions of derivative securities, regardless of whether exempt from section 16(b) of the Act, resulting in a change of beneficial ownership in the issuer's securities. Every transaction shall be reported even though acquisitions and dispositions during the month are equal. Report total beneficial ownership as of the end of the month for each class of securities in which a transaction was reported.

Note: * * *

(ii) * * *

Note: Transactions reportable on Form 5 may, at the option of the reporting person, be reported on a Form 4 filed before the due date of the Form 5. (*See* Instruction 8 for the code for voluntarily reported transactions.)

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 4, such owners may file Form 4 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate only the name and address of the designated filer in Item 1 of

Form 4 and attach a listing of the names and IRS or social security numbers (or addresses in lieu thereof) of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. If the space provided for signatures is insufficient, attach a signature page. Submit any attached listing of names or signatures on another Form 4, copy of Form 4 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (Form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 4 of the Form on the attachment.

* * * * *

6. Additional Information

If the space provided in the line items of this Form or space provided for additional comments is insufficient, attach another Form 4, copy of Form 4 or a separate page of 8½ by 11 inch white paper to Form 4, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 4 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3). If additional information is not provided in this manner, it will be assumed that no additional information was provided.

* * * * *

8. Transaction Codes

* * * If a transaction involves an equity swap or instrument with similar characteristics, use transaction Code ''K'' in addition to the code(s) that most appropriately describes the transaction, *e.g.*, ''S/K'' or ''P/K.''

General Transaction Codes

P—Open market or private purchase of non-derivative or derivative security
S—Open market or private sale of non-derivative or derivative security
V—Transaction voluntarily reported earlier than required

Rule 16b–3 Transaction Codes

A—Grant, award or other acquisition pursuant to Rule 16b–3(d)
D—Disposition to the issuer of issuer equity securities pursuant to Rule 16b–3(e)
F—Payment of exercise price or tax liability by delivering or withholding securities incident to the receipt, exercise, or vesting of a security issued in accordance with Rule 16b–3
I—Discretionary transaction in accordance with Rule 16b–3(f) resulting in acquisition or disposition of issuer securities
M—Exercise or conversion of derivative security exempted pursuant to Rule 16b–3

Derivative Securities Codes (Except for transactions exempted pursuant to Rule 16b–3)

C—Conversion of derivative security
E—Expiration of short derivative position
H—Expiration (or cancellation) of long derivative position with value received
O—Exercise of out-of-the-money derivative security
X—Exercise of in-the-money or at-the-money derivative security

Other Section 16(b) Exempt Transaction and Small Acquisition Codes (except for Rule 16b–3 codes above)

G—Bona fide gift
L—Small acquisition under Rule 16a–6
W—Acquisition or disposition by will or the laws of descent and distribution
Z—Deposit into or withdrawal from voting trust

Other Transaction Codes

J—Other acquisition or disposition (describe transaction)
K—Transaction in equity swap or instrument with similar characteristics
U—Disposition pursuant to a tender of shares in a change of control transaction

* * * * *

1. Name and Address of Reporting Person*

(Last) (First) (Middle)
(Street)
(City) (State) (Zip)

*If the Form is filed by more than one Reporting Person, *see* Instruction 4(b)(v).

* * * * *

7. Individual or Joint/Group Filing

(Check applicable line)

_____Form filed by One Reporting Person
_____Form Filed by More than One Reporting Person

* * * * *

22. By amending Form 5 (referenced in § 249.105) and the General Instructions thereto by adding a sentence at the end of paragraph (a) of General Instruction 2 after the note; by revising General Instruction 4(a)(i)(A); by removing General Instruction 4(a)(ii); by redesignating paragraphs (a)(iii) and (a)(iv) of General Instruction 4 as paragraphs (a)(ii) and (a)(iii); by revising newly designated paragraph 4(a)(iii) and adding paragraph (b)(v) to General Instruction 4; by revising General Instruction 6; in General Instruction 8 by adding a sentence at the end of the paragraph appearing under the ''Transaction Codes'' caption and revising the Transaction Codes; by revising the last paragraph in the General Instructions, following the Transaction Codes, and caption thereto; and by revising Item 1 and adding Item 7 to the information preceding Table I to read as follows:

Note: The text of Form 5 does not and this amendment will not appear in the Code of Federal Regulations.

Form 5 Annual Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. Where Form Must be Filed

(a) * * * Alternatively, this Form is permitted to be submitted to the Commission in electronic format at the option of the reporting person pursuant to § 232.101(b)(4) of this chapter.

* * * * *

4. Transactions and Holdings Required to be Reported

(a) General Requirements

* * * * *

(i) * * *

(A) any transaction during the issuer's most recent fiscal year that was exempt from section 16(b) of the Act, except: (1) any exercise or conversion of derivative securities exempt under either § 240.16b–3 or § 240.16b–6(b) (these are required to be reported on Form 4); (2) any transaction exempt from section 16(b) of the Act pursuant to Rule 16b–3(c) of this section, which is exempt from section 16(a) of the Act; and (3) any transaction exempt from section 16 of the Act pursuant to another section 16(a) rule;

* * * * *

(iii) Every transaction shall be reported even though acquisitions and dispositions with respect to a class of securities are equal. Report total beneficial ownership as of the end of the issuer's fiscal year for all classes of securities in which a transaction was reported.

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report on Form 5, such owners may file Form 5 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions and holdings with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate only the name and address of the designated filer in Item 1 of Form 5 and attach a listing of the names and IRS or social security numbers (or addresses in lieu thereof) of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. If the space provided for signatures is insufficient, attach a signature page. Submit any attached listing of names or signatures on another Form 5, copy of Form 5 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (Form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 4 of the Form on the attachment.

* * * * *

6. Additional Information

If the space provided in the line items of this Form or space provided for additional comments is insufficient, attach another Form 5, copy of Form 5 or a separate page of 8½ by 11 inch white paper to Form 5, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 4 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3). If additional information is not provided in this manner, it will be assumed that no additional information was provided.

* * * * *

8. Transaction Codes

* * * If a transaction involves an equity swap or instrument with similar characteristics, use transaction Code ''K'' in addition to the code(s) that most appropriately describes the transaction, *e.g.*, ''S/K'' or ''P/K.''

General Transaction Codes

P—Open market or private purchase of non-derivative or derivative security
S—Open market or private sale of non-derivative or derivative security

Rule 16b-3 Transaction Codes

A—Grant, award or other acquisition pursuant to Rule 16b-3(d)
D—Disposition to the issuer of issuer equity securities pursuant to Rule 16b-3(e)
F—Payment of exercise price or tax liability by delivering or withholding securities incident to the receipt, exercise or vesting of a security issued in accordance with Rule 16b-3
I—Discretionary transaction in accordance with Rule 16b-3(f) resulting in acquisition or disposition of issuer securities
M—Exercise or conversion of derivative security exempted pursuant to Rule 16b-3

Derivative Securities Codes (Except for transactions exempted pursuant to Rule 16b-3)

C—Conversion of derivative security
E—Expiration of short derivative position
H—Expiration (or cancellation) of long derivative position with value received
O—Exercise of out-of-the-money derivative security
X—Exercise of in-the-money or at-the-money derivative security

Other Section 16(b) Exempt Transaction and Small Acquisition Codes (except for Rule 16b-3 codes above)

G—Bona fide gift
L—Small acquisition under Rule 16a–6
W—Acquisition or disposition by will or the laws of descent and distribution
Z—Deposit into or withdrawal from voting trust

Other Transaction Codes

J—Other acquisition or disposition (describe transaction)
K—Transaction in equity swap or instrument with similar characteristics
U—Disposition pursuant to a tender of shares in a change of control transaction

To indicate that a holding should have been reported previously on Form 3, place a ''3'' in Table I, column 3 or Table II, column 4, as appropriate. Indicate in the space provided for explanation of responses the event triggering the Form 3 filing obligation. To indicate that a transaction should have been reported previously on Form 4, place a ''4'' next to the transaction code reported in Table I, column 3 or Table II, column 4 (*e.g*, an open market purchase of a non-derivative security that should have been reported previously on Form 4 should be designated as ''P4''). To indicate that a transaction should have been reported on a previous Form 5, place a ''5'' in Table I, column 3 or Table II, column 4, as appropriate. In addition, the appropriate box on the front page of the Form should be checked.

* * * * *

1. Name and Address of Reporting Person*

(Last) (First) (Middle)
(Street)
(City) (State) (Zip)

* If the Form is filed by more than one Reporting Person, *see* Instruction 4(b)(v).

* * * * *

7. Individual or Joint/Group Filing

(Check applicable line)

_____Form Filed by One Reporting Person
_____Form Filed by More than One Reporting Person

* * * * *

Dated: May 31, 1996.
By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14184 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–37261; 35–26525; IC–21998]

RIN 3235–AB14

Employee Benefit Plan Exemptive Rules Under Section 16 of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Extension of phase-in period for rule 16b–3.

SUMMARY: The Commission today is extending the phase-in period for compliance with the substantive conditions of new Rule 16b–3 regarding employee benefit plan transactions under the Securities Exchange Act of 1934.

DATES: Effective June 14, 1996. The phase-in period for compliance with new § 240.16b–3, which previously has been extended to September 1, 1996, is extended until November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Office of the Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

SUPPLEMENTARY INFORMATION: On February 8, 1991, the Commission adopted comprehensive revisions to the rules under section 16[1] of the Securities Exchange Act of 1934 (''Exchange Act'').[2] The new regulatory scheme generally became effective on May 1, 1991, but a 16 month phase-in period was provided with respect to specified rules affecting employee benefit plans, in order to give registrants ample time to review the rule changes and amend their plans accordingly.[3] The Adopting Release provided that registrants could continue to rely on the exemptions from section 16(b) of the Exchange Act[4] afforded by former Rules 16a–8(b),[5] 16a–8(g)(3),[6] and 16b–3[7] after May 1, 1991, but would be required to adopt the substantive conditions of new Rule 16b–3[8] by September 1, 1992.[9]

The Rule 16b–3 phase-in period was extended until September 1, 1996, or such different date as set by the Commission, pending completion of further rulemaking under section 16 with regard to employee benefit plans.[10] The amendments to the rules under section 16 adopted today, which become effective August 15, 1996, complete this rulemaking effort.[11] While new Rule 16b–3 becomes available for issuers that wish to use it on August 15, 1996, the phase-in period for Rule 16b–3 is extended until November 1, 1996.[12]

[1] 15 U.S.C. 78p (1988).

[2] 15 U.S.C. 78a *et seq.* (1988).

[3] Exchange Act Release No. 28869 (February 8, 1991) (56 FR 7242) (''Adopting Release''). *See* Section VII of the Adopting Release for transition provisions generally and Section VII.C for transition provisions relating to employee benefit plans.

[4] 15 U.S.C. 78p(b).

[5] 17 CFR 240.16a–8(b).

[6] 17 CFR 240.16a–8(g)(3).

[7] 17 CFR 240.16b–3 (1990).

[8] 17 CFR 240.16b–3 (1991).

[9] The phase-in period applies only to the exemption from section 16(b), not to the revised reporting requirements under section 16(a) that became effective on May 1, 1991 and the further revisions adopted today.

[10] Exchange Act Release No. 36063 (August 7, 1995) (60 FR 40994).

[11] Exchange Act Release No. 34–37260, Section VII.

[12] When an issuer adopts a plan that complies with new Rule 16b–3 or converts one of its existing plans to the new rule, all plans must be converted, provided that any transaction between an issuer and its officers or directors that occurs outside the scope of a formal plan or pursuant to a plan that permits only the issuance of cash-only instruments

Consistent with the transition provisions adopted today, current Rule 16b–3 and former Rules 16a–8(b), 16a–8(g) and 16b–3 will remain available for transactions effected prior to November 1, 1996.

Dated: May 31, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14185 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–P

may rely on new Rule 16b–3 without triggering this conversion requirement.

17 CFR Parts 210, 228, 229, 230, 232, 239, 240, and 249

[Release Nos. 33–7300 and 34–37262; S7–6–96]

RIN 3235–AG75

Phase One Recommendations of Task Force on Disclosure Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: In connection with its consideration of certain of the recommendations contained in the Task Force on Disclosure Simplification's Report (''Task Force Report''), the Securities and Exchange Commission (''Commission'') is eliminating 44 rules and four forms that it has determined are no longer necessary or appropriate in the public interest or for the protection of investors. It also is adopting other minor or technical rule changes or corrections. Other proposals designed to improve the disclosure process, both for investors and those subject to the Commission's disclosure requirements, will be forthcoming in future releases following the Commission's further consideration of the remaining Task Force recommendations.

EFFECTIVE DATE: The amendments will become effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910 and Douglas G. Tanner, Office of Chief Accountant, Division of Corporation Finance at (202) 942–2960.

SUPPLEMENTARY INFORMATION: To begin implementing certain of the recommendations of the Task Force on Disclosure Simplification, the Commission today is eliminating Rules 3–16,[1] 4–05,[2] 4–06,[3] and 4–10(b) through (h)[4] of Regulation S–X,[5] Industry Guide 1,[6] Rule 148[7] under the Securities Act of 1933 (''Securities Act''),[8] Regulation B[9] (including Forms 1–G and 3–G and Schedules A, B, C and D thereunder[10]), Rules 445,[11] 446,[12] and 447[13] of Regulation C under the Securities Act,[14] Regulation F,[15] (including Form 1–F[16]), Securities Act Rules 702(T)[17] and 703(T),[18] Form 701,[19] Rule 13a–17[20] under the Securities Exchange Act of 1934 (''Exchange Act''),[21] Exchange Act Rules 15d–17,[22] 16b–1(c)[23] and 16b–4,[24] General Instruction I of Form 10–K,[25] and Form 10–C.[26] In addition, amendments are being adopted with respect to the following rules and forms: Item 501[27] of Regulation S–K,[28] Item 601(b)[29] of Regulations S–B[30] and S–K, Rule 252(h)(2)[31] of Regulation A,[32] Rules 402,[33] 406,[34] 464,[35] 471,[36] 472[37] and 473[38] of Regulation C, Rule 504[39] of Regulation D,[40], Rule 902[41] of Regulation S,[42] Rule 311[43] of Regulation S–T,[44] Form F–6,[45] Form F–7,[46] Form F–8,[47] Form F–9,[48] Form F–10,[49] Form F–80,[50] and Exchange Act Rules 12b–11,[51] 13a–13,[52] 14d–1,[53] 15d–13,[54] 16a–3,[55] and 24b–2.[56]

I. Background

Chairman Arthur Levitt organized the Task Force on Disclosure Simplification (''Task Force'') in August 1995 to review forms and rules relating to capital-raising transactions, periodic reporting pursuant to the Exchange Act, proxy solicitations, and tender offers and beneficial ownership reports under the Williams Act. The goal was to simplify the disclosure process and to make regulation of capital formation more effective and efficient where consistent with investor protection.

In the course of its review, the Task Force met with issuing companies, investor groups, underwriters, accounting firms, law firms and others who participate daily in the capital markets. The Task Force prepared a report summarizing its findings and setting forth recommendations and suggestions of areas for further Commission study. The Task Force Report was presented to the Commission at an open meeting on March 5, 1996.[57]

The Task Force recommended that the Commission eliminate or modify many rules and forms, as well as simplify several key aspects of securities offerings. At the time the report was authorized for publication, the Commission had the opportunity to consider a relatively small number of those recommendations. It determined to act on several of those recommendations to begin the simplification process, and issued a release (''Proposing Release'')[58] proposing for public comment the elimination of 45 rules and 4 forms in conjunction with the publication of the Task Force Report. A number of other revisions, including minor and technical amendments, also were proposed. This was done with the view

[1] 17 CFR 210.3–16.
[2] 17 CFR 210.4–05.
[3] 17 CFR 210.4–06.
[4] 17 CFR 210.4–10 (a) through (h).
[5] 17 CFR Part 210.
[6] 17 CFR 229.801(a) and 229.802(a).
[7] 17 CFR 230.148.
[8] 15 U.S.C. 77a *et seq.*
[9] 17 CFR 230.300 through 230.346.
[10] Referenced in 17 CFR 239.101.
[11] 17 CFR 230.445.
[12] 17 CFR 230.446.
[13] 17 CFR 230.447.
[14] 17 CFR 230.400 through 230.494.
[15] 17 CFR 230.651 through 230.656.
[16] 17 CFR 239.300.
[17] 17 CFR 230.702(T).
[18] 17 CFR 230.703(T).
[19] 17 CFR 239.701.
[20] 17 CFR 240.13a–17.
[21] 15 U.S.C. 78a *et seq.*
[22] 17 CFR 240.15d–17.
[23] 17 CFR 240.16b–1.
[24] 17 CFR 240.16b–4.
[25] 17 CFR 249.310.
[26] 17 CFR 249.310c.
[27] 17 CFR 229.501.
[28] 17 CFR Part 229.
[29] 17 CFR 228.601(b) and 17 CFR 229.601(b).
[30] 17 CFR Part 228.
[31] 17 CFR 230.252(h)(2).
[32] 17 CFR 230.251 through 230.263.
[33] 17 CFR 230.402.
[34] 17 CFR 230.406.
[35] 17 CFR 230.464.
[36] 17 CFR 230.471.
[37] 17 CFR 230.472.
[38] 17 CFR 230.473.
[39] 17 CFR 230.504.
[40] 17 CFR 230.501 through 230.508.
[41] 17 CFR 230.902.
[42] 17 CFR 230.901 through 230.904.
[43] 17 CFR 232.311.
[44] 17 CFR Part 232.
[45] 17 CFR 239.36.
[46] 17 CFR 239.37.
[47] 17 CFR 239.38.
[48] 17 CFR 239.39.
[49] 17 CFR 239.40.
[50] 17 CFR 239.41.
[51] 17 CFR 240.12b–11.
[52] 17 CFR 240.13a–13.
[53] 17 CFR 240.14d–1.
[54] 17 CFR 240.15d–13.
[55] 17 CFR 240.16a–3.
[56] 17 CFR 240.24b–2.
[57] The Report is available for inspection and copying in the Commission's public reference room. The Report also is posted on the Commission's Internet web site (http://www.sec.gov). Persons interested in commenting on the Report may do so by referring to File No. S7–6–96.
[58] Release No. 33–7271 (March 5, 1996) (61 FR 9848).

that other proposals designed to improve the disclosure process, both for investors and those subject to the Commission's disclosure requirements, would be forthcoming in future releases following the Commission's further consideration of the Task Force recommendations.[59]

The Commission received nine comment letters responding to the Proposing Release. The letters generally expressed support for the proposed actions.[60] Based on the Commission's views articulated in the Proposing Release,[61] the comment letters received, and the Commission's further consideration of the proposals, the Commission has determined that the rules and forms proposed to be eliminated are no longer necessary or appropriate in the public interest or for the protection of investors; consequently, they are being eliminated as proposed, with three exceptions noted below. The other rule changes also are being adopted as proposed. By issuing these rule and form changes, the Commission is not expressing its views with respect to the remaining recommendations or suggestions in the Task Force Report that it has not yet fully considered.

II. Non-Financial Disclosure

A. Securities Act Rules

1. Regulation B (Rules 300–346), and Accompanying Schedules A, B, C, and D, and Forms 1–G and 3–G

The Commission has determined that Regulation B and its accompanying schedules and forms no longer are useful to investors and issuers and that the availability of other exemptions, such as the limited offering exemption from registration set forth in Regulation D, or the private placement exemption under section 4(2) of the Securities Act,[62] have rendered Regulation B obsolete. Consequently, this regulation is being eliminated, as proposed.

2. Regulation F (Rules 651–656) and Accompanying Form 1–F

Regulation F provided a conditional limited exemption from Securities Act registration for assessments levied on assessable stock and for resales of forfeited assessable stock. The Commission has determined that Regulation F and accompanying schedules and forms no longer are useful to investors and issuers and that the availability of other exemptions, such as the limited offering exemption from registration set forth in Regulation D, or the private placement exemption under section 4(2) of the Securities Act, have rendered Regulation F obsolete. In light of this, Regulation F is being eliminated, as proposed.

3. Securities Act Rule 148

Rule 148, originally a counterpart to Rule 144, provided a safe harbor for the resales of certain categories of securities acquired in bankruptcy proceedings. The Commission has determined that Rule 148 no longer serves a useful purpose and that it is not necessary to retain it for securities issued under the repealed Bankruptcy Act. The Bankruptcy Code, which replaced the repealed Bankruptcy Act, provides an exemption from Securities Act registration, as well as a safe harbor for the resales of securities received under a plan of reorganization. Therefore, the rule is being eliminated, as proposed.

4. Securities Act Rules 445, 446, and 447

Rules 445, 446 and 447, which govern registration statements filed in connection with securities to be offered through competitive bidding (*e.g.*, by means of a solicitation of competitive proposals from underwriters), appear to be rarely used. The Commission believes that these rules are no longer needed because issuers may use Rule 430A[63] to satisfy their filing obligations when they engage in competitive bidding currently covered by the rules being rescinded. Thus, these rules are being eliminated, as proposed.

5. Securities Act Rule 494

The Commission proposed eliminating Rule 494, which accommodates the practice of advertising securities issued by foreign national governments. It appears that this rule continues to be useful to foreign governments in their capital-raising efforts; consequently, the rule is being retained without change.

B. Exchange Act Rules

1. Paragraph (c) of Exchange Act Rule 16b–1[64]

This rule exempted the acquisition of securities resulting from a reorganization of a railroad or other carrier approved by the Interstate Commerce Commission (''ICC''), an agency that was abolished as of January 1, 1996. The function of approving such reorganizations has now been transferred to the Surface Transportation Board, an independent agency of the Department of Transportation. The Commission believes that the exemption provided by this rule no longer serves a useful purpose and is therefore being eliminated.

2. Exchange Act Rule 16b–4

Rule 16b–4 provided an exemption from the requirements of Section 16(b) for certain holding company redemption transactions. Currently, there are few situations where a holding company owns securities in only one company and desires to exchange its own shares through a redemption for those of such company. If such a situation arose, equivalent relief would be available through other means, for example, Rule 16b–6.[65] Accordingly, Rule 16b–4 is being rescinded, as proposed.

C. Disclosure Requirements

1. Item 501(b) of Regulation S–K

Item 501(b) of Regulation S–K required registrants to provide a cross-reference sheet immediately following the facing page in prospectuses, showing the location of the information required to be included in response to the items in the form. This cross-reference sheet is not necessary because affected filings otherwise contain a reasonably detailed table of contents required by Regulation S–K Item 502(g).[66]

2. Item 501(c)(8) of Regulation S–K[67]

The red ink requirement applicable to the prospectus caption ''Subject to Completion'' and related legend is being eliminated, thereby reducing issuer costs and conforming the requirements of Regulation S–K with the requirements of Regulation S–B.

---

[59] Pursuant to this policy, the Commission today has issued additional proposals to implement other Task Force recommendations. *See* Release No. 33–7301 (May 31, 1996).

[60] The comment letters are available for inspection and copying in the Commission's public reference room. Refer to file number S7–6–96. Comment letters that were submitted via electronic mail may be viewed at the Commission's web site: http://www.sec.gov.

[61] Additional background information relating to each of the rules, schedules and forms affected is found in the Proposing Release.

[62] 15 U.S.C. 77d(2).

[63] 17 CFR 230.430A.

[64] The Commission has adopted other amendments to its rules under Section 16 of the Exchange Act in Release No. 34–37260 (May 31, 1996).

[65] 17 CFR 240.16b–6.

[66] References to the cross reference sheet have deleted from Securities Act Rule 472.

[67] 17 CFR 229.501(c)(8).

3. Exhibits

The Commission is deleting the following from the required list of exhibits in Regulation S–K and Regulation S–B[68] because the information in each such exhibit either appears to be infrequently used or is otherwise available. The specific exhibits to be eliminated are: Opinion regarding discount on capital shares (Exhibit 6);[69] Opinion regarding liquidation preference (Exhibit 7); Material foreign patents (Exhibit 14); and Information from reports furnished to State insurance regulatory authorities (Exhibit 28).[70]

The Commission also had proposed to eliminate Exhibit 11 of Item 601(b) of Regulations S–K and S–B, ''Statement Regarding Computation of Per Share Earnings'' because the exhibit appeared to be infrequently used. While some commenters supported the elimination of this exhibit, others indicated that this information may be used by investors and analysts. Furthermore, the Financial Accounting Standards Board (''FASB'') has issued a Proposed Statement of Financial Accounting Standards, ''Earnings per Share and Disclosure of Information about Capital Structure.''[71] In light of the comments received, and FASB's proposals to make changes in this area, the Commission has decided to postpone acting on its proposal to eliminate Exhibit 11, pending further consideration.

4. Industry Guide 1

Guide 1 required disclosure of the principal sources of electric and gas revenues and the classes of services offered by the registrant in certain registration statements as well as annual reports on Form 10–K. In addition, if equity securities were being registered and issued at a price below book value per share, Guide 1 required disclosure of the effects, if any, on the registrant's business of issuing such shares at a price below the underlying book value per share. The Commission is eliminating Guide 1 because the information requested by the Guide also is within the coverage of other rules of the Commission, including Items 101 and 303 of Regulation S–K.[72]

D. Forms

1. Form 701

The Commission is deleting expired Form 701 (Notice of sales pursuant to an exemption under Section 701[73]) and the rules that required its filing (Securities Act Rules 702(T) and 703(T)) in order to remove them from the Code of Federal Regulations. By their terms, Rules 702(T) and 703(T), and thus Form 701, were effective only until 1993. One commenter indicated that the Commission should reinstate Form 701 to allow it to more easily track who is relying on the Section 701 exemption. The Commission believes that investor interests have not been compromised as a result of the sunset of this form and that its reinstitution would serve little purpose. Consequently, the form and its implementing rules are being eliminated, as proposed.

2. Form F–6

The Commission is eliminating Items 3(e) and 4(a) of Form F–6, governing the registration of depositary shares evidenced by American Depositary Receipts (''ADRs''), because the elicited information appears to be of little use to investors or the marketplace at large.

3. Form 10–C

The Commission is eliminating Form 10–C and Rules 13a–17 and 15d–17, which required issuers registered under the Exchange Act and quoted on Nasdaq to report to the Commission and the NASD changes in corporate name, as well as aggregate increases or decreases of a class of securities that exceeds 5% of the amount of securities of the class outstanding. The information regarding changes in number of shares outstanding typically is reflected in an issuer's financial statements.

III. Financial Disclosure

The Commission also is implementing certain of the recommendations in the Task Force Report relating to accounting disclosure rules, as set forth below. These rules were identified as being largely duplicative of generally accepted accounting principles (''GAAP'') or other Commission rules. These changes are not intended to alter current accounting standards or disclosure practices. Most of the comment letters addressed the accounting issues raised in the proposals, generally supporting the changes.

1. Rule 3–16 of Regulation S–X

Rule 3–16(a) of Regulation S–X set forth the requirement that a registrant that has emerged from a significant reorganization disclose in its financial statements a brief explanation of such reorganization. In addition, if the registrant were about to emerge from a reorganization, Rule 3–16(b) of Regulation S–X would require a balance sheet giving effect to the plan of reorganization with separate presentation of the registrant's balance sheet before the reorganization, the changes to be effected in the reorganization, and the balance sheet of the registrant after the reorganization. Registrants have historically satisfied the requirements of Rule 3–16(b) with pro forma financial information.

The Commission is eliminating Rule 3–16 of Regulation S–X, as proposed, because the information requested by that Rule also is within the scope of Article 11 of Regulation S–X, and the disclosure requirements of the AICPA Statement of Position (''SOP'') 90–7, Accounting Research Bulletin No. 43 (''ARB 43''), Section 210 of the Financial Reporting Codification and SAB 78.

2. Rule 4–05 of Regulation S–X

The Commission is eliminating Rule 4–05 of Regulation S–X, relating to current assets and current liabilities when a company's operating cycle is longer than one year, because Chapter 3A of ARB 43 and current accounting practices require the same presentation and information.

3. Rule 4–06 of Regulation S–X

Rule 4–06 of Regulation S–X, which provided that reacquired indebtedness of a registrant must be deducted from the appropriate liability caption on the registrant's balance sheet, is being eliminated. GAAP, including Accounting Principles Board Opinion (''APB'') 26 and Statement of Financial Accounting Standards No. (''SFAS'') 76, requires that such items be considered extinguished and deducted from the appropriate caption on the balance sheet. Further, with respect to the provisions of Rule 4–06 relating to reacquired indebtedness held for pension and other special funds, SFAS 87 and SFAS 106 prescribe the definition of, and accounting for, plan assets for pension plans and other post-employment benefit plans.

4. Rule 4–10 of Regulation S–X

The successful efforts method of accounting codified into Rule 4–10 is duplicative of the accounting standards adopted by the FASB in SFAS 19. Because of such duplication, the Commission is eliminating the portions of Rule 4–10 that duplicate SFAS 19—

[68] Item 601(b) of Regulation S–B and Regulation S–K.

[69] This exhibit currently is not required in Regulation S–B; consequently, no change is necessary.

[70] Regulation S–T Rule 311(c), providing that exhibits filed by electronic filers pursuant to paragraph (b)(28) may be filed in paper under cover of Form SE (17 CFR 239.64, 249.444, 269.8) also has been eliminated.

[71] The comment period on FASB's Exposure Draft of the Proposed Statement expires on May 31, 1996.

[72] 17 CFR 229.101 and 229.303, respectively.

[73] 17 CFR 230.701.

paragraph (b) through (h) of the Rule. In response to comments, the adopted language clarifies that entities following the successful efforts method shall continue to comply with the accounting and financial reporting disclosure requirements of SFAS 19.

IV. Miscellaneous Minor and Technical Changes

The Commission also is making the following technical changes to certain rules and forms under the Securities Act and the Exchange Act.

- Correct a number of out-of-date cross references in certain Securities Act rules and forms.[74]
- Allow the addition or withdrawal of a delaying notation under Regulation A[75] or the filing of a delaying or other amendment under Rule 473[76] by facsimile transmission, so as to provide issuers with additional flexibility in filing documents with the Commission.
- Modify and clarify signature requirements to allow manual, typed, duplicated or faxed signatures on paper filings, with a manual signature retention requirement for typed, duplicated or faxed signatures.[77] This change clarifies the rules and also extends to paper filers the option of filing typed signature pages, thus providing comparable treatment to both paper and electronic filers.[78] The language retains the five-year manual signature retention requirement of Regulation S–T Rule 302(b).
- Revise provisions in Rule 406 of Regulation C and Exchange Act Rule 24b–2 to emphasize the fact that confidential treatment requests should not be submitted electronically, but rather, should be submitted in paper. This is intended to minimize the chances of a confidential document being erroneously submitted as part of a public filing.[79]
- Modify Rule 504 of Regulation D[80] so that the rule itself states that there is no information delivery requirement in connection with Rule 504 offerings. This is intended to eliminate confusion resulting from the current language of Regulation D.
- Update the Regulation S definition of ''Designated Offshore Securities Market'' to include markets that have been recognized as such by the Division of Corporation Finance pursuant to delegated authority since the adoption of the regulation.[81]
- Eliminate provisions exempting small life insurance companies from filing quarterly financial results and Management's Discussion and Analysis in Part I of Form 10–Q and Form 10–QSB.[82] The exemption for mutual life companies is not being eliminated as proposed because a number of companies that file with the Division of Investment Management continue to rely on the exemption.
- Eliminate a general instruction to Form 10–K[83] referring to filings on Form S–18, which was replaced by other small business forms in 1992.

V. Cost-Benefit Analysis

Commenters almost universally agreed that the foregoing rule changes were desirable and would reduce unnecessary duplication in the Commission's rules, schedules and forms, as well as duplication with other accounting requirements. Those with compliance obligations under the federal securities laws should benefit from the simplification and clarification of rules and by the elimination of rules and forms that are outdated or rarely used for other reasons. The Commission's view that there will be no anticipated detrimental effects to investors was supported by the comment as well. It is not believed, however, that the changes outlined herein will affect significantly the overall costs and burdens associated with filing requirements generally, because many of the changes are being made to eliminate superfluous and redundant requirements.

VI. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604 concerning these amendments. As stated in the final analysis, no public commenter specifically addressed the issues outlined in the initial regulatory flexibility analysis. Most persons commenting generally on the proposals supported the changes. Where commenters expressed concerns about the proposed elimination of Exhibit 11, the Commission responded by deferring final action on that point. The analysis describes the types of entities that are denominated small entities under the Commission's rules and indicates that it is difficult to estimate the number of small entities that will be affected by the rule changes adopted in this release. The analysis also states that it is anticipated that most compliance obligations are expected to remain the same after the rules become effective. Where obligations are impacted, it is expected that the rule amendments will lessen regulatory burdens somewhat, both for small and large entities alike. Finally, the analysis explains that the Commission has attempted to help small entities, together with larger companies, by eliminating redundant rules and reducing compliance obligations. Exempting or otherwise treating small entities in a disparate manner would place them at a disadvantage. The analysis indicates that special consideration of small entities under other aspects of the federal securities laws will be undertaken in future rulemaking.

A copy of the final regulatory flexibility analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3–7, 450 Fifth Street, NW., Washington, DC 20549.

VII. Paperwork Reduction Act

The staff has consulted with the Office of Management and Budget (''OMB'') and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 (''the Act'') (44 U.S.C. 3501 *et seq.*). The Commission solicited comment on the compliance burdens associated with the proposals, and received no public comment in response. As stated in the Proposing Release, it is anticipated that the changes that eliminate certain exhibits from Item 601(b) of Regulations

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[74] Amendments to Rule 406, 464 and 473 of Regulation C and Forms F–7, F–8, F–9, F–10 and F–80.

[75] Amendment to 17 CFR 230.252(h)(2).

[76] 17 CFR 230.473.

[77] Amendments to Rule 402 and 471 of Regulation C, and Exchange Act Rules 12b–11, 14d–1 and 16a–3.

[78] *See* Rule 302 of Regulation S–T (17 CFR 232.302).

[79] The Commission encourages issuers to use electronic media to satisfy their obligations under the Federal securities laws, and in fact requires most filings made with the Commission to be submitted electronically via the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. However, requests for confidential treatment currently are not processed through EDGAR, and therefore must be submitted in paper. Electronic submission of these documents may be permitted or required at a future date; Commission rules would be amended accordingly.

[80] Amendment to 17 CFR 230.504.

[81] Amendment to Rule 902 of Regulation S. Since the proposal of the amendment, the Irish Stock Exchange has become a designated offshore securities market; consequently, it has been added to the final rule.

[82] Amendment to Exchange Act Rules 13a–13 and 15d–13. The exemption for small life insurance companies expired by its terms on December 20, 1983.

[83] General Instruction I.

S–K and S–B[84] would reduce the existing information collection requirements that are associated with the forms identified in the exhibit tables in those regulations. The net reduction for all affected information collection requirements would be an estimated 62,663 hours, or about .3% of the total burden hours associated with past requirements.

With respect to the elimination of certain requirements within Form F–6,[85] the supporting statement indicates that registrants no longer would be required to furnish the name of each dealer known to it or depositary who: (1) Has deposited shares against the issuance of ADRs within the past six months, (2) proposes to deposit shares against issuance of ADRs, or (3) assisted or participated in the creation of the plan of the issuance of the ADRs or the selection of the deposited securities. This rule change will reduce the total information burden of affected registrants (currently 339 hours) by approximately .1 hour per submission, for a total reduction of 33.9 hours for all submissions.

X. Statutory Basis for the Proposals

The foregoing amendments are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 210, 228, 229, 230, 232, 239, 240, and 249

Accountants, Confidential business information, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

[84] The titles of the affected information collection requirements are ''Regulation S–K'' and ''Regulation S–B.''

[85] This information collection is entitled ''Form F–6,'' OMB Control Number 3235–0292. The collection is in accordance with the clearance requirements of 44 U.S.C. 3507. The collection of information in Form F–6 is mandatory where the form is applicable. Information reported on Form F–6 is made available to the public. The form displays the OMB control number and expiration date; if this information is not displayed, the agency may not sponsor or conduct, or require a response to, the information collection.

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

§ 210.3–16 [Removed and reserved]

2. By removing and reserving § 210.3–16.

§ 210.4–05 [Removed and reserved]

3. By removing and reserving § 210.4–05.

§ 210.4–06 [Removed and reserved]

4. By removing and reserving § 210.4–06.

5. By amending § 210.4–10 by removing paragraphs (c) through (h) and redesignating paragraphs (i) and (j) as paragraphs (c) and (d), and by revising paragraph (b) following the undesignated heading to read as follows:

§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(b) A reporting entity that follows the successful efforts method shall comply with the accounting and financial reporting disclosure requirements of Statement of Financial Accounting Standards No. 19, as amended.

* * * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

6. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.601 [Amended]

7. By amending § 228.601 (Item 601 of Regulation S–B) in the exhibit table, by removing and reserving exhibit numbers (7), (14) and (28), and by removing and reserving paragraphs (b)(7), (b)(14) and (b)(28).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation continues to read in part as follow:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.501 [Amended]

9. By amending § 229.501 (Item 501 of Regulation S–K) by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and in newly designated paragraph (b)(8) by removing the words '', in red ink''.

§ 229.601 [Amended]

10. By amending § 229.601 (Item 601 of Regulation S–K) in the exhibit table, by removing and reserving exhibit numbers (6), (7), (14) and (28), and by removing and reserving paragraphs (b)(6), (b)(7), (b)(14) and (b)(28).

§§ 229.801, 229.802 [Amended]

11. By amending § 229.801 and § 229.802 by removing and reserving paragraph (a) Industry Guide 1 in both sections.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

12. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 240.148 [Removed and reserved]

13. By removing and reserving § 230.148.

14. By amending § 230.252 by revising paragraph (h)(2) to read as follows:

§ 230.252 Offering statement.

* * * * *

(h) *Amendments.*

(1) * * *

(2) An amendment to include a delaying notation pursuant to paragraph (g)(2) or to remove one pursuant to paragraph (g)(3) of this section after the initial filing of an offering statement may be made by telegram, letter or facsimile transmission. Each such telegraphic amendment shall be

confirmed in writing within a reasonable time by filing a signed copy. Such confirmation shall not be deemed an amendment.

§§ 230.300 through 230.346 (Regulation B) [Removed and reserved]

15. By removing the undesignated center heading—Regulation B—and removing and reserving §§ 230.300 through 230.346 (Regulation B) (The undesignated center heading ''Attention Electronic Filers'' and the paragraph immediately following remain unchanged).

16. By amending § 230.402 by removing the word ''manually'' from the fourth sentence of paragraph (a), and from the fourth sentence of paragraph (c), and by revising paragraph (e) to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(e) *Signatures.* Where the Act or the rules thereunder, including paragraphs (a) and (c) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the registrant for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

17. By amending § 230.406 by revising the heading ''Preliminary Note'' to read ''Preliminary Notes'', by designating the preliminary note as preliminary note 1, adding preliminary note 2, removing from paragraph (a) the words ''or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form'', and removing paragraph (j) to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

Preliminary Notes: (1) * * *

(2) All confidential treatment requests shall be submitted in paper format only, whether or not the filer is an electronic filer. *See* Rule 101(c)(1)(i) of Regulation S–T (§ 232.101(c)(1)(i) of this chapter).

* * * * *

Undesignated Center Heading and §§ 230.445–230.447 [Removed and reserved]

18. By removing the undesignated center heading Competitive Bids and removing and reserving §§ 230.445 through 230.447.

§ 230.464 [Amended]

19. By amending § 230.464 by revising the heading to read ''Effective date of post-effective amendments to registration statements filed on Form S–8 and on certain Forms S–3, S–4, F–2 and F–3.'' and by removing from the introductory text the words ''or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form'' and from paragraph (b) the words ''or a Form F–4 registration statement complying with General Instruction F of that Form''.

20. By amending § 230.471 by designating the text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.471 Signatures to amendments.

(a) * * *

(b) Where the Act or the rules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the registrant for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

21. By amending § 230.472 by revising the second sentence of paragraph (b) to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(b) * * * Each such copy of the amended prospectus shall be accompanied by a copy of the cross reference sheet required by Rule 481(a) (§ 230.481(a)), where applicable, if the amendment of the prospectus resulted in any change in the accuracy of the cross reference sheet previously filed. * * *

* * * * *

22. By amending § 230.473 by revising the second sentence of paragraph (c) and by removing from paragraph (d) the words ''or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form'' to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(c) * * * Any such amendment filed after the filing of the registration statement, any amendment altering the proposed date of public sale of the securities being registered, or any amendment filed pursuant to paragraph (b) of this section may be made by telegram, letter or facsimile transmission. * * *

* * * * *

23. By amending § 230.504 by revising paragraph (b)(1) to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met.* (1) To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502(a).

* * * * *

Undesignated center heading and §§ 230.651–230.656 (Reg. F) [Removed and reserved]

24. By removing the undesignated center heading and by removing and reserving §§ 230.651 through 230.656 (Regulation F).

§ 230.702(T) [Removed]

25. By removing § 230.702(T).

§ 230.703(T) [Removed]

26. By removing § 230.703(T).

§ 230.902 [Amended]

27. By amending § 230.902 at the end of paragraph (a)(1) before the word ''and'', add the words ''the Helsinki Stock Exchange; the Alberta Stock Exchange; the Oslo Stock Exchange; the Mexico Stock Exchange; the Istanbul Stock Exchange; and the Irish Stock Exchange''.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

28. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.311 [Amended]

29. By amending § 232.311 by removing paragraph (c) and redesignating paragraphs (d) through (i) as paragraphs (c) through (h).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

30. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

31. By amending Form F–6 (referenced in § 239.36) by removing Items 3(e) and 4(a) and by redesignating Item 3(f) as Item 3(e) and Items 4(b) and 4(c) as Items 4(a) and 4(b).

Note: The text of Form F–6 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

32. By amending Form F–7 (referenced in § 239.37) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

Note: The text of Form F–7 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

33. By amending Form F–8 (referenced in § 239.38) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

Note: The text of Form F–8 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

34. By amending Form F–9 (referenced in § 239.39) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

Note: The text of Form F–9 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

35. By amending Form F–10 (referenced in § 239.40) in Part I, Item 4 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

Note: The text of Form F–10 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

36. By amending Form F–80 (referenced in § 239.41) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

Note: The text of Form F–80 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

§ 239.101 [Removed and reserved]

37. By removing and reserving § 239.101 and by removing Schedules A, B, C, D and Forms 1–G and 3–G referenced in that section.

§ 239.300 [Removed and reserved]

38. By removing and reserving § 239.300 and by removing Form 1–F.

§ 239.701 [Removed and reserved]

39. By removing and reserving § 239.701 and by removing Form 701.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

40. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

41. By amending § 240.12b–11 by removing the word ''manually'' from paragraph (b) and by revising paragraph (d) to read as follows:

§ 240.12b–11 Number of copies; signatures; binding.

* * * * *

(d) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder, including paragraph (b) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

42. By amending § 240.13a–13 by revising the section heading and paragraph (c) to read as follow:

§ 240.13a–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(c) Part I of the quarterly reports on Form 10–Q or Form 10–QSB need not be filed by:

(1) Mutual life insurance companies; or

(2) Mining companies not in the production stage but engaged primarily in the exploration for the development of mineral deposits other than oil, gas or coal, if all of the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of not more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

* * * * *

§ 240.13a–17 [Removed and reserved]

43. By removing and reserving § 240.13a–17.

44. By amending § 240.14d–1 by revising paragraph (d) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(d) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

45. By amending § 240.15d–13 by revising the section heading and paragraph (c) to read as follows:

§ 240.15d–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

* * * * *

(c) Part I of the quarterly reports on Form 10–Q or Form 10–QSB need not be filed by:

(1) Mutual life insurance companies; or

(2) Mining companies not in the production stage but engaged primarily

in the exploration for the development of mineral deposits other than oil, gas or coal, if all of the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of not more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

* * * * *

§ 240.15d–17 [Removed and reserved]

46. By removing and reserving § 240.15d–17.

47. By amending § 240.16a–3 by revising paragraph (i) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(i) *Signatures.* Where Section 16 of the Act, or the rules or forms thereunder, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

§ 240.166–1 [Amended]

48. By amending § 240.16b–1 by removing paragraph (c).

§ 240.166–4 [Removed and reserved]

49. By removing and reserving § 240.16b–4.

50. By amending § 240.24b–2 by adding a preliminary note preceding the text of paragraph (a) and by removing paragraph (g), to read as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

Preliminary Note

Confidential treatment requests shall be submitted in paper format only, whether or not the filer is required to submit a filing in electronic format.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

51. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.,* unless otherwise noted;

* * * * *

52. By amending Form 10–K (referenced in § 249.310) by removing general instruction I. and redesignating general instruction J. as general instruction I.

Note: The text of Form 10–K does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

§ 249.310c [Removed and reserved]

53. By removing and reserving § 249.310c and by removing Form 10–C.

By the Commission.

Dated: May 31, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14182 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240, 249, and 274

[Release Nos. 33–7301 and 34–37263; S7–15–96]

RIN 3235–AG80

Phase Two Recommendations of Task Force on Disclosure Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: After considering certain of the recommendations contained in the Report of the Task Force on Disclosure Simplification, the Commission now proposes to eliminate two forms and one rule that may no longer be necessary or appropriate for the protection of investors. The Commission also proposes to add one rule, and to amend nine rules and 17 forms in order to eliminate unnecessary requirements and to streamline the disclosure process.

DATES: Comments should be submitted on or before July 29, 1996.

ADDRESSES: All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–15–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: After considering certain of the recommendations of the Task Force on Disclosure Simplification, the Commission today is proposing the amendment of Rule 401,[1] Rule 424,[2] Rule 462,[3] Rule 463[4] and Rule 503[5] under the Securities Act of 1933 (''Securities Act'').[6] The Commission also is proposing the elimination of Rule 507[7] under the Securities Act. Amendments are being proposed to the following Securities Act forms: Form SB–1,[8] Form SB–2,[9] Form S–1,[10] Form S–3,[11] Form S–11,[12] Form S–4,[13] Form F–1,[14] Form F–3,[15] Form F–4[16] and Form D.[17] In addition, the Commission proposes the elimination of Form SR[18] under the Securities Act and Form 8–B[19] under the Securities Exchange Act of 1934 (''Exchange Act'').[20] The Commission proposes to add Rule 12a–8[21] under the Exchange Act. In addition, amendments are being proposed to the following Exchange Act rules and forms: Rule 12d1–2,[22] Rule 12g–3,[23] Rule 15d–5,[24] Form 8–A,[25] Form 20–F,[26] Form 10–Q,[27] Form 10–QSB,[28] Form 10–K,[29] and Form 10–KSB.[30] Amendments also are being proposed to the following rule and form applicable to investment companies: Rule 497 under the Securities Act[31] and Form N–2[32] under the Investment Company Act of 1940.[33]

I. Background

On March 5, 1996, the Task Force on Disclosure Simplification (''Task Force'') presented its Report (''Task Force Report''),[34] which recommended the elimination or modification of many rules and forms, and proposed suggestions for simplifying significant aspects of securities offerings. In conjunction with the publication of the Task Force Report, the Commission proposed for public comment the elimination of 45 rules and four forms. Most of these proposals are being adopted today in a separate release.[35]

After further consideration of the Task Force recommendations, the Commission now is proposing for public comment the further elimination of two forms and one rule. The Commission also is proposing to add one rule, and to amend nine rules and 17 forms in order to simplify and improve the disclosure process.

The Commission's issuance of these proposals does not reflect its views on the merits of the remaining recommendations in the Task Force Report that it has not yet considered. As it further considers other recommendations made in the Task Force Report, the Commission anticipates making other proposals aimed at streamlining the disclosure process.

The Commission's principal proposals contained in this release are as follows:

- The Form D federal filing requirement would be eliminated for the Regulation D[36] and Section 4(6)[37] exemptions, although Form D itself would be retained;
- Form SR, the use of proceeds report for initial public offerings, would be eliminated, and the information currently required by Form SR would be required in Exchange Act periodic reports;
- Form 8–B, which pertains to the registration of the securities of successor issuers, would be eliminated;
- The Securities Act registration forms would be amended to permit issuers to register concurrently a public offering under the Securities Act and a class of securities under the Exchange Act by filing a single form that would cover both registrations;
- Form 8–A, the short-form Exchange Act registration statement, would be amended to provide automatic effectiveness for all securities that are registered on that Form, as currently is the case for exchange-listed debt securities; and
- Post-effective amendments to Securities Act registration statements filed solely to add exhibits would become effective automatically upon filing.

[1] 17 CFR 230.401.
[2] 17 CFR 230.424.
[3] 17 CFR 230.462.
[4] 17 CFR 230.463.
[5] 17 CFR 230.503.
[6] 15 U.S.C. 77a *et seq.*
[7] 17 CFR 230.507.
[8] 17 CFR 239.9.
[9] 17 CFR 239.10.
[10] 17 CFR 239.11.
[11] 17 CFR 239.13.
[12] 17 CFR 239.18.
[13] 17 CFR 239.25.
[14] 17 CFR 239.31.
[15] 17 CFR 239.33.
[16] 17 CFR 239.34.
[17] 17 CFR 239.500.
[18] 17 CFR 239.61.
[19] 17 CFR 249.208b.
[20] 15 U.S.C. 78a *et seq.*
[21] 17 CFR 240.12a–8.
[22] 17 CFR 240.12d1–2.
[23] 17 CFR 240.12g–3.
[24] 17 CFR 240.15d–5.
[25] 17 CFR 249.208a.
[26] 17 CFR 249.220f.
[27] 17 CFR 249.308a.
[28] 17 CFR 249.308b.
[29] 17 CFR 249.310.
[30] 17 CFR 249.310b.
[31] 17 CFR 230.497.
[32] 17 CFR 239.14 and 274.11a–1.
[33] 15 U.S.C. 80a–1 *et seq.*
[34] The Task Force Report is available for inspection and copying in the Commission's public reference room. The Report also is posted on the Commission's Internet web site (http://www.sec.gov). Persons interested in commenting on the Report may do so by referring to File No. S7–6–96 and, as noted above, submitting comments in paper or electronically.
[35] *See* Release No. 33–7300 (May 31, 1996).
[36] 17 CFR 230.501 through 17 CFR 230.508.
[37] 15 U.S.C. 77d(6).

II. Forms

A. Form D

The Commission currently requires the filing of Form D by an issuer that engages in an unregistered offering of its securities in reliance on an exemption under Regulation D or Section 4(6) of the Securities Act. For each claimed exempt offering, an issuer must file a Form D with the Commission no later than 15 days after the first sale of securities. Form D requires the issuer to disclose basic information concerning the identity of the issuer and the offering, including the exemption being claimed and information regarding the offering price, number of investors, expenses, and use of proceeds. An issuer also may use the Form to give notice to state securities regulators of its reliance on the Uniform Limited Offering Exemption (''ULOE'')[38] for its securities offering exemption in states that have adopted ULOE and Form D.

The Commission proposes to amend Form D to eliminate the federal requirement that issuers file Form D when relying on the Regulation D or Section 4(6) exemptions.[39] A Form D typically provides only minimal information about the issuer and the offering. Moreover, the Commission does not require an issuer to file a notice when making offerings under certain other exemptions from Securities Act registration, such as an intrastate offering under the Rule 147 safe harbor.[40] Certain information regarding unregistered sales, similar to that provided in Form D, is currently required by Item 701 of Regulation S–K,[41] which applies to an issuer registering an initial public offering or other offering of securities on Form S–1, as well as to a foreign private issuer registering an offering of securities on Form F–1. Small business issuers are required to disclose similar information pursuant to the requirements of Form SB–1 and the requirements of Item 701 of Regulation S–B,[42] which applies to offerings registered on Form SB–2.[43]

Although the additional information provided in Form D is of minimal usefulness for federal purposes, the Commission notes that many states appear to find that Form useful. The Commission recognizes that a single federal form has obviated the need for multiple state forms for the purposes of ULOE. Thus, the Form has had the effect of creating a uniform state approach to ULOE notifications.

As a result, the Commission proposes to retain Form D, but to eliminate the Form D filing requirement for the Regulation D and Section 4(6) exemptions. The Commission proposes to amend Rule 503, which sets forth the notice filing requirement for issuers claiming a Regulation D exemption, to require issuers to prepare and retain the Form D notice after the first sale of securities. As proposed, Form D would be required to be retained by the issuer in its records for at least three years after the first sale of securities made in reliance on Regulation D, subject to possible inspection by the Commission's staff. Since the requirement to file Form D would be rescinded, the Commission proposes to eliminate Rule 507, which provides that an issuer is ineligible to claim a Regulation D exemption if it has previously been subject to a court order for failing to comply with the notice requirement of Rule 503. The Commission looks forward to working with NASAA in reconciling differing federal and state regulatory needs with respect to Form D.

Comment is requested as to whether Form D is useful to investors and issuers. Should Form D be rescinded altogether? Does Form D provide information that would not otherwise be available in other disclosure documents? Should the Commission require issuers to prepare and retain Form D only if they are required to file the Form for state securities law purposes? Rather than require the preparation of the Form at all, should the Commission require issuers to have available upon request by the Commission or its staff the information currently contained in Form D for a three-year period? Would the elimination of the Form D filing requirement for Regulation D purposes hinder the securities offering exemption program in those states that have adopted ULOE and Form D? Are there any states that require a Form D in Rule 504 offerings and is it necessary to maintain a Form D recordkeeping requirement for offerings pursuant to Rule 504? Should Form D be revised to reflect its primary usefulness for state regulatory purposes, and if so, how? Is a recordkeeping requirement for Form D reasonable, and if so, would a shorter period, *e.g.*, one year or two years, or longer period, *e.g.*, five years, be more appropriate?

The Commission solicits comment on whether Form D should be eliminated for Regulation D purposes, but retained for the purposes of Section 4(6). If Form D is retained for Section 4(6) purposes, should issuers be required only to prepare and retain, rather than file, the Form?

If the proposal to require quarterly disclosure of unregistered sales is adopted, would this adequately substitute for the information provided by Form D with respect to issuers required to file reports with the Commission? Would this create an information gap with respect to non-reporting issuers? Should Form D be eliminated only if the Commission adopts this proposal?

B. Form SR

Rule 463 under the Securities Act requires issuers to report on Form SR the use of proceeds following an initial public offering within ten days of the first three months following the effective date of the registration statement, and every six months thereafter, until the later of the termination of the offering or the application of all the offering proceeds.[44] The Commission proposes to eliminate Form SR in favor of requiring first-time issuers to report the use of proceeds in their first periodic Exchange Act report (quarterly report or annual report, whichever is filed first) after effectiveness, and thereafter in their periodic Exchange Act reports through the later of the application of the proceeds or the termination of the offering. Although this proposal would increase the frequency with which domestic issuers would report this information, the consolidation of disclosure requirements would facilitate reporting by registrants by reducing the number of forms they would be required to file to satisfy their substantive reporting obligations. Furthermore, these important disclosures regarding the use of proceeds and the progress of the offering would appear within a

[38] See NASAA Rep. (CCH) ¶ 6201. The North American Securities Administrators Association, Inc. (''NASAA'') adopted the ULOE in 1983 to provide a model blue sky exemption for certain offers or sales of securities that are sold in compliance with Rules 505 and 506 of Regulation D under the Securities Act. The purposes of the ULOE are two-fold: to create a state limited offering exemption that is compatible with federal exemptions and to create a uniform exemption that could be adopted by the states.

[39] In 1994, 7,494 filings on Form D were made. From January through October 1995, 6,066 filings were made.

[40] 17 CFR 230.147. *See also* 15 U.S.C. 77c(a)(11).

[41] 17 CFR 229.701.

[42] 17 CFR 228.701.

[43] The Commission has proposed to require disclosure requiring unregistered sales on a quarterly basis, including information about sales pursuant to Regulation D. *See* Release No. 33–7189 (June 27, 1995) (60 FR 35656).

[44] In 1994 and 1995, 2,103 and 1,635 such filings were made, respectively.

filing that is more commonly monitored by investors, and would further the integrated disclosure scheme.

The Commission proposes to amend Rule 463 to reflect the proposed changes. In addition, the Commission proposes to amend the periodic reporting forms under the Exchange Act (Forms 10–Q, 10–QSB, 10–K, and 10–KSB) by adding a disclosure item that would require all of the information currently required by Form SR.[45] Of course, the disclosure would continue to be required only of first-time issuers. Comment is solicited on whether the disclosure requirement should instead be placed in Regulations S–K and S–B, with the periodic reporting forms referring to that disclosure item.

The Commission also proposes to amend Form 20–F, the Exchange Act annual report form applicable to foreign private issuers,[46] to require disclosure of the use of proceeds information currently contained in Form SR. Foreign private issuers, unlike domestic issuers, are not required to file Exchange Act periodic reports on Forms 10–Q or 10–KSB, but are required to submit to the Commission the periodic reports prepared in accordance with home jurisdiction requirements. As a result of the Commission's proposal, foreign private issuers would be reporting the use of proceeds information on an annual, rather than quarterly, basis. Comment is requested as to whether it is appropriate to permit foreign private issuers to report use of proceeds information on a less frequent basis than domestic issuers. Should Form SR be retained for foreign private issuers? If so, should the Form be retained for domestic issuers as well? In light of requirements under Form 20–F under which most information relating to transactions with affiliates is based on home country disclosure requirements, should foreign private issuers continue to be required to disclose separately the use of proceeds with respect to direct or indirect payments to directors, officers or general partners or their associates, to persons owning ten percent or more of the issuer's equity securities and other affiliates of the issuer or should such requirement be eliminated (whether Form SR is retained for foreign private issuers or not)?

Comment is requested as to whether the filing of a separate Form SR continues to serve a useful purpose, or whether reliance on Exchange Act reporting obligations would protect sufficiently the interests of investors. Would the proposal unduly burden the periodic reporting responsibilities of issuers by requiring the reporting of use of proceeds information on a quarterly basis rather than on a semi-annual basis, as is currently the case?

It is possible that an issuer would have its Exchange Act reporting obligation terminate prior to the application of all proceeds from its initial public offering. Comment is requested as to the need for continued disclosure in this situation.

The proposed amendments to the Exchange Act periodic reports require disclosure of the amount of the issuer's net offering proceeds used for any purpose for which at least five percent of the issuer's total proceeds or $50,000, whichever is less, has been used. This reflects the current Form SR requirement. Comment is solicited as to whether the five percent and $50,000 threshold figures, which were set in 1971, should be retained or raised to ten percent, or $75,000 or $100,000, respectively, to reflect inflation. Irrespective of the threshold levels used, should the requirement be the *greater* of five percent or $50,000 (or whatever the threshold figures may be)? In addition, comment is solicited as to whether the periodic forms should be amended as proposed to include *all* of the current Form SR disclosure, including the information requirement regarding offerings that terminate without any sales, or whether any such disclosure currently required in Form SR should be eliminated.

C. Form 8–B

The Commission proposes to eliminate Exchange Act Form 8–B, regarding registration of securities of successor issuers, because Exchange Act Rule 12g–3 has rendered that Form largely superfluous. Form 8–B was adopted in 1936 to provide for registration of securities of certain successor issuers under Section 12 of the Exchange Act.[47] An issuer uses Form 8–B to register its securities when the issuer has no securities registered under section 12 of the Exchange Act, but has succeeded to an issuer that had securities registered under section 12 at the time of the succession.

The Commission received only 59 Form 8–B filings in 1994 and 58 such filings in 1995. The usefulness of Form 8–B has been limited because of the application of Exchange Act Rule 12g–3 to successor issuers. In the event of a succession by merger, consolidation, exchange of securities, or acquisition of assets, Rule 12g–3 automatically deems to be registered under section 12 of the Exchange Act the equity securities of an issuer not previously registered under section 12 that are issued to the holders of equity securities registered pursuant to that section. Hence, a successor to an issuer with a class of securities registered under section 12 is deemed to succeed to that registration and need not file a Form 8–B.

In order to accommodate the elimination of Form 8–B, the Commission proposes to expand Rule 12g–3 to include any transactions or securities that are currently covered by Form 8–B, but not current Rule 12g–3.[48] Such transactions include the succession of a non-reporting issuer to more than one reporting issuer, either through consolidation into a new entity or a holding company formation. Currently, such a succession would require both existing issuers to deregister their securities under the Exchange Act, after which the successor would file a Form 8–B. As proposed, when a non-reporting issuer succeeds to the registration of more than one reporting issuer and the reporting issuers are registered under different paragraphs of section 12, the successor issuer would be able to elect the section 12 paragraph under which it would be deemed registered by noting this election in the Form 8–K disclosing the succession. Comment is requested whether this is appropriate. Would it be more effective to deem the successor issuer registered under section 12(b)?

The Commission proposes to amend Rule 12g–3 to clarify that the rule applies to issuers with securities registered under section 12(b) of the Exchange Act,[49] as well as to those with securities registered under section 12(g).[50] Accordingly, Rule 12g–3 as proposed to be amended would apply to any class of securities, whether exchange-listed, required to be registered under section 12(g) of the

[45] The proposed amendments to these forms assume that the Commission's rule proposal pertaining to disclosure of Item 701 of Regulations S–K and S–B information on a quarterly basis (*see* n.43 above) is adopted before these proposed amendments are adopted. As currently contemplated, the use of proceeds information would appear as a separate item in the periodic report immediately following the Item 701 information. If the Item 701 rule proposal is not adopted before the amendments proposed today, corresponding changes would be made to the item designations within the amended forms.

[46] ''Foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) (17 CFR 240.3b–4(c)).

[47] 15 U.S.C. 78l. ''Succession'' is defined in Exchange Act Rule 12b–2 (17 CFR 240.12b–2).

[48] Consistent with current practice, the successor issuer would be required to file a Form 8–K with respect to the transaction and subsequently comply with all of the applicable provisions of the Exchange Act. *See* Items 1 and 2 of Form 8–K (17 CFR 249.308).

[49] 15 U.S.C. 78l(b).

[50] 15 U.S.C. 78l(g).

Exchange Act, or voluntarily registered under section 12(g) of the Exchange Act.[51]

The Commission also proposes to amend Exchange Act Rule 15d–5, which pertains to the automatic assumption of reporting obligations by a non-reporting issuer that succeeds to an issuer that has reporting obligations under section 15(d) of the Exchange Act.[52] In connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, Rule 15d–5 automatically transfers the section 15(d) reporting obligations of a predecessor issuer to equity securities issued by a non-reporting successor issuer in connection with the succession. Consistent with its proposed amendment to Rule 12g–3, the Commission proposes to amend Rule 15d–5 so that it would cover *all* securities issued by a non-reporting issuer, not just equity securities.

Comment is requested as to whether Form 8–B continues to be useful to issuers and investors. Comment is solicited regarding whether there are any other situations in which a company currently files a Form 8–B that would not be encompassed by proposed Rule 12g–3. Are there any additional notification or other benefits to investors if an issuer files on Form 8–B in addition to filing its Form 8–K report?

III. Registration Requirements

A. Concurrent Exchange Act/Securities Act Registration

The Commission proposes to permit a company to register concurrently a public offering under the Securities Act and a class of securities under the Exchange Act by filing a single form that would cover both registrations.

Under current rules, a reporting company can register a class of securities under the Exchange Act on a short form registration statement, Form 8–A. Form 8–A requires only a description of the registrant's securities pursuant to Item 202 of Regulation S–K[53] and the filing of certain exhibits.[54] Pursuant to staff practice, an issuer registering an initial public offering is permitted to use Form 8–A even though it is not subject to reporting until after the effectiveness of that Securities Act registration statement.

Under the current rules, registrants that are concurrently registering a class of securities under the Securities Act and the Exchange Act must file two forms, Form 8–A and the appropriate Securities Act form. Since the Securities Act form will contain or incorporate by reference all of the information called for by Form 8–A, the Commission proposes to eliminate the Form 8–A filing requirement when there is a Securities Act registration statement.[55]

In order to provide for concurrent registration under the Securities Act and the Exchange Act, the Commission is proposing to amend Forms SB–1, SB–2, S–1/F–1, S–3/F–3, S–4/F–4, and S–11[56] and Form N–2 for certain closed-end investment companies and business development companies.[57] The respective forms would each be modified to include a box on the cover page of the registration statement that could be checked to indicate when concurrent Exchange Act registration is being made, and to include certain other information, such as the title of the class of securities to be registered under the Exchange Act. The proposed procedure for concurrent registration is intended to facilitate dual Securities Act and Exchange Act.

In addition to the Securities Act rules applicable to the filing and effectiveness of the registration statement, Exchange Act Rule 12d1–2, which pertains to the effectiveness of the registration statement for Exchange Act purposes, would be applicable to the concurrent registration statement. Under this proposal, the registration of a class of securities under section 12(g) of the Exchange Act would become effective at the same time as the effectiveness of the registration statement pertaining to such securities under the Securities Act. However, the registration under section 12(b) of the Exchange Act of a class of securities to be listed on a national securities exchange would not become effective until after certification had been received by the Commission from the national securities exchange, as required by section 12(d) of the Exchange Act.[58]

The Commission does not propose to permit concurrent registration for securities registered on ''shelf'' registration statements in which the securities will be offered and sold on a delayed basis in reliance on Rule 415(a)(1)(x),[59] since those registration statements normally do not include an adequate description of the securities for the purposes of Exchange Act registration.[60] However, concurrent Exchange Act registration would be available for a continuous offering of securities that is registered on a ''shelf'' registration statement.[61]

When concurrent registration is not available, Form 8–A would still have to be used. The Commission proposes to streamline the current Form 8–A procedure by providing automatic effectiveness for all registration statements on that Form, just as currently provided for exchange-listed debt securities.[62] There appears to be little justification for differentiating between debt and equity securities.

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[51] Section 12(g) of the Exchange Act only requires the registration of equity securities. The Commission notes that the proposed rule could impose reporting obligations on a limited class of issuers not currently subjected by Rule 12g–3 to reporting following a succession because the predecessor issuer had a class of securities registered under section 12 voluntarily. However, the Commission notes that the proposal should not impose any undue burdens as a result of this situation, because such an issuer would likely be able to terminate the registration under section 12 immediately following the succession.

[52] 15 U.S.C. 78o(d).

[53] 17 CFR 229.202. The Commission proposes to amend Form 8–A to require a parallel description of registrant's securities pursuant to Item 202 of Regulation S–B (17 CFR 228.202) for small business issuers that use Form 8–A.

[54] Form 8–A can incorporate by reference information that is contained in other filings made with the Commission.

[55] The $250 filing fee normally payable upon the filing of a registration statement under the Exchange Act would not apply to securities registered concurrently on a Securities Act form. Currently, the Commission is considering a proposal to rescind all Exchange Act filing fees. *See* Release No. 33–7293 (May 16, 1996). If the fee proposal is not adopted by the time that the concurrent registration rule proposals are adopted, the Commission proposes in this release to rescind the $250 filing fee for all Exchange Act registrations of securities that are made concurrently with Securities Act filings, as well as for all Form 8–A filings.

[56] The Task Force recommended the elimination of Forms S–2/F–2 in its Report. If these Forms have not been eliminated before adoption of the concurrent registration proposal, the Commission currently intends to modify Forms S–2/F–2 in the same manner.

[57] Closed-end investment companies that register their shares on an exchange and business development companies are required to register their securities under Sections 12(b) and 12(g), respectively, of the Exchange Act.

[58] 15 U.S.C. 78l(d). Rule 12d1–2 would be amended to provide that the Exchange Act registration would be effective at the same time as the Securities Act registration statement, or at the time certification has been received by the Commission, whichever is later.

[59] 17 CFR 230.415(a)(1)(x).

[60] Item 1 of Form 8–A requires issuers to provide a description of the securities to be registered that satisfies the requirements of Item 202 of Form S–K.

[61] Rule 415(a)(1)(ix) permits registration of continuous offerings that begin promptly after effectiveness of the registration statement and may continue for more than 30 days. Because a continuous offering must commence promptly, the registration statement pertaining to such offerings would contain sufficient information to satisfy the requirements of Item 202 of Regulation S–K.

[62] If used for section 12(g) registration, the Form 8–A would be effective upon filing with the Commission. If used for section 12(b) registration, the Form 8–A would become effective upon the later of filing with the Commission, or the Commission's receipt of certification from the national securities exchange.

Since Form 8–A primarily incorporates by reference information found in other Commission filings that may be subject to prior staff review, staff review of these Form 8–A filings is not needed. Thus, automatic effectiveness would simplify the logistics of Exchange Act registration without affecting the quality of disclosure available to the public.

The availability of concurrent registration of securities on a Securities Act registration statement and automatic effectiveness of the Form 8–A would render superfluous the special procedures for registration of debt securities listed on a national securities exchange on Form 8–A.[63] Accordingly, the Commission proposes conforming amendments to Form 8–A and to Rule 12d1–2.

Comment is requested as to whether Form 8–A should be retained when a registration statement under the Securities Act also is being filed with respect to the same class of securities. Should a check box be added to Form 8–A instead to indicate the registrant's request for concurrent effectiveness? The Commission solicits comment on whether issuers would find the concurrent registration procedure useful. Do issuers consider the filing of a Form 8–A burdensome? Comment is generally requested regarding the procedural mechanisms of the concurrent registration system, including timing, requests for acceleration and withdrawal. With respect to the concurrent registration of securities on one form for Exchange Act and Securities Act purposes, comment is solicited as to whether a filing made on the Electronic Data Gathering, Analysis and Retrieval (''EDGAR'') system should have a tag that identifies the registration statement as one in which Exchange Act registration also is contemplated.

As noted above, the proposals for concurrent registration would not apply to delayed offerings of securities registered on ''shelf'' registration statements under Rule 415(a)(1)(x). Are there other delayed offerings permitted under Rule 415 for which there may not be an adequate description of securities? Would the automatically effective Form 8–A be a streamlined enough procedure, or should the Commission establish a concurrent registration procedure applicable to delayed offerings? Comment is solicited as to whether the description of the securities to be registered contained in such registration statements would, in some cases, satisfy the requirements of Item 202 of Regulation S–K. If so, should the concurrent registration procedure be available? If not, should the concurrent registration procedure be permitted if the Item 202 information is incorporated into the Form 8–A from the prospectus filed under Rule 424(b)?

The Commission also requests comment on the desirability of providing automatic effectiveness for all securities registered on Form 8–A. Should issuers have the option of delaying the effectiveness of a Form 8–A registration statement? Are there occasions when it would be more convenient for issuers to file Form 8–A early and request acceleration when needed? Regardless of whether concurrent registration or automatic effectiveness is adopted, the Commission also is considering eliminating the requirement in Form 8–A that issuers file certain exhibits with the copy of the Form 8–A that is filed with each national securities exchange on which the securities are to be registered.[64] Comment is solicited as to whether these exhibits continue to be useful to the national securities exchanges that receive such exhibits or, if not, whether the exhibit requirement should be eliminated.

B. Registration Requirements for American Depositary Receipts

The Commission proposes to eliminate the registration requirement under section 12(b) of the Exchange Act for American Depositary Receipts (''ADRs'') registered on Form F–6 [65] under the Securities Act.

Under current rules, a foreign issuer whose common stock is traded on Nasdaq in the form of ADRs must register the common stock under Section 12(g) of the Exchange Act, but is not required to register the ADRs. A foreign issuer whose common stock is listed on a national securities exchange, however, is required to register both the common stock and the ADRs under Section 12(b) of the Exchange Act. There appears to be little benefit to investors by applying an Exchange Act registration and reporting obligation to the listed ADRs in addition to the deposited securities. It is common practice for the Exchange Act registration statement and reports of foreign issuers to be used to satisfy the requirements for both the deposited securities and the listed ADRs. With respect to the issuer's preparation of an Exchange Act registration statement, the proposal would eliminate only the requirement to list the ADR on the cover page of the registration statement. Eliminating the Exchange Act registration and reporting obligation with respect to the listed ADRs would not appear to have a material impact on the content of disclosure, and would be consistent with the existing view of ADRs as a mechanism for investment in the underlying foreign securities. In these circumstances, Exchange Act registration imposes a regulatory burden that has no apparent benefit to investors, since it results in no additional disclosure and creates an unwarranted regulatory distinction between Nasdaq-traded ADRs and exchange-listed ADRs.

The Commission proposes to add Rule 12a–8 under the Exchange Act to exempt ADRs registered on Form F–6 from the registration requirements of section 12(b). The section 12(b) registration requirements, however, would continue to apply to the class of securities underlying the ADRs.

Comment is solicited as to whether the Section 12(b) registration requirements for ADRs continue to provide useful disclosure to investors. Assuming that the underlying deposited securities continue to be subject to section 12(b) registration, are there any concerns unique to exchange-traded securities that would warrant continued Exchange Act registration of such ADRs? [66]

C. Securities Act Form Eligibility

The Commission proposes to amend Rule 401(c) under the Securities Act to permit an issuer to switch to a shorter Securities Act form at the time of filing any amendment if it has become eligible to use the shorter form since filing its initial registration statement.

Currently, under Rule 401 under the Securities Act, the form and content of a registration statement and prospectus are determined on the initial filing date of such registration statement and prospectus. An issuer is not permitted under Rule 401 to reevaluate its status until it files a post-effective amendment pursuant to Section 10(a)(3) [67] of the

[63] In 1994, the Commission amended its rules to permit a Form 8–A filed with respect to a class of debt securities to be listed on a national securities exchange to become effective simultaneously with the effectiveness of the Securities Act registration statement pertaining to such debt securities. *See* Release No. 34–34922 (Nov. 1, 1994) (59 FR 55342).

[64] These exhibits include, for example, copies of the last annual report filed pursuant to section 13 or 15(d) of the Exchange Act, copies of the latest definitive proxy statement filed with the Commission, and copies of the issuer's charter and by-laws.

[65] 17 CFR 239.36.

[66] If Section 12(b) registration is not rescinded with respect to ADRs, the Commission proposes to provide concurrent Exchange Act registration for ADRs on Form F–6, the Securities Act registration form for ADRs.

[67] 15 U.S.C. 77j(a)(3).

Securities Act. As such, even if an issuer meets the eligibility criteria to use a shorter form at the time of filing a pre-effective or post-effective amendment (other than a Section 10(a)(3) post-effective amendment), current rules require it to file the amendment on the longer form that applied at the time of its initial registration statement.

In its Report, the Task Force recommended that an issuer be permitted to take advantage of a form if it meets the eligibility criteria for that form at the time it files an amendment. The Commission proposes to revise Rule 401(c) to permit issuers to determine the appropriate form upon filing *any* amendment, including pre-effective and post-effective amendments. This proposal should ease filing burdens on issuers without causing any harm to investors. In order to assure that the change would not impose new burdens, the rule would continue to provide that if an issuer files an amendment other than for the purposes of section 10(a)(3), an issuer would not be required to use a form that is different from the one used for its last section 10(a)(3) amendment, or if none has been filed, its initial registration statement.

The Commission requests comment on whether the proposed change for determining the availability of a short form when filing a pre- or post-effective amendment is appropriate.

D. Rule 424(d)—Radio and Television Broadcast Prospectuses

Rules 424(d) and 497(f) currently provide that prospectuses of corporate issuers and investment companies, respectively, consisting of a radio or television broadcast must be reduced to writing and filed at least five days before they are broadcast or otherwise issued to the public. Although the Securities Act provides that such prospectuses may be treated differently than other prospectuses in certain circumstances,[68] this filing requirement imposes a burden on issuers using such prospectuses that does not appear necessary for investor protection purposes. Accordingly, the Task Force recommended elimination of the requirement of filing five days prior to first broadcast. In accordance with this recommendation and in view of the increasing use of electronic media in connection with securities offerings, it is proposed that Rules 424(d) and 497(f) be amended to eliminate the special filing requirements for these prospectuses.[69] While Rules 424(d) and 497(f) would maintain the requirement that radio or television broadcast prospectuses be reduced to writing, it is proposed that such prospectuses be filed with the Commission in accordance with the requirements applicable to other types of prospectuses. Pursuant to these amendments, radio and television broadcast prospectuses would be filed, in the case of corporate issuers, in accordance with the timing specified in Rule 424 (between two to five days after use depending on the subject matter of the prospectus), and, in the case of investment companies, any time prior to use in accordance with Rule 497(e).

Comment is solicited as to whether the current five day pre-broadcast filing requirement should be retained or if a shorter period would be more appropriate.

Comment is solicited as to whether a pre-broadcast filing requirement should be retained for corporate issuers. Comment is solicited as to whether all radio and television prospectuses would fit within one of the other existing categories in Rule 424, and if not, is there a need for a separate filing rule for these prospectuses under Rule 424? Comment is requested as to whether there should be a uniform filing requirement for all issuers for these types of prospectuses.

E. Exhibits

The Commission proposes to permit automatic effectiveness of a post-effective amendment filed solely to add an exhibit. Following effectiveness, issuers may update their registration statements to include new consents, opinions or other exhibits. Under current rules, registrants eligible to use Forms S–3/F–3 may file updated exhibits post-effectively on Form 8–K. The exhibit is then automatically incorporated by reference into its prospectus. By contrast, registrants that are not eligible to use Form S–3/F–3 can accomplish the filing of updated exhibits only by way of post-effective amendments, which are subject to possible staff review. Even if such amendments are not selected for review, there may be a delay between the time the amendments are filed and when they are declared effective.

In order to facilitate the filing of updated exhibits by non-S–3/F–3 registrants and eliminate delays, the Commission proposes to add new Rule 462(d) to permit any post-effective amendments filed solely to add exhibits, either generally or in reference to particular exhibits, to become effective automatically upon filing. A check box and a new EDGAR form type would be added to Forms SB–1, SB–2, S–1/F–1, S–4/F–4, and S–11[70] to permit such automatic effectiveness.

The proposed rule is not intended to affect an issuer's disclosure obligations. It would not be available for the filing of exhibits that would trigger the filing of a post-effective amendment to update the prospectus. In addition, the proposed rule would not provide automatic effectiveness to post-effective amendments that include an exhibit that otherwise should have been filed pre-effectively. Accordingly, in these situations, the issuer would not be permitted to check the box for automatic effectiveness.

Comment is requested as to whether the current availability of staff review of post-effective amendments filed solely to add an exhibit continues to be useful to investors and issuers. The Commission also requests comment on whether it would be useful to extend automatic effectiveness of post-effective amendments to Forms S–3/F–3.

IV. General Request for Comment

Any interested persons wishing to submit comment on any of the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–15–96. This file number should be included on the subject line if E-mail is used. Comment is specifically requested as to whether any of the rules or forms that have been proposed to be eliminated provide disclosure that is material to investors, issuers or other market participants, the states or any other entity. Comment also is requested on any competitive burdens that might result from the adoption of any of the proposals. All comments will be considered by the Commission in complying with its responsibility under

[68] Under section 10(f) of the Securities Act (15 U.S.C. 77j(f)), the Commission is granted the authority to require radio and television broadcast prospectuses to be filed along with other forms of prospectuses used in connection with the sale of the registered securities.

[69] Such an approach would be consistent with the positions set forth in Securities Act Release No. 33–7233 (October 6, 1995) concerning the use of electronic media for delivery purposes.

[70] As noted above, the Task Force recommended that Forms S–2/F–2 be eliminated. If these Forms have not been eliminated before adoption of the automatic effectiveness proposal, the Commission currently intends to adopt corresponding changes to them.

Section 23(a) of the Exchange Act.[71] Comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

V. Cost-Benefit Analysis

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid the Commission in its evaluation of the costs and benefits that may result from the changes proposed in this release. It is anticipated that these proposals will benefit those with filing obligations by simplifying or clarifying current rules and by eliminating rules and forms that are outdated or rarely used for other reasons. No detrimental effects to investors are expected. It is not believed that the changes outlined in this release will affect significantly the overall costs and burdens associated with filing requirements generally. If these proposals contain anything that could increase the burdens on issuers, the Commission believes such burdens will be outweighed by the benefits to investors and the increase in convenience to issuers.

VI. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments would eliminate certain forms and one rule, add one rule, and revise other rules to change or modernize them.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined by the Commission's rules. It is not expected that materially increased reporting, recordkeeping and compliance burdens would result from the changes. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose additional burdens on small business issuers.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Felicia H. Kung, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

VII. Paperwork Reduction Act

Certain provisions of Regulation C, the section 12(b) and section 12(g) registration requirements of the Exchange Act, and the section 13(a) and 15(d) periodic reporting obligations of the Exchange Act contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (the ''Act'') (44 U.S.C. 3501 *et seq.*). The Commission has submitted its proposed revisions to the information collections required by these provisions to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(a) and 5 CFR 1320.11. The titles of the affected information collections are ''Form 20–F,'' ''Form 10–Q,'' ''Form 10–QSB, ''Form 10–K,'' ''Form 10–KSB,'' and ''Form 8–A.''

Under Rule 463 of Regulation C, issuers must report the use of proceeds following an initial public offering on Form SR. Form SR must be filed within ten days of the first three months following the effective date of the registration statement, and every six months thereafter until the offering has been terminated or all proceeds have been applied. The Commission's proposal to eliminate Form SR and to require first-time issuers to report information currently contained in Form SR on their periodic Exchange Act reports would reduce the number of forms filed by issuers, but may marginally increase their reporting or recordkeeping burden by increasing the frequency with which issuers report use of proceeds information. It is estimated for purposes of the Paperwork Reduction Act that approximately 28,950 Form 10–Qs and 10,150 Form 10–Ks are filed each year, and that approximately 1,470 Form 10–Qs and 490 Form 10–Ks would include the proposed disclosure item. It also is estimated that approximately 6,000 Form 10–QSBs and 2,075 Form 10–KSBs are filed each year, and that approximately 795 Form 10–QSBs and 265 Form 10–KSBs[72] would include the proposed disclosure item. In addition, it is estimated that approximately 545 Form 20–Fs are filed each year, and that approximately 100 Form 20–Fs would include the proposed disclosure item. The burden for each Form 10–Q, 10–QSB, Form 10–K, Form 10–KSB and Form 20–F that includes the proposed item disclosure would be increased by an estimated burden of 5.5 hours for a total increase of annual burden of 17,160 hours with respect to all five forms.[73] If the proposals were adopted: (i) an estimated 1,470 respondents would file Form 10–Q each year with the proposed disclosure item at an estimated burden of 5.5 hours per filing for an estimated total annual burden of 8,085 hours; (ii) an estimated 795 respondents would file Form 10–QSB each year with the proposed disclosure item at an estimated burden of 5.5 hours per filing for an estimated total annual burden of 4,372.5 hours; (iii) an estimated 490 respondents would file Form 10–K each year with the proposed disclosure item at an estimated burden of 5.5 hours per filing for an estimated total annual burden of 2,695 hours; (iv) an estimated 265 respondents would file Form 10–KSB each year with the proposed disclosure item at an estimated burden of 5.5 hours per filing for an estimated total annual burden of 1,457.5 hours and (v) an estimated 100 respondents would file Form 20–F each year with the proposed disclosure item at an estimated burden of 5.5 hours per filing for an estimated total annual burden of 550 hours.

Form 8–A, the short-form Exchange Act registration statement, is used by a reporting company and by a company registering an initial public offering. The Commission's proposal to permit Exchange Act registration of a class of securities concurrent with the Securities Act registration of such securities by requiring registrants to check a box on the cover page of the Securities Act registration statement should eliminate the need for the Form 8–A registration statement in many instances. At the present, approximately 1,940 Form8–As are filed each year for a total annual burden of 14,550 hours. As a result of the Commission's proposal, it is estimated that approximately 1,164 fewer Form 8–As would be filed, for an estimated reduction in total burden

[71] 15 U.S.C. 78w(a).

[72] These estimates are based on the number of small business issuers with initial public offerings in fiscal year 1995 and assume that there are no increases each year.

[73] Total annual burden hours are determined by multiplying the estimated average burden hours for completing the particular item by the estimated number of responses that would include that item.

hours of 8,730 hours. Therefore, if the proposals were adopted, an estimated 776 respondents would file Form 8–A at an estimated burden of 7.5 hours per filing for an estimated total annual burden of 5,820 hours.

The Commission also proposes to eliminate the federal filing requirement for Form D, and to eliminate Form SR and Form 8–B.

Responses to the described information collections are mandatory. Unless a currently valid OMB control number is displayed, an agency may not sponsor, conduct or require response to an information collection.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments on the following: whether the proposed change in the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; on the accuracy of the Commission's estimate of the burden of the proposed changes to the collection of information; on the quality, utility and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, with reference to File No. S7–15–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis for the Proposals

The foregoing amendments are proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 15, 23 and 35A of the Exchange Act, and sections 8, 24, 38 and 54 of the Investment Company Act of 1940.

List of Subjects

17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78(d), 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. By amending § 230.401 by revising paragraph (c) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(c) The form and contents of any amendment to a registration statement and prospectus, other than an amendment described in paragraph (b) of this section, shall conform to the applicable rules and forms as in effect on the filing date of such amendment, or, at the option of the filer, the filing date of the most recent amendment described in paragraph (b) of this section or, if no such amendment has been filed, the initial filing date of the registration statement and prospectus.

* * * * *

§ 230.424 [Amended]

3. By amending § 230.424 in paragraph (d) by removing the phrase ''at least five days before it is broadcast or otherwise issued to the public'' in the second sentence and in its place adding ''in accordance with the requirements of this Section''.

4. By amending § 230.462 by adding paragraph (d) to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

* * * * *

(d) A post-effective amendment filed solely to add exhibits to a registration statement shall become effective upon filing with the Commission.

5. By amending § 230.463 by revising paragraphs (a) and (b) to read as follows:

§ 230.463 Report of offering of securities and use of proceeds therefrom.

(a) Except as hereinafter provided in this section, following the effective date of the first registration statement filed under the Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to Sections 13(a) and 15(d) (15 U.S.C. 78m(a) and 78o(d)) of the Securities Exchange Act of 1934 after effectiveness, and thereafter on each of its subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 through the later of the application of the offering proceeds, or the termination of the offering.

(b) A successor issuer shall comply with paragraph (a) of this section only to the extent that a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer.

* * * * *

§ 230.497 [Amended]

6. By amending § 230.497 in paragraph (f) by removing the phrase ''at least 5 days before it is broadcast or otherwise issued to the public'' in the second sentence and in its place adding ''in accordance with the requirements of this Section''.

7. By revising § 230.503 to read as follows:

§ 230.503 Notice of sales.

An issuer offering or selling securities in reliance on § 230.504, § 230.505 or § 230.506 shall prepare a notice on Form D (17 CFR 239.500) promptly after the first sale of securities. The issuer shall retain the notice until three years after the date of the first sale of securities. Upon request, the issuer shall furnish to the Commission or its staff a copy of the Form D notice.

§ 230.507 [Removed and reserved]

8. By removing and reserving § 230.507.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

10. By amending § 239.9 by designating the current text as paragraph (a), and adding paragraphs (b) and (c) to read as follows:

§ 239.9 Form SB–1, optional form for the registration of securities to be sold to the public by certain small business issuers.

* * * * *

(b) Subject to paragraph (c) of this section, this form may be used for concurrent registration pursuant to section 12 (b) or (g) (15 U.S.C. 78*l* (b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities being registered on this form under the Securities Act of 1933.

(c) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

11. By amending Form SB–1 (referenced in § 239.9) by revising the title to the form and the facing page, by adding General Instruction I, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph (3) to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form SB–1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form SB–1

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Form SB–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 AND SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No._____)

_____
(Name of small business issuer in its charter)

_____
(State or jurisdiction of incorporation or organization)

_____
(Primary Standard Industrial Classification Code Number)

_____
(I.R.S. Employer Identification No.)

_____
Address and telephone number of principal executive offices)

_____
(Address of principal place of business or intended principal place of business)

_____
(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction I, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction I, please check the following box. [ ]

_____
(title of class)

_____
(title of class)

CALULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

The following delaying amendment is optional, but see Rule 473 before omitting it. The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Disclosure alternative used: Alternative 1 _____ Alternative 2 _____

General Instructions

* * * * *

I. Registration Under the Securities Exchange Act of 1934

1. Subject to General Instruction I.2., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

2. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

3. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

4. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

* * * * *

Part II— Information Not Required in Prospectus

* * * * *

Signatures

In accordance with the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SB–1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

(3) If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

* * * * *

By amending § 239.10 by designating the current text as paragraph (a), and adding paragraphs (b) and (c) to read as follows:

§ 239.10 Form SB–2, optional form for the registration of securities to be sold to the public by small business issuers.

* * * * *

(b) Subject to paragraph (c) of this section, this form may be used for concurrent registration pursuant to section 12 (b) or (g) (15 U.S.C. 78l (b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities being registered on this form under the Securities Act of 1933.

(c) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

13 By amending Form SB–2 (referenced in § 239.10) by revising the title to the form and the facing page, by adding General Instruction D, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph (3) to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form SB–2 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form SB–2

U.S. Securities and Exchange Commission
Washington, DC 20549

Form SB–2

Registration Statement Under the Securities Act of 1933 and Section 12 (b) or (g) of the Securities Exchange Act of 1934

(Amendment No._____)

_____

(Name of small business issuer in its charter)

_____

(State or jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

I.R.S. Employer Identification No.)

_____

(Address and telephone number of principal executive offices)

_____

(Address of principal place of business or intended principal place of business)

_____

(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public

_____

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction D, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction D, please check the following box. [ ]

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

The following delaying amendment is optional, but see Rule 473 before omitting it. The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Disclosure alternative used: Alternative 1 _____ Alternative 2 _____.

General Instructions

* * * * *

D. Registration Under the Securities Exchange Act of 1934

1. Subject to General Instruction D.2., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be

registered'' on the cover page of this registration statement.

2. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

3. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

4. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

* * * * *

Part II—Information Not Required In Prospectus

* * * * *

Signatures

In accordance with the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SB–2 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

(3) If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

* * * * *

14. By amending § 239.11 by revising the section heading, designating the current paragraph as paragraph (a), and adding paragraphs (b) and (c) to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933 and section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(b) Subject to paragraph (c) of this section, this form may be used for concurrent registration pursuant to section 12 (b) or (g) (15 U.S.C. 78l (b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities being registered on this form under the Securities Act of 1933.

(c) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

15. By amending Form S–1 (referenced in § 239.11) by revising the title to the form and the facing page, by adding General Instruction VI, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 3. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form S–1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form S–1

Securities and Exchange Commission, Washington, D.C. 20549

Form S–1

Registration Statement Under the Securities Act of 1933 and Section 12 (b) or (g) of the Securities Exchange Act of 1934

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification No.)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public_____.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction VI, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction VI, please check the following box. [ ]

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

CALCULATION OF REGISTRATION FEE—Continued

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

VI. Registration Under the Securities Exchange Act of 1934

A. Subject to General Instruction VI.B., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

B. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

C. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

D. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

* * * * *

PART II—Information Not Required In Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

3. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

* * * * *

16. By amending § 239.13 by revising the section heading, by revising the introductory text of § 239.13, by removing the phrase ''Securities Exchange Act of 1934 (Exchange Act)'' from paragraph (a)(2) and in its place adding ''Exchange Act'' and by adding paragraph (e) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 and section 12(b) or (g) of the Securities Exchange Act of 1934 of securities of certain issuers offered pursuant to certain types of transactions.

This form may be used by any registrant which meets the requirements of paragraph (a) of this section (''Registrant Requirements'') for the registration of securities under the Securities Act of 1933 (''Securities Act'') which are offered in any transaction specified in paragraph (b) of this section (''Transaction Requirements''), provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (c) of this section. In addition, this form may be used for the concurrent registration of securities pursuant to section 12 (b) or (g) (15 U.S.C. 78*l* (b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act''), subject to paragraph (e) of this section (''Registration Pursuant to the Exchange Act'').

* * * * *

(e) *Registration Pursuant to the Exchange Act.* Registrants may use this form to register concurrently a class of securities pursuant to section 12 (b) or (g) of the Exchange Act subject to the following:

(1) Subject to paragraph (e)(2) of this section, this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Exchange Act of any class of securities being registered on this form under the Securities Act of 1933.

(2) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

(3) Concurrent registration under the Exchange Act is not available when securities being registered on this Form S–3 pursuant to paragraphs (b)(1) and (b)(2) of this section are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

By amending Form S–3 (referenced in § 239.13) by revising the title to the form and the facing page, by adding General Instruction V, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 4. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form S–3 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form S–3

Securities and Exchange Commission
Washington, DC 20549

FORM S–3

Registration Statement Under the Securities Act of 1933 and Section 12 (b) or (g) of the Securities Exchange Act of 1934

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification No.)

_____

(Address, including zip code, and telephone number, including area code, of registrants' principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public

If any of the securities being registered on this Form are to be offered pursuant to dividend or interest reinvestment plans, please check the following box. [ ]

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction V, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

Name of each exchange on which each class is to be registered

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction V, please check the following box. [ ]

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

(Title of class)

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the ''Calculation of Registration Fee'' table (''Fee Table''). Where two or more classes of securities are being registered pursuant to General Instruction II.D, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.D). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration Under the Securities Exchange Act of 1934

A. Subject to General Instruction V.B., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

B. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

C. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

D. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

E. Concurrent registration under the Exchange Act is not available when securities being registered on this Form pursuant to General Instruction I.B.I and I.B.2. are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

* * * * *

Part II— Information Not Required In Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

4. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

18. By amending § 239.18 by revising the section heading, by designating the introductory text as paragraph (a), and by adding paragraphs (b) and (c) to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 and section 12 (b) or (g) of the Securities Exchange Act of 1934 of securities of certain real estate companies.

* * * * *

(b) Subject to paragraph (c) of this section, this form may be used for concurrent registration pursuant to section 12(b) or (g) (15 U.S.C. 78*l* (b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities being registered on this form under the Securities Act of 1933.

(c) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

19. By amending Form S–11 (referenced in § 239.18) by revising the title to the form, by adding General Instruction H, by revising the facing page, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 3. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form S–11 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form S–11

Securities and Exchange Commission, Washington, DC 20549

Form S–11

For Registration Under the Securities Act of 1933 and Section 12 (b) or (g) of the Securities Exchange Act of 1934 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

H. Registration Under the Securities Exchange Act of 1934

(a) Subject to General Instruction H.(b), this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

(b) If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

(c) If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

(d) At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

(e) Concurrent registration under the Exchange Act is not available when securities being registered on this Form are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

Form S–11

Securities and Exchange Commission, Washington, D.C. 20549

Form S–11

For Registration Statement Under the Securities Act of 1933 and Section 12 (b) or (g) of the Securities Exchange Act of Securities of Certain Real Estate Companies

_____

(Exact name of registrant as specified in governing instruments)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public

_____.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction H, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction H, please check the following box. [ ]

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of securities being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of

securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

Part II—Information Not Required In Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19___.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

3. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

20. By amending § 239.25 by revising the section heading, by designating the introductory text as paragraph (a), and by adding paragraph (b) to read as follows:

§ 239.25 Form S–4, for the registration of securities issued in business combination transactions under the Securities Act of 1933 and section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(b) Registrants may use this form to register concurrently a class of securities pursuant to section 12 (b) or (g) (15 U.S.C. 78*l* (b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') subject to the following:

(1) Subject to paragraph (b)(2) of this section, this form may be used for concurrent registration pursuant to section 12 (b) or (g) (15 U.S.C. 78*l* (b) or (g)) of the Exchange Act of any class of securities being registered on this form under the Securities Act of 1933.

(2) If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

(3) Concurrent registration under the Exchange Act is not available when securities being registered on this Form S–4 are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

21. By amending Form S–4 (referenced in § 239.25) by revising the title to the form and the facing page, by adding General Instruction K, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 4. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form S–4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form S–4

Securities and Exchange Commission, Washington, D.C. 20549

Form S–4

Registration Statement Under the Securities Act of 1933 and Section 12(b) or (g) of the Securities Exchange Act of 1934

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(I.R.S. Employer Identification No.)

_____

(Address, including zip code, and telephone number, including area code, of registrants' principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public _____.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction K, please check the following box. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction K, please check the following box. [ ]

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

K. Registration Under the Exchange Act

1. Subject to General Instruction K.2., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Exchange Act of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

2. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

3. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

4. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

5. Concurrent registration under the Exchange Act is not available when securities being registered on this Form pursuant to General Instruction H are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on_____ 19____.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

4. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

22 By amending § 239.31 by revising the section heading and by adding paragraph (c) to read as follows:

§ 239.31 Form F–1, registration statement under the Securities Act of 1933 and section 12(b) or (g) of the Securities Exchange Act of 1934 for securities of certain foreign private issuers.

* * * * *

(c) A registrant may use this form to register concurrently a class of securities pursuant to section 12(b) or (g) (15 U.S.C. 78*l*(b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') subject to the following:

(1) Subject to paragraph (c)(2) of this section, this form may be used for concurrent registration pursuant to section 12(b) or (g) (15 U.S.C. 78*l*(b) or (g)) of the Exchange Act of any class of securities being registered on this form under the Securities Act of 1933.

(2) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

23. By amending Form F–1 (referenced in § 239.31) by revising the title to the form and the facing page, by adding General Instruction VI, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 3. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form F–1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form F–1

Securities and Exchange Commission

Form F–1

Registration Statement Under the Securities Act of 1933 and Section 12(b) or (g) of the Securities Exchange Act of 1934

_____

(Exact Name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English)

_____

(State or other jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial 1 Classification Code Number)

_____

I.R.S. Employer Identification No.)

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public

_____.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, please check the following box. [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction VI, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction VI, please check the following box. [ ]

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

VI. Registration Under the Securities Exchange Act of 1934

A. Subject to General Instruction VI.B., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

B. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

C. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

D. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

3. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

* * * * *

24. By amending § 239.33 by revising the section heading and introductory text to § 239.33, by removing the phrase ''Securities Exchange Act of 1934 ('Exchange Act')'' from paragraph (a)(1) and in its place adding ''Exchange Act'' and by adding paragraph (c) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 and section 12(b) or (g) of the Securities Exchange Act of 1934 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

This instruction sets forth registrant requirements and transaction requirements for the use of Form F–3. Any foreign private issuer, as defined in § 230.405 of this chapter, which meets the requirements of paragraph (a) of this section (''Registrant Requirements'') may use this Form F–3 for the registration of securities under the Securities Act of 1933 (''Securities Act'') which are offered in any transaction specified in paragraph (b) of this section (''Transaction Requirements''), provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see Paragraph (a)(5) of this section. In addition, this form may be used for the concurrent registration of securities pursuant to section 12(b) or (g) (15 U.S.C. 78l(b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act''), subject to paragraph (c) of this section (''Registration Pursuant to the Exchange Act'').

* * * * *

(c) *Registration Pursuant to the Exchange Act.* Registrants may use this form to register concurrently a class of securities pursuant to section 12(b) or (g) (15 U.S.C. 78l(b) or (g)) of the Exchange Act subject to the following:

(1) Subject to paragraph (c)(2) of this section, this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Exchange Act of any class of securities being registered on this form under the Securities Act of 1933.

(2) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

(3) Concurrent registration under the Exchange Act is not available when securities being registered on this Form pursuant to paragraphs (b)(1) and (b)(2) of this section are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

25. By amending Form F–3 (referenced in § 239.33) by revising the title to the form and the facing page, by adding General Instruction V, by amending the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 4. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form F–3 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form F–3

Securities and Exchange Commission

Form F–3

Registration Statement Under the Securities Act of 1933 and Section 12(b) or (g) of the Securities Exchange Act of 1934

_____

(Exact Name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address and telephone number of Registrant's principal executive offices)

_____

(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. [ ]

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, please check the following box. [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction V, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction V, please check the following box. [ ]

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the ''Calculation of Registration Fee'' table (''Fee Table''). Where two or more classes of securities are being registered pursuant to General Instruction II.C, however, the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.C). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration Under the Securities Exchange Act of 1934

A. Subject to General Instruction V.B., this form may be used for concurrent registration pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

B. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

C. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

D. At least one complete, signed copy of the registration statement shall be filed with each exchange on which the securities are to be registered.

E. Concurrent registration under the Exchange Act is not available when securities being registered on this Form pursuant to General Instruction I.B.I and I.B.2. are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

* * * * *

Part II— Information Not Required in Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of_____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

4. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

26. By amending § 239.34 by revising the section heading, by designating the introductory text of § 239.34 as paragraph (a), by redesignating paragraphs (a) through (e) as paragraphs (a)(1) through (a)(5), and by adding paragraph (b) to read as follows:

§ 239.34 Form F–4, for the registration under the Securities Act of 1933 and section 12(b) or (g) of the Securities Exchange Act of 1934 of securities of foreign private issuers issued in certain business combination transactions.

* * * * *

(b) Registrants may use this form to register concurrently a class of securities pursuant to section 12(b) or (g) (15 U.S.C. 78l(b) or (g)) of the Securities Exchange Act of 1934 (''Exchange Act'') subject to the following:

(1) Subject to paragraph (b)(2) of this section, this Form F–4 may be used for concurrent registration pursuant to section 12(b) or (g) of the Exchange Act of any class of securities being registered on this form under the Securities Act of 1933;

(2) If the registrant would be required to file an annual report pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this Form F–4 will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form; and

(3) Concurrent registration under the Exchange Act is not available when securities being registered on this Form are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

27. By amending Form F–4 (referenced in § 239.34) by revising the title to the form and the facing page, by adding General Instruction H, by revising the signature requirements in Part II (not including the Instructions thereto), and by adding paragraph 4. to the Instructions to ''Signatures'' to read as follows:

Note: The text of Form F–4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form F–4

Securities and Exchange Commission

Form F–4

Registration Statement Under the Securities Act of 1933 and Section 12(b) or (g) of the Securities Exchange Act of 1934

_____

(Exact Name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English)

_____

(State or other jurisdiction of incorporation or organization)

_____

(Primary Standard Industrial Classification Code Number)

_____

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public _____.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ]

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(b) of the Securities Exchange Act of 1934 pursuant to General Instruction H, please check the following box. [ ]

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

If any class of securities is to be concurrently registered on this Form pursuant to Section 12(g) of the Securities Exchange Act of 1934 pursuant to General Instruction H, please check the following box. [ ]

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

_____

(Title of class)

_____

(Title of class)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table.

General Instructions

* * * * *

H. Registration Under the Securities Exchange Act of 1934

1. Subject to General Instruction H.2., this form may be used for concurrent registration pursuant to section 12 (b) or (g) of the Exchange Act of any class of securities listed under ''Title of each class of securities to be registered'' on the cover page of this registration statement.

2. If the registrant would be required to file an annual report pursuant to section 15(d) of the Exchange Act for its last fiscal year, except for the fact that the Exchange Act registration on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

3. If a class of securities is concurrently being registered under the Exchange Act, the provisions of Rule 12d1–2 of the Exchange Act apply with respect to the effectiveness of the registration statement for Exchange Act purposes.

4. At least one complete, signed copy of the registration statement shall be filed with each

exchange on which the securities are to be registered.

5. Concurrent registration under the Exchange Act is not available when securities being registered on this Form pursuant to General Instruction F are to be offered on a delayed basis pursuant to § 230.415(a)(1)(x) of this chapter.

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Signatures

Pursuant to the requirements of the Securities Act of 1933 [and Section 12 of the Securities Exchange Act of 1934], the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19___.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

* * * * *

4. If a class of securities is being registered concurrently under the Exchange Act, the registrant should sign the registration statement in accordance with the requirements of *both* the Securities Act and Section 12 of the Exchange Act.

§ 239.61 [Removed and Reserved]

28. By removing and reserving § 239.61 and by removing Form SR.

29. By revising § 239.500 to read as follows:

§ 239.500 Form D, notice of sales of securities under Regulation D.

An issuer offering or selling securities in reliance on Regulation D (§ 230.501 through § 230.508 of this chapter) shall prepare a notice on Form D promptly after the first sale of securities. The issuer shall retain the notice until three years after the date of the first sale of securities. Upon request, the issuer shall furnish to the Commission or its staff a copy of the Form D notice.

30. By amending Form D (referenced in § 239.500) by revising the General Instructions to read as follows:

Note: The text of Form D does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form D

* * * * *

General Instructions

Federal

Who Must Prepare: All issuers making an offering of securities in reliance on an exemption under Regulation D, 17 CFR 230.501 *et seq.*, should prepare this notice promptly after the first sale of securities.

Recordkeeping Requirement: The issuer shall retain this notice until three years after the date of the first sale of securities. Upon request, the issuer shall furnish to the Commission or its staff a copy of the Form D notice.

State

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this Form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been, made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this Form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

31. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

32. By adding § 240.12a–8 to read as follows:

§ 240.12a–8 Exemption of depositary shares.

Depositary shares (as that term is defined in § 240.12b–2) registered on Form F–6 (§ 239.36 of this chapter), but not the underlying deposited securities, shall be exempt from the operation of section 12(a) of the Act (15 U.S.C. 78*l*(a)).

33. By revising the undesignated subject heading preceding § 240.12d1–1 to read as follows:

Certification by Exchanges and Effectiveness of Registration

* * * * *

34. By amending § 240.12d1–2 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 240.12d1–2 Effectiveness of registration.

* * * * *

(b) A registration statement on Form 8–A (17 CFR 249.208a) shall become effective:

(1) With respect to a class of securities registered pursuant to section 12(b) of the Act (15 U.S.C. 78*l*(b)), upon the later of receipt by the Commission of certification from the national securities exchange or the filing of the Form 8–A with the Commission; or

(2) With respect to a class of securities registered pursuant to section 12(g) of the Act (15 U.S.C. 78*l*(g)), upon the filing of Form 8–A with the Commission.

(c) A registration statement that concurrently registers a class of securities under the Securities Act of 1933 and section 12(b) (15 U.S.C. 78*l*(b)) of the Act shall become effective pursuant to the Act at the later of either the effectiveness of the registration statement pursuant to the Securities Act of 1933 or receipt by the Commission of certification by the exchange.

(d) A registration statement that concurrently registers a class of securities under the Securities Act of 1933 and section 12(g) (15 U.S.C. 78*l*(g)) of the Act shall become effective pursuant to the Act at the same time as the effectiveness of the registration statement pursuant to the Securities Act of 1933.

35. By amending § 240.12g-3 by revising paragraphs (a) and (b), by redesignating paragraph (c) as paragraph (d), by adding paragraph (c) to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, securities of an issuer, not previously registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), are issued to the holders of any class of securities of another issuer that is registered pursuant to either section 12 (b) or (g) of the Act (15 U.S.C. 78*l*(b) or (g)), the class of securities so issued shall be deemed to be registered under the same paragraph of section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by § 240.12g3–2 or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act but for this section.

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, securities of an issuer, that are

not registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), are issued to the holders of any class of securities of another issuer that is required to file a registration statement pursuant to either section 12(b) or (g) of the Act (15 U.S.C. 78*l*(b) or (g)) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to the same paragraph of section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession such class is exempt from such registration other than by § 240.12g3–2 or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41) and following the succession the successor would not be required to register such class of securities under section 12 of the Act but for this section.

(c) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, securities of an issuer not previously registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) are issued to the holders of classes of securities of more than one other issuer that are each registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by § 240.12g3–2 or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act but for this section. If the classes of securities issued by each of the predecessor issuers are registered under the same paragraph of section 12 of the Act, the class of securities issued by the successor issuer will be deemed registered under the same paragraph of section 12 of the Act. If the classes of securities issued by the predecessor issuers each are registered under different paragraphs of section 12 of the Act, then the successor issuer shall indicate in the Form 8–K (§ 249.308) report filed with the Commission in connection with the succession, pursuant to the requirements of Form K–8, the paragraph of section 12 of the Act under which the class of securities issued by the successor issuer will be deemed registered.

* * * * *

36. By revising paragraph (a) of § 240.15d-5 to read as follows:

§ 240.15d–5 Reporting by successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, securities of any issuer that is not required to file reports pursuant to Section 15(d) (15 U.S.C. 78o(d)) of the Act are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to such section shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall after the consummation of the succession file reports in accordance with such section, and the rules and regulations thereunder unless such issuer is exempt from filing such reports or the duty to file such reports is suspended under said section.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

37. The authority citation for Part 249 continues to read in part as follows:

Authority 15 U.S.C. 78a, et seq., unless otherwise noted;

* * * * *

38. By amending § 249.208a by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(c) If this form is used for the registration of a class of securities pursuant to Section 12(b) of this Act (15 U.S.C. 78*l*(b)), it shall become effective upon the later of receipt by the Commission of certification from the national securities exchange or the filing of the Form 8–A with the Commission.

(d) If this form is used for the registration of securities pursuant to Section 12(g) of the Act (15 U.S.C. 78*l*(g)), it shall become effective upon filing with the Commission.

39. By amending Form 8–A (referenced in § 249.208a) by revising paragraph (c) of General Instruction A, by adding paragraph (d) to General Instruction A, by revising the two check boxes on the cover page, and by revising ''Item 1'' under ''Information Required In Registration Statement'' before the Instruction to read as follows:

Note: The text of Form 8–A does not, and the amendments will not, appear in the Code of Federal Regulations.

Form 8–A

For Registration of Certain Classes of Securities Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934

GENERAL INSTRUCTIONS

* * * * *

A. Rule as to Use of Form 8–A.

* * * * *

(c) If this form is used for the registration of a class of securities pursuant to Section 12(b) of the Exchange Act, it shall become effective upon the later of receipt by the Commission of certification from the exchange or the filing of the Form 8–A with the Commission.

(d) If this form is used for the registration of securities pursuant to Section 12(g) of the Act, it shall become effective upon filing with the Commission.

* * * * *

Securities And Exchange Commission, Washington, DC 20549

Form 8–A

For Registration of Certain Classes of Securities Pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934

* * * * *

If this form relates to the registration of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), please check the following box. [ ]

If this form relates to the registration of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), please check the following box. [ ]

* * * * *

Information Required in Registration Statement

Item 1. Description of Registrant's Securities to be Registered

Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter). Small business issuers may furnish the information required by Item 202 of Regulation S–B (§ 228.202 of this chapter).

* * * * *

§ 249.208b [Removed and Reserved]

40. By removing and reserving § 249.208b and by removing Form 8–B.

41. By amending Form 20–F (referenced in § 249.220f) by adding paragraph (d) to Item 9 of Part I preceding the Instructions to read as follows:

Note: The text of Form 20–F does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Part I

* * * * *

Item 9. Management's Discussion and Analysis of Financial Condition and Results of Operations

* * * * *

(d) Use of proceeds.

As required by Rule 463 (17 CFR 230.463) under the Securities Act of 1933 (''Securities Act''), following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first annual report filed pursuant to Sections 13(a) and 15(d) of the Exchange Act after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent annual reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act through the later of the application of the offering proceeds, or the termination of the offering. To the extent that a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (d)(2) through (d)(4) of this Item need only be provided with respect to the first annual report filed pursuant to Sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration statement filed under the Securities Act. Subsequent annual reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (d)(2) through (d)(4) of this Item if any of such required information has changed since the last annual report filed. In disclosing the use of proceeds in the first of such reports filed pursuant to the Exchange Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the report is being made, the Commission file number assigned to the registration statement, and, if applicable, the first six (6) digits of its CUSIP number;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering terminated prior to the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of expenses incurred, the issuer should indicate which figures provided are estimates;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (d)(4)(v);

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments; and any other purposes for which at least five (5) percent of the issuer's total proceeds or $50,000 (whichever is less) has been used. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of net offering proceeds applied, the issuer should indicate which figures provided are estimates; and

(viii) If the use of proceeds in paragraph (d)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

* * * * *

42. By amending Form 10–Q (referenced in § 249.308a) by adding paragraph (d) to Item 2 of Part II preceding the Instruction to read as follows:

Note: The text of Form 10–Q does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission,Washington, D.C. 20549

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 2. Changes in Securities

* * * * *

(d) As required by Rule 463 (17 CFR 230.463) of the Securities Act of 1933 (''Securities Act''), following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (the ''Act'') after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent reports filed pursuant to Sections 13(a) and 15(d) of the Act through the later of the application of the offering proceeds, or the termination of the offering. To the extent that a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (d)(2) through (d)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to Sections 13(a) and 15(d) of the Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Act need only provide the information required in paragraphs (d)(2) through (d)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first of such reports filed pursuant to the Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the report is being made, the Commission file number assigned to the registration statement, and, if applicable, the first six (6) digits of its CUSIP number;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering terminated prior to the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of

expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of expenses incurred, the issuer should indicate which figures provided are estimates;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (d)(4)(v);

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments; and any other purposes for which at least five (5) percent of the issuer's total proceeds or $50,000 (whichever is less) has been used. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of net offering proceeds applied, the issuer should indicate which figures provided are estimates; and

(viii) If the use of proceeds in paragraph (d)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

* * * * *

43. By amending Form 10–QSB (referenced in § 249.308b) by adding paragraph (d) to Item 2 of Part II preceding the Instruction to read as follows:

Note: The text of Form 10–QSB does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 2. Changes in Securities

* * * * *

(d) As required by Rule 463 (17 CFR 230.463) of the Securities Act of 1933 (''Securities Act''), following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (the ''Act'') after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent reports filed pursuant to Sections 13(a) and 15(d) of the Act through the later of the application of the offering proceeds, or the termination of the offering. To the extent that a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (d)(2) through (d)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to Sections 13(a) and 15(d) of the Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Act need only provide the information required in paragraphs (d)(2) through (d)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first of such reports filed pursuant to the Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the report is being made, the Commission file number assigned to the registration statement, and, if applicable, the first six (6) digits of its CUSIP number;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering terminated prior to the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of expenses incurred, the issuer should indicate which figures provided are estimates;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (d)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments; and any other purposes for which at least five (5) percent of the issuer's total proceeds or $50,000 (whichever is less) has been used. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of net offering proceeds applied, the issuer should indicate which figures provided are estimates; and

(viii) If the use of proceeds in paragraph (d)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

* * * * *

44. By amending Form 10–K (referenced in § 249.310), Item 5 of Part II by redesignating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

Note: The text of Form 10–K does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part II

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters

* * * * *

(b) As required by Rule 463 (17 CFR 230.463) of the Securities Act of 1933 (''Securities Act''), following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (the ''Act'') after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent reports filed pursuant to Sections 13(a) and 15(d) of the Act through the later of the application of the offering proceeds, or the termination of the offering. To the extent that a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall

provide such a report. The information provided pursuant to paragraphs (b)(2) through (b)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to Sections 13(a) and 15(d) of the Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Act need only provide the information required in paragraphs (b)(2) through (b)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first of such reports filed pursuant to the Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the report is being made, the Commission file number assigned to the registration statement, and, if applicable, the first six (6) digits of its CUSIP number;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering terminated prior to the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of expenses incurred, the issuer should indicate which figures provided are estimates;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (b)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments; and any other purposes for which at least five (5) percent of the issuer's total proceeds or $50,000 (whichever is less) has been used. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of net offering proceeds applied, the issuer should indicate which figures provided are estimates; and

(viii) If the use of proceeds in paragraph (b)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

* * * * *

45. By amending Form 10–KSB (referenced in § 249.310b), Item 5 of Part II by redesignating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

Note: The text of Form 10–KSB does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part II

Item 5. Market for Common Equity and Related Stockholder Matters

* * * * *

(b) As required by Rule 463 (17 CFR 230.463) of the Securities Act of 1933 (''Securities Act''), following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (the ''Act'') after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent reports filed pursuant to Sections 13(a) and 15(d) of the Act through the later of the application of the offering proceeds, or the termination of the offering. To the extent that a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (b)(2) through (b)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to Sections 13(a) and 15(d) of the Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Act need only provide the information required in paragraphs (b)(2) through (b)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first of such reports filed pursuant to the Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the report is being made, the Commission file number assigned to the registration statement, and, if applicable, the first six (6) digits of its CUSIP number;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering terminated prior to the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate whether such payments were: (A) direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of expenses incurred, the issuer should indicate which figures provided are estimates;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (b)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments; and any other purposes for which at least five (5) percent of the issuer's total proceeds or $50,000 (whichever is less) has been used. Indicate whether such payments were: (A) direct or

indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or (B) direct or indirect payments to others. If the issuer is providing a reasonable estimate for the amount of net offering proceeds applied, the issuer should indicate which figures provided are estimates; and

(viii) If the use of proceeds in paragraph (b)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

46. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

* * * * *

47. By amending §§ 239.14 and 274.11a–1 to add a new sentence at the end of the section to read as follows:

§ 239.14 Form N–2, for closed end management investment companies registered on Form N–8A.

§ 274.11a–1 Form N–2, registration statement of closed-end management investment companies.

* * * In addition, this form may be used for the concurrent registration of securities pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*).

48. By amending Form N–2 (referenced in § 239.14 and 274.11a–1) on the facing page by adding after the check box heading ''Amendment No. _____'' two check boxes; following the ''Calculation of Registration Fee Table'' and before ''Instructions'' two line item descriptions; adding a second paragraph to General Instruction A; and in the signature requirements in Part C before the phrase ''and/or the Investment Company Act of 1940'' adding the parenthetical ''(and Section 12 of the Securities Exchange Act of 1934)'' to read as follows:

Note: The text of Form N–2 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

[ ] REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934

[ ] REGISTRATION STATEMENT PURSUANT TO SECTION 12(g) UNDER THE SECURITIES EXCHANGE ACT OF 1934

* * * * *

Securities to be registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

Securities to be registered pursuant to Section 12(g) of the Securities Exchange Act of 1934:

Title of each class to be so registered

_____

_____

Name of each exchange on which each class is to be registered

_____

_____

* * * * *

General Instructions

A. Use of Form N–2

* * * * *

Form N–2 may be used for concurrent registration pursuant to Sections 12 (b) or 12(g) of the Securities Exchange Act of 1934 [15 U.S.C. 78l(b) or (g)]. Registrants that intend to list their securities on an exchange shall file at least one complete signed copy of the registration statement with each exchange on which securities are to be registered.

* * * * *

By the Commission.

Dated: May 31, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–14183 Filed 6–13–96; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday
June 14, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 119, 121, and 135

Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121 and 135

[Docket No. 28154; Amendment Nos. 119–2, 121–259, and 135–65]

Rin 2120–AG03

Operating Requirements: Domestic Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts changes that are editorial or typographical in nature in parts 119, 121, and 135. The changes are necessary to correct errors or clarify the intent of the regulations published on December 20, 1995 (60 FR 65832). The changes in this amendment will not impose any additional restrictions on persons affected by these regulations.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking (ARM–100); Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1995, new part 119, Certification: Air Carriers and Commercial Operators, was published in the Federal Register (60 FR 65832; December 20, 1995). Part 119 reorganizes, into one part, certification and operations specifications requirements that formerly existed in SFAR 38–2 and in parts 121 and 135. The final rule for new part 119 also deleted or changed certain sections in part 121, Subparts A through D, and part 135, Subpart A, because the requirements in those subparts have been recodified in part 119. Also on December 20, 1995, a final rule was published that upgrades the training requirements for part 121 operators and requires certain part 135 operators to conduct their training under the requirements of part 121 (60 FR 65940). On January 26, 1996, another final rule was published (61 FR 2608) affecting parts 119, 121, and 135. That amendment made editorial and terminology changes in the remaining subparts of parts 121 and 135 to conform those parts to the language of part 119 and to make certain other changes.

Part 119 was issued as part of a large rulemaking effort to upgrade the requirements that apply to scheduled operations conducted in airplanes that seat 10 to 30 passengers. These operations will in the future be conducted under the requirements of part 121, in accordance with the final rule published on December 20, 1995.

The changes in this final rule are necessary because, as a result of the implementation of part 119 and the beginning of the transition process for commuter operations affected by the final rule published on December 20, 1995, a number of questions of interpretation have been raised and errors in previous final rules have been identified. The changes in this document make necessary corrections and will help to clarify the intent of part 119, the training rule, and the commuter rule.

Preamble Correction

In the preamble to the commuter final rule, the FAA attributed a comment incorrectly. The statement on 60 FR 65872 that the Regional Airline Association recommends that the FAA require each certificate holder to equip its airplanes with TCAS II and a Mode S transponder was incorrect. This recommendation was made by the Air Line Pilots Association.

Editorial Changes

A number of changes are necessary in parts 119, 121, and 135 to correct typographical errors, to make minor editorial changes that help clarify the intent of the rules, or to make editorial changes that make related rules consistent with each other. These types of changes are not individually explained. However, a number of changes are being made that require some explanation, which follows:

1. Section 119.2 and SFAR 38–2 are amended to reinstate certain part 121 and 135 sections that were removed by the commuter rule to make it clear that persons who originally were certificated under SFAR 38–2 must continue to comply with those sections in parts 121 and 135, that have been recodified into part 119, until they receive new operations specifications issued under part 119, or until March 20, 1997, whichever occurs first.

2. New paragraph (j) is added to § 121.2 to clarify how crewmembers and certificate holders transitioning to part 121 can obtain credit for training and qualification obtained under part 135.

3. Section 121.404 is amended by correcting the date in the introductory paragraph to March 19, 1998, as was originally published in the Air Carrier and Commercial Operator Training Programs (60 FR 65940, December 20, 1995).

4. Sections 121.721, 121.723, and 135.43 are amended to clarify the status of international crewmember certificates. The FAA no longer issues these certificates because the State Department no longer processes them; however crewmembers who already have been issued these certificates may continue to use them.

5. Sections 121.431 and 135.3 are revised to remove the redundant phrase ''* * *or with airplanes having a passenger seating configuration of 10 seats or more.''

Corrections to Tables

Several additional corrections are necessary for Tables 2–4, which were originally published on December 20, 1995 (60 FR 65850, 65888, 65890) and were republished on January 26, 1996 (61 FR 2618, 2619, and 2621), as follows:

1. In Table 2—Comparable Sections in Parts 121 and 135, the word ''underwater'' in the listing under Subpart K should be ''overwater.''

2. In Table 4—Distribution Table for Part 119, correct the listing for § 121.5, which was replaced by § 119.21(a), not § 119.49(a).

Federalism Implications

The regulations do 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 various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements associated with this rule have already been approved. There will be a decrease in the paperwork requirements as a result of the elimination of the issuance of the certificate formerly issued to crewmembers engaged in international travel in accordance with sections 121.723 and 135.43.

Good Cause Justification for Immediate Adoption

This amendment is needed to make editorial corrections in parts 119, 121, and 135. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and

opportunity for public comment before adopting this amendment is unnecessary.

Conclusion

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it has been determined that the action: (1) Is not a significant rule under Executive Order 12866; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); Also because this regulation is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that the rule 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.

List of Subjects

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Air transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR parts 119, 121, and 135) as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 44105, 44106, 44111, 44701–44717, 44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Section 119.2 is revised to read as follows:

§ 119.2 Compliance with 14 CFR part 119 or SFAR 38–2 of parts 121 and 135 of this chapter.

(a) Each certificate holder that before January 19, 1996, was issued an air carrier certificate or operating certificate and operations specifications under the requirements of part 121, 135, or SFAR 38–2 of parts 121 and 135 of this chapter shall continue to comply with SFAR 38–2 of parts 121 and 135 of this chapter until March 20, 1997, or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. In addition, persons conducting operations under SFAR 38–2 of parts 121 and 135 of this chapter shall continue to comply with the applicable requirements of §§ 121.6, 121.57, 121.59, 121.61, 121.71 through 121.83. 135.5. 135.11(c), 135.15, 135.17, 135.27. 135.29, 135.33, 135.35. 135.37. and 135.39 of this chapter as in effect on January 18, 1996, until March 20, 1997, or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. If a certificate holder is issued operations specifications in accordance with part 119 before March 20, 1997, then, notwithstanding all provisions in SFAR 38–2 of parts 121 and 135 of this chapter, such certificate holder shall comply with the provisions of part 119.

A copy of these regulations may be obtained from the Federal Aviation Administration, Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591, or by phone (202) 267–9677.

(b) Each person who on or after January 19, 1996, applies for or obtains an initial air carrier certificate or operating certificate and operations specifications to conduct operations under part 121 or 135 of this chapter shall comply with this part, notwithstanding all provisions of SFAR 38–2 of parts 121 and 135 of this chapter.

3. Section 119.3 is amended by revising the introductory text of the definition for ''commuter operation,'' revising paragraph (1)(ii) of the definition for ''on-demand operation,'' revising paragraphs (1)(iii) and (2)(i) and adding pargarph (1)(iv) of the definition for ''supplemental operation,'' and revising the introductory text of the definition for ''when common carriage is not involved or operations not involving common carriage'' to read as follows:

§ 119.3 Definitions.

* * * * *

Commuter operation means any scheduled operation conducted by any person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:

* * * * *

On-demand operation * * *

(1) * * *

(ii) Noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

* * * * *

Supplemental operation * * *

(1) * * *

(iii) Each propeller-powered airplane having a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations; or

(iv) Each turbojet powered airplane having a passenger seat configuration of 1 or more and less than 31 seats, excluding each crewmember seat, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.

(2) * * *

(i) Passenger-carrying operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative; or

* * * * *

When common carriage is not involved or operations not involving common carriage means any of the following:

* * * * *

4. Section 119.21 is amended by revising the section heading and by revising paragraph (a) introductory text, and (a)(3) to read as follows:

§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.

(a) Each person who conducts airplane operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

* * * * *

(3) Supplemental operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a determination of

safety in air commerce, the Administrator may authorize or require those operations to be conducted under paragraph (a)(1) or (a)(2) of this section.

* * * * *

5. Section 119.23 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.

* * * * *

(b) Each person who conducts noncommon carriage (except as provided in § 91.501(b) of this chapter) or private carriage operations for compensation or hire with airplanes having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds shall—

* * * * *

6. Section 119.33 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 119.33 General requirements.

* * * * *

(c) Each applicant for a certificate under this part and each applicant for operations specifications authorizing a new kind of operation that is subject to § 121.163 or § 135.145 of this chapter shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or part 135 of this chapter.* * *

* * * * *

7. Section 119.63 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 119.63 Recency of operation.

* * * * *

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the number of calendar days specified in paragraph (a) of this section, it shall not conduct such kind of operation unless—

* * * * *

8. Section 119.67 is amended by revising paragraph (d)(3) to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

* * * * *

(d) * * *

(3) Have at least 1 year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

8. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

9. Special Federal Aviation Regulation 38–2 is amended by adding a new paragraph (d) to section 1 to read as follows:

SFAR No. 38–2—Certification and Operating Requirements

1. * * *

(d) Persons conducting operations under this SFAR shall continue to comply with the applicable requirements of §§ 121.6, 121.57, 121.59, 121.61, 121.71 through 121.83, 135.5, 135.11(c), 135.15, 135.17, 135.27, 135.29, 135.33, 135.35, 135.37, and 135.39 of this chapter as in effect on January 18, 1996, until March 20, 1997, or until the date on which the certificate holder is issued operations specifications in accordance with part 119, whichever occurs first. A copy of these regulations may be obtained from the Federal Aviation Administration, Office of Rulemaking (ARM), 800 Independence Ave., SW., Washington, DC 20591, or by phone (202) 267–9677.

* * * * *

10. Section 121.2 is amended by revising paragraphs (d)(1) introductory text and (d)(2) introductory text, (d)(2)(ii) and (h); and adding new paragraph (j) to read as follows:

§ 121.2 Compliance schedule for operators that transition to part 121; certain new entrant operators.

* * * * *

(d) * * *

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(10(i) of this section on or after a date listed in paragraph (d)(1) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(1) of this section:

* * * * *

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in paragraph (d)(2) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(2) of this section:

* * * * *

(ii) December 20, 2010: § 121.305(j), third attitude indicator.

* * * * *

(h) *Continuing requirements.* A certificate holder described in paragraph (a) of this section shall comply with the applicable airplane operating and equipment requirements of part 135 of this chapter for the airplanes described in paragraph (a)(1) of this section, until the airplane meets the specific compliance dates in paragraphs (d) and (e) of this section.

* * * * *

(j) Any training or qualification obtained by a crewmember under part 135 of this chapter before March 20, 1997, is entitled to credit under this part for the purpose of meeting the requirements of this part, as determined by the Administrator. Records kept by a certificate holder under part 135 of this chapter before March 20, 1997, can be annotated, with the approval of the Administrator, to reflect crewmember training and qualification credited toward part 121 requirements.

11. Section 121.157 is amended by revising paragraph (e) and the introductory text of paragraph (f) to read as follows:

§ 121.157 Aircraft certification and equipment requirements.

* * * * *

(e) *Commuter category airplanes.* Except as provided in paragraph (f) of this section, no certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, and before March 30, 1995, unless it meets the applicable requirements of § 121.173 (a), (b), (d), and (e), and was type certificated in the commuter category.

(f) *Other nontransport category airplanes.* No certificate holder may operate under this part a nontransport category airplane type certificated after December 31, 1964, unless it meets the applicable requirements of § 121.173 (a), (b), (d), and (e), was manufactured before March 20, 1997, and meets one of the following:

* * * * *

§ 121.317 [Amended]

12. Section 121.317(l) is amended by changing the date ''December 22, 1997'' to ''December 20, 1997.''

13. Section 121.385(c) is revised to read as follows:

§ 121.385 Composition of flight crew.

* * * * *

(c) The minimum pilot crew is two pilots and the certificate holder shall

designate one pilot as pilot in command and the other second in command.

* * * * *

14. Section 121.404 is revised to read as follows:

§ 121.404 Compliance dates: Crew and dispatcher resource management training.

After March 19, 1998, no certificate holder may use a person as a flight crewmember, and after March 19, 1999, no certificate holder may use a person as a flight attendant or aircraft dispatcher unless that person has completed approved crew resource management (CRM) or dispatcher resource management (DRM) initial training, as applicable, with that certificate holder or with another certificate holder.

15. Section 121.406 is amended by revising the section heading to read as follows:

§ 121.406 Credit for previous CRM/DRM training.

* * * * *

16. Section 121.431 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 121.431 Applicability.

(a) * * * The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter * * *

* * * * *

17. Section 121.721 is revised to read as follows:

§ 121.721 Applicability.

This section describes the certificates that were issued to United States citizens who were employed by air carriers at the time of issuance as flight crewmembers on United States registered aircraft engaged in international air commerce. The purpose of the certificate is to facilitate the entry and clearance of those crewmembers into ICAO contracting states. They were issued under Annex 9, as amended, to the Convention on International Civil Aviation.

18. Section 121.723 is revised to read as follows:

§ 121.723 Surrender of international crewmember certificate.

The holder of a certificate issued under this section, or the air carrier by whom the holder is employed, shall surrender the certificate for cancellation at the nearest FAA Flight Standards District Office at the termination of the holder's employment with that air carrier.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

19. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

20. Section 135.2 is amended by removing paragraphs (h) and (i), by revising the first sentence of paragraph (c), and by revising (d)(1) introductory text, and (d)(2) introductory text to read as follows:

§ 135.2 Compliance schedule for operators that transition to part 121 of this chapter; certain new entrant operators.

* * * * *

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d), and (e) of this section, each certificate holder described in paragraph (a)(1) of this section shall comply with each applicable requirement of part 121 of this chapter on and after March 20, 1997 or on and after the date on which the certificate holder is issued operations specifications under this part, whichever occurs first. * * *

(d) * * *

(1) *Nontransport category turbopropeller powered airplanes type certificated after December 31, 1964, that have a passenger seat configuration of 10–19 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(i) of this section on or after a date listed in paragraph (d)(1) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(1) of this section:

* * * * *

(2) *Transport category turbopropeller powered airplanes that have a passenger seat configuration of 20–30 seats.* No certificate holder may operate under this part an airplane that is described in paragraph (a)(1)(ii) of this section on or after a date listed in paragraph (d)(2) of this section unless that airplane meets the applicable requirement listed in paragraph (d)(2) of this section:

* * * * *

21. Section 135.3 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 135.3 Rules applicable to operations subject to this part.

* * * * *

(b) After March 19, 1997, each certificate holder that conducts commuter operations under this part with airplanes in which two pilots are required by the type certification rules of this chapter shall comply with subparts N and O of part 121 of this chapter instead of the requirements of subparts E, G, and H of this part. * * *

* * * * *

22. Section 135.43 is revised to read as follows:

§ 135.43 Crewmember certificates: International operations.

(a) This section describes the certificates that were issued to United States citizens who were employed by air carriers at the time of issuance as flight crewmembers on United States registered aircraft engaged in international air commerce. The purpose of the certificate is to facilitate the entry and clearance of those crewmembers into ICAO contracting states. They were issued under Annex 9, as amended, to the Convention on International Civil Aviation.

(b) The holder of a certificate issued under this section, or the air carrier by whom the holder is employed, shall surrender the certificate for cancellation at the nearest FAA Flight Standards District Office at the termination of the holder's employment with that air carrier.

23. Section 135.64 is amended by revising paragraph (b)(2) to read as follows:

§ 135.64 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

* * * * *

(b) * * *

(2) The information required by § 119.35(g)(2), (g)(7), and (g)(8) of this chapter;

* * * * *

Issued in Washington, DC, on June 4, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 96–14565 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–13–M

Friday
June 14, 1996

Part V

Department of Education

William D. Ford Federal Direct Loan Program; Solicitation of Applications; Notice

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program; Solicitation of Applications

AGENCY: Department of Education.

ACTION: Notice of solicitation of applications.

SUMMARY: The Secretary of Education invites applications from schools to participate in the William D. Ford Federal Direct Loan (Direct Loan) Program. This notice relates to the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

APPLICATION DEADLINE: Applications may be submitted at any time.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith, U.S. Department of Education, 600 Independence Avenue SW., Room 3042, ROB–3, Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under Title IV, Part D, of the Higher Education Act of 1965, as amended (HEA). See Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Background

The HEA directs the Secretary to phase in the Direct Loan Program. The HEA provides that the student loan volume made under the Direct Loan Program should represent 5 percent of the total student loan volume in the first year of the program (academic year 1994–1995), 40 percent for the second year of the program (academic year 1995–1996), 50 percent for the third and fourth years of the program (academic years 1996–1997 and 1997–1998), and 60 percent for the fifth year of the program (academic year 1998–1999).

The HEA allows the loan volume to exceed the percentage goals for academic years 1996–1997, 1997–1998, and 1998–1999 if the Secretary determines that a higher percentage is warranted by the number of institutions of higher education that desire to participate in the Direct Loan Program that meet the eligibility requirements for participation. See section 453(a)(2) and (3) of the HEA.

Schools participating in the Direct Loan Program transmit and receive loan origination information electronically to and from a Direct Loan Servicer and receive Federal funds electronically. The Secretary provides PC software and mainframe specifications, as well as technical assistance, to schools to facilitate their implementation of the Direct Loan program.

The standards for institutional participation in the Direct Loan Program for the 1995–1996 and subsequent years were published as final regulations on December 1, 1994 (59 FR 61664). See 34 CFR 685.400 and § 685.402. These final regulations were developed after the Secretary received input from the financial aid community and other members of the public through a negotiated rulemaking process and numerous other opportunities for public comment.

Application and Selection Process

The Secretary will accept applications from schools to participate in the Direct Loan Program at any time. The Secretary will select schools to participate in the Direct Loan Program periodically and will notify the institutions individually when they are selected.

The Secretary encourages a potential participant to submit an application well in advance of the date on which the school will begin participation in the Direct Loan Program. This will allow a school more time to plan for its transition into the Direct Loan Program and to begin the transition process. Further, a school will be able to take advantage of training opportunities and prepare any campus materials it may choose to use in the Direct Loan Program.

The Secretary will publish an interim list of the schools selected to participate in the Direct Loan Program for each academic year on or before December 16 of the preceding calendar year. A school that already has been selected to participate in the Direct Loan Program and an eligible school that previously applied to participate in the program but was not selected, need not submit an application again. However, if an eligible school that previously applied but did not participate (either because it was not selected or because it chose not to participate) does not wish to be considered for participation, it should notify the Secretary.

Solicitation of Applications for Participation in the Direct Loan Program

Purpose of Program

To provide loans to enable students and parents of students to pay the students' costs of attendance at a postsecondary school. Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Eligible Applicants

Colleges, universities, graduate and professional schools, and vocational and technical schools that meet the definition of an eligible institution under section 435(a) of the HEA.

Deadline for Transmittal of Applications

Applications may be submitted at any time.

For Information Contact

Kenneth Smith, U.S. Department of Education, 600 Independence Avenue SW., Room 3042, ROB–3, Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Application Form and Instructions

The Secretary has developed an application form for a school to use to apply to participate in the Direct Loan Program. A copy of the application form is included as an Appendix to this notice. On this form, the signature of the President or Chief Executive Officer (CEO) of the institution is required. In addition, the school must designate an official at the school to receive Direct Loan Materials.

If a school is applying as part of a consortium, it must indicate the exact names of all schools in the consortium and the name of the destination point (school or outside entity) for the consortium.

In order to be considered for participation, a school must complete the application and mail or fax the application to: U.S. Department of Education, Office of Postsecondary Education, ROB–3, Federal Direct Loan Task Force, Room 4025, 600 Independence Avenue SW., Washington, DC 20202–5162, FAX: (202) 260–6718, (202) 260–6705, or (202) 260–6706.

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford, Federal Direct Loan Program)

Dated: June 7, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

Form Approved
O.M.B. No. 1840-0664
Expiration Date: 2/28/98

William D. Ford Federal Direct Loan Program Participation Application

Section I: School Information

Please see instructions on back of application.

I-A. School Name: _____

I-B. FFEL Code: _____ I-C. IRS EIN: _____

Official Information

	President/CEO/Other	Designated Official to Receive Direct Loan Materials
I-D. Name	☐ Dr. ☐ Ms. ☐ Mr. _____	☐ Dr. ☐ Ms. ☐ Mr. _____
I-E. Title:	_____	_____
I-F. Address:	_____	_____
	_____	_____
	_____	_____
I-G. Telephone Number:	_____	_____
I-H. FAX Number:	_____	_____

I-I Signature of President or CEO: _____ Date: _____

Section II: School Participation

II-A. Would you like to participate in both the Direct Loan Program and the FFEL Program? Yes ☐ No ☐

II-B. Do you have any delinquent outstanding debts to the federal government? Yes ☐ No ☐

If yes, please indicate the name of the agency or agencies. _____

If you are not applying as a consortium, then you do not need to complete Section III.

Section III: School Consortium Information

Note that all schools in the consortium must file an application and must complete Section III.

Destination Point: _____ **FFEL # of Destination Point** _____

NAME OF SCHOOL _____ **FFEL # OF SCHOOL** _____

_____ _____

_____ _____

_____ _____

Continue on a separate sheet of paper if necessary.

William D. Ford Federal Direct Loan Program Application Instructions

I-A School Name - Enter the name of your school as it appears on the Federal Family Education Loan (FFEL) Program Participation Agreement (PPA). If the name of the school has changed since the PPA was signed, enter the school's new name, which should be currently on file with the Department.

I-B FFEL Code - Enter the six-digit school identification number under which your school receives its FFEL funds and FFEL default rate notifications. Note that only one FFEL code per application will be accepted. Institutions that receive funds from the Department under more than one FFEL code and are consequently notified of more than one default rate must apply for the Direct Loan Program under separate FFEL numbers.

I-C IRS Employer Identification Number - Enter your school's nine-digit IRS employer identification number (EIN). This is the tax identification number the IRS issues to businesses.

I-D Printed Name - Please print the name of the president or chief executive officer authorizing your school's application for the Direct Loan Program and whose signature is in the signature block. Also enter the name of the official designated to receive Direct Loan materials.

I-E Title - Enter the titles of persons indicated in I-D.

I-F Address - Enter the address of the president or chief executive officer who is authorizing the school's application for the Direct Loan Program. If the address of the school has changed since the PPA was signed, enter the new address, which should be currently on file with the Department. Also enter the address of the official designated to receive Direct Loan materials.

I-G Telephone Number - Enter the telephone number of the president or chief executive officer who is authorizing your school's application for the Direct Loan Program. Also enter the telephone number of the official designated to receive Direct Loan materials.

I-H FAX Number - Enter the FAX number of the president or chief executive officer who is authorizing your school's application to the Direct Loan Program.

I-I President/CEO Signature - The signature of the president or chief executive officer authorizes the school's application to the Direct Loan Program. This signature is necessary for a school to be considered for acceptance into the Direct Loan Program. By signing this application you certify that the information provided on the form is true and correct.

II-A Type of Participation - If your school wishes to offer new loans only through the Direct Loan Program, check the "No" box. If your school wishes to offer some students new loans through the FFEL Program and some of its new loans through the Direct Loan Program, check the "Yes" box.

II-B Delinquent Debts - Check the box that indicates whether your school owes a delinquent debt to any federal agency. If yes, provide the name of the agency or agencies.

III Consortium Information - For a school to be part of a consortium it must possess a six-digit school identification number under which it has received its FFEL funds and FFEL default rates. Schools that are part of a consortium will participate in the Direct Loan Program in the same manner as the other Direct Loan schools, except that the communication between the Secretary and the schools in consortia is through a single destination point.

In the space provided, please indicate the name (and FFEL number, if the destination point is a school) of the destination point for your consortium. In the additional space provided, list the names and corresponding FFEL numbers of all members of your consortium.

Applications should be sent to:-

U.S. Department of Education
Office of Postsecondary Education, ROB-3
Direct Loan Task Force, Room 4025
600 Independence Avenue, SW
Washington, DC 20202-5162 ***FAX (202) 260-6705***

Paperwork Reduction Notice

The time required to complete this information collection is estimated to average 0.2. hours (12 minutes) per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to : U.S. Department of Education, Washington, DC 20202-4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: **U.S. Department of Education, Office of Postsecondary Education, ROB-3, Direct Loan task Force, Room 4025, 600 Independence Avenue, SW, Washington, DC 20202-5162**

[FR Doc. 96–15126 Filed 6–13–96; 8:45 am]
BILLING CODE 4000–01–M

Federal Register

Friday
June 14, 1996

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Chapter I

Advisory Guidance; Offering, Accepting, and Transporting Hazardous Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Chapter I

[Notice No. 96–10]

Advisory Guidance; Offering, Accepting, and Transporting Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: Preliminary findings in the investigation of a recent passenger aircraft accident in Florida indicate a possibility that hazardous materials carried as cargo aboard the aircraft may have caused or contributed to the severity of the accident. This is advisory guidance to remind persons involved in the transportation of hazardous materials of their responsibilities to ensure that hazardous materials are properly identified, packaged, authorized for transportation, handled, loaded, and transported in conformance with the Hazardous Materials Regulations.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Director, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. General

A. Background

A May 11, 1996 aircraft accident in Florida resulted in 110 fatalities. Preliminary evidence indicates that oxygen generators (chemical) were carried as cargo on board the aircraft and may have caused or contributed to the severity of the accident. In an interim final rule published on May 24, 1996 (61 FR 26418), RSPA has temporarily prohibited the transportation of oxygen generators (chemical) as cargo on passenger aircraft, while RSPA and the Federal Aviation Administration (FAA) determine what further regulatory actions may be necessary.

This accident serves to point out the risks posed by hazardous materials in transportation. RSPA is publishing this advisory notice to remind persons who offer, accept for transportation, or transport hazardous materials of their responsibilities to ensure that authorized hazardous materials are transported safely and that prohibited hazardous materials are not offered for transportation or transported.

B. Regulation of Hazardous Materials Transportation in Commerce

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) specify requirements for the safe transportation of hazardous materials in commerce by rail car, aircraft, vessel, and motor vehicle. These comprehensive regulations govern transportation-related activities by offerors (e.g., shippers, brokers, forwarding agents, freight forwarders, and warehousers); carriers (i.e., common, contract, and private); packaging manufacturers, reconditioners, testers, and retesters; and independent inspection agencies. The HMR apply to each person who performs, or causes to be performed, functions related to the transportation of hazardous materials such as determination of, and compliance with, basic conditions for offering; filling packages; marking and labeling packages; preparing shipping papers; handling, loading, securing and segregating packages within a transport vehicle, freight container or cargo hold; and transporting hazardous materials.

In general, the HMR prescribe requirements for classification, packaging, hazard communication, incident reporting, handling and transportation of hazardous materials. The HMR are enforced by RSPA and DOT's modal administrations: the FAA, the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the United States Coast Guard (USCG). Federal law provides for civil penalties of not more than $25,000 and not less than $250 for each violation. An individual who willfully violates a provision of the HMR may be fined, under Title 18 U.S.C., up to $250,000, be imprisoned for not more than 5 years, or both; a business entity may be fined up to $500,000.

The information presented in this document highlights some of the requirements of the HMR which can affect transportation safety, but does not address many of the specific provisions and exceptions contained in the HMR. This advisory notice is intended to provide general guidance. It should not be used as a substitute for the HMR to determine compliance.

II. Basic Requirements

A. Training

The terms ''hazmat employee'' and ''hazmat employer'' are defined in detail in 49 CFR 171.8. Stated briefly, a hazmat employee is anyone who directly affects hazardous materials transportation safety, and a hazmat employer is anyone who uses employees in connection with transporting hazardous materials in commerce, causing hazardous materials to be transported, or manufacturing or offering packagings as authorized for use in transportation of hazardous materials.

Before any hazmat employee performs a function subject to the HMR, that person must be provided initial training in the performance of that function. Also, if a new regulation is adopted, or an existing regulation is changed that relates to a function performed by a hazmat employee, that hazmat employee first must be instructed in those new or revised function-specific requirements. For example, if a new requirement is added to the shipping paper requirements, a hazmat employee must be instructed regarding the new requirement prior to performance of a function affected by the new or revised rule. As an interim measure, a hazmat employee may perform a required function under the direct supervision of a properly trained and knowledgeable hazmat employee for a period of 90 days, or until the required training is provided, whichever comes first.

Each hazmat employee must be initially trained, and periodically retrained at least every three years (previously two years; see final rule under Docket HM–222B; 61 FR 27166, May 30, 1996) in three areas: General awareness/ familiarization training designed to provide familiarity with requirements of the HMR and to enable the employee to recognize and identify hazardous materials; function-specific training concerning requirements of the HMR which are specifically applicable to the functions the employee performs; and safety training concerning emergency response information, measures to protect the employee from the hazards posed by materials, and methods and procedures for avoiding accidents.

Hazmat employers are responsible for training. Each hazmat employee must be trained and tested, and the employer must keep a record of training to include certification of training and testing, date of training, a description of the training material, and the name and address of the person providing the training.

RSPA stresses the importance of hazmat employer compliance with the hazmat employee training requirement. Effective training of hazmat employees reduces the potential for incidents and accidents and is essential for the protection of people (employees,

passengers, emergency response personnel, and the general public), property, and the environment.

See Subpart H (Training) of Part 172 for detailed requirements.

B. Classification and Identification of Hazardous Materials.

The HMR set forth the procedures and criteria for determining the hazard class (see § 173.2) and the proper shipping name (see § 172.101) for hazardous materials. Some materials are so hazardous that they are specifically designated as ''forbidden'' in the Hazardous Materials Table in § 172.101 (the Table) and may not be offered for transportation or transported in commerce. Some require special review and approval. Others are designated as ''forbidden'' from transportation by specific modes, such as air transportation. Section 173.21 extends the ''forbidden'' designation beyond those materials listed by name in the Table to additional general categories, including materials (other than materials classed as explosives) that will detonate in a fire; combinations of materials that are likely to cause a dangerous evolution of heat, create flammable or poisonous gases or vapors, or produce corrosive materials; and packages that give off a flammable gas or vapor likely to create a flammable mixture with air in a transport vehicle. In the May 24, 1996 interim final rule, RSPA added a provision to § 173.21 to temporarily prohibit the transportation of oxygen generators (chemical) as cargo in passenger aircraft.

The Table lists, by name, several thousand of the most commonly transported hazardous materials. Tens of thousands of other hazardous materials that pose similar hazards as specifically listed materials are addressed by generic descriptions like ''flammable liquids, n.o.s.'' (''n.o.s.'' means not otherwise specified).

The Table is a key element and primary guide to offerors, carriers, and enforcement personnel in determining compliance with the regulations. For each entry, the Table specifies the proper shipping name, hazard class or division, identification number, packing group, required hazard warning labels, packaging authorizations, per-package quantity limitations for passenger and cargo aircraft, and special provisions.

C. Protective Packaging.

The packaging required for a hazardous material is the first line of defense in ensuring that the material is not released during transportation. An inadequately packaged hazardous material may not be offered for transportation, accepted or transported.

Generally, the HMR specify various performance levels for packagings for hazardous materials, based on the nature and level of hazards posed by the specific material to be packaged therein. All packagings must be designed to ensure that under normal conditions of transportation there will be no release of the contents, and that the effectiveness of the packaging will not be substantially reduced by temperature changes. Packagings used to transport liquids by aircraft must be able to withstand significant changes in ambient pressure. In the case of combination packagings, the inner packagings containing a liquid must be packed so that the closures are properly installed and tight, are upright, and the outer packaging must be marked to show the proper orientation. All inner packagings must be adequately secured and cushioned within the outer packaging to prevent breakage or leakage and to control their movement within the outer packaging under conditions normally incident to transportation. Substances that may react dangerously with each other may not be placed within the same package.

See Subpart B (Preparation of Hazardous Materials for Transportation) of Part 173 for general packaging requirements.

D. Hazard Communication.

Essential elements of hazard warning information are required to be communicated through shipping documents, package markings and labels, placards on transport vehicles and bulk packagings, written emergency response information, and emergency response telephone numbers to be used in the event of an emergency involving the hazardous material.

Shipping papers can be in the form of a bill of lading, freight bill, hazardous waste manifest, or other shipping document. At a minimum, a properly prepared shipping paper clearly identifies a hazardous material by its proper shipping name, hazard class or division number, identification number, packing group (if any), and total quantity. Additional hazard warning and handling information, such as ''POISON'' and ''CARGO AIRCRAFT ONLY,'' must be entered on the shipping paper. This information is intended to enhance safety by informing hazmat employees of the presence of hazardous materials and prompting them to ensure that required actions, such as placarding and segregation of incompatible materials, are accomplished. This same information is used by emergency responders in responding to incidents and accidents involving hazardous materials.

The ''shipper's certification'' is a positive endorsement that the offeror is required to provide when tendering a shipment of hazardous materials to a carrier for transportation. The person signing the certification must be trained in appropriate areas of the HMR (e.g., classification, description, packaging, marking, and labeling) pertaining to the shipment.

See Subpart C (Shipping papers) of Part 172 and related sections for detailed requirements.

Package markings and labels convey information on packages, such as the proper shipping name, identification number, and hazard class of a hazardous material. This information readily identifies that a package contains a hazardous material. It is used by carriers and other persons to ensure compliance with loading and stowage requirements designed to prevent potentially dangerous situations that may occur with incompatible hazardous materials, or to prevent contamination of foodstuffs, feed, or other edible materials. Also, the information provided by package markings and hazard warning labels can be used by emergency responders when shipping papers are destroyed or otherwise not immediately available. Hazardous materials markings must be durable, in English, and unobscured by other information appearing on the package. Hazard warning labels must conform to size and color specifications, be placed on the package near the marked proper shipping name, be clearly visible and be unobscured by other information.

See Subparts D (Marking) and E (Labeling) of Part 172 and related sections for detailed requirements.

Hazard warning placards and identification numbers are displayed on the outside of motor vehicles, freight containers, and bulk packagings loaded with hazardous materials. They provide a readily visible warning that hazardous materials are present. The information they provide can be critical to emergency responders in mitigating the impacts of a hazardous materials incident or accident.

See Subparts D (Marking) and F (Placarding) of Part 172 and related sections for detailed requirements.

Emergency response information and an emergency response telephone number must be provided by the offeror and maintained by the carrier for use in the mitigation of an accident or incident involving the hazardous material. The offeror must provide information concerning immediate hazards to

health, risks of fire or explosion, immediate precautions to be taken in event of an accident or incident, immediate methods for handling fires, initial methods for handling spills or leaks in the absence of fire, and preliminary first-aid measures. Furthermore, the shipping paper must contain the emergency response telephone number of a person who is either knowledgeable of the hazardous material and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information.

The required emergency response information provided by the offeror must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels.

See Subpart G (Emergency Response Information) of Part 172 and related sections for detailed requirements.

E. Incident Reporting and Modal-Specific Requirements.

Incident Reporting

The HMR require carriers to report incidents involving hazardous materials. These incident reports are maintained by RSPA in its automated Hazardous Materials Information System (HMIS) database. RSPA uses this information to identify problems, such as inadequate or improper packagings; operational problems occurring during loading, unloading, or handling of packages; and inadequate blocking, bracing, or securing of packages within transport vehicles, freight containers, and cargo holds. When potentially serious problems are detected, regulatory or enforcement actions may be initiated.

Each person who discovers a discrepancy relative to the shipment of a hazardous material following its acceptance for transportation aboard an aircraft is required to notify the nearest FAA Civil Aviation Security Office, by telephone, as soon as practicable following discovery. This reporting requirement (see § 175.31) applies to packages which are found to contain hazardous materials that are: other than as described or certified on shipping papers; in quantities exceeding authorized limits; in inside containers which are not authorized or have improper closures; in inside containers not oriented as shown by package markings; or with insufficient or improper absorption materials, when required. Also, a telephonic report is required when a package or bag is found to contain a hazardous material subsequent to its being offered and accepted as other than a hazardous material shipment.

See §§ 171.15, 171.16, 175.31, 176.48 and related sections for detailed requirements concerning the reporting of incidents, discrepancies, and other hazardous conditions.

Stowage and Segregation

Hazard warning labels and package markings are used by carrier personnel and other persons to ensure that hazardous materials are properly segregated or stowed, when required. For example, the HMR generally prohibit the loading of Class 8 (corrosive) material above or adjacent to Division 4.1 (flammable solid) materials or Division 5.1 (oxidizing) materials. Furthermore, there are modal-specific rules, such as quantity limitation requirements for transportation by passenger aircraft.

See §§ 173.21, 173.24, 173.24a, 174.81, 175.75, 175.78, 176.83, 177.848 and related sections for detailed stowage and segregation requirements.

III. Common-Sense Reminders

The HMR are only effective when persons who engage in day-to-day transportation-related activities make a concerted effort to ensure their own compliance, as well as that of others from whom they may receive shipments. The following reminders, as a minimum, are provided for consideration to ensure that hazardous materials are recognized and handled safely in conformance with the regulations.

A. Know Your Customer

Does your customer manufacture, ship or transport products that are hazardous materials? If so, what kind and in what quantities?

B. Know the Packaging

Is each hazardous material packaged in an authorized packaging that conforms to a DOT specification or United Nations standard, or other packaging authorization of the HMR? (See Parts 172, 173, 178–180, including §§ 172.101, 173.24, 173.24a, and 173.27).

C. Know/Verify the Proper Hazardous Material Description

Does the shipping description used match the proper shipping name, hazard class or division, identification number, and packing group listed in the Hazardous Materials Table in § 172.101? Is there a conflict between the documentation and the package marking? Is there an emergency response telephone number on the shipping paper? Does emergency response information accompany the shipping paper? Is the shipper's certification entered on the shipping paper, as required by § 172.204?

D. Visually Inspect Shipments

Is there damage to a package that makes it unsuitable for transportation? Are hazardous materials warning labels clearly visible? Is the transport vehicle, freight container, or bulk packaging properly marked and placarded?

E. Advise Your Customer of Possible Discrepancies

Do not take independent action to correct known or suspected deficiencies. DON'T GUESS. If you know or suspect there is a problem, advise your customer and work together to bring the shipment into conformance with the HMR.

F. Report Violations

RSPA operates a toll-free telephone number (800–467–4922) that may be used to voluntarily report suspected violations of the HMR. Reported violations that concern a single mode of transportation are forwarded to the appropriate DOT modal administration for follow-up action.

IV. Obtaining Federal Assistance in Complying With the HMR

Numerous resources of the Department of Transportation are readily available to assist offerors, carriers, packaging manufacturers and other persons in understanding particular requirements of the HMR. RSPA operates a hazardous materials information center that responds to inquiries regarding the HMR. The information center operates during normal business hours. After-hours callers may leave a recorded message. Calls will be returned by the end of the next business day. The telephone number is 800–467–4922 or, in Washington, DC, 202–366–4488.

Modal-specific information may be obtained directly from DOT's modal administrations (i.e., FAA, FHWA, FRA, and USCG) at their Washington, DC headquarters or local field offices.

RSPA has a variety of training materials and compliance guides available in limited quantities to interested persons. Information on those publications and related materials is available via the Internet @ hmix.dis.anl.gov (146.137.100.54) or by calling 800–467–4922, ext. 3.

Issued in Washington, DC on June 7, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–15070 Filed 6–13–96; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Friday
June 14, 1996

Part VII

Department of Education

National Awards Program for Model Professional Development; Notice Inviting Applications for Awards

DEPARTMENT OF EDUCATION

National Awards Program for Model Professional Development; Notice Inviting Applications for Awards

Purpose of Program: The National Awards Program will recognize a variety of schools and school districts with model professional development activities in the pre-K through twelfth grade levels that have led to increased student achievement.

Eligible Applicants: All local educational agencies and public and private schools are eligible to apply.

Supplementary Information: Schools and school districts throughout the Nation are undertaking efforts to raise academic standards and to improve the academic achievement of all students. For these efforts to be successful, it has become clear that they must include strategies for permitting teachers (and other school and local educational agency (LEA) staff) to obtain the skills and knowledge they need to enable all students to achieve. Indeed, whatever the school reform initiative, teachers are the core. However, teachers need access to new knowledge and skills to enable them to continue to teach to higher standards and to respond to the challenges facing education today.

Realizing that high-quality professional development must be at the core of any effort to achieve educational excellence, the Secretary in 1994 directed a broadly representative team within the U.S. Department of Education to examine the best available research and exemplary practices related to professional development, and work with the field to develop a set of basic principles of high-quality professional development. Out of this national effort came the Department's Statement of Mission and Principles of Professional Development. This statement reflected both extensive collaboration with a wide range of education constituents and review of public comment received on a draft Statement of Mission and Principles of Professional Development published in the Federal Register on December 9, 1994 (59 FR 63773). The Department issued the final Statement of Mission and Principles (Attachment A) in 1995 after review of public comment and reexamination of the best available research on exemplary practices. This statement is grounded in the practical wisdom of leading educators across the country about the kind of professional development that, if implemented, maintained, and supported, will have a positive and lasting effect on teaching and learning in America.

The Statement of Mission and Principles of Professional Development represents a framework for guiding school and school district staff as they design and implement their professional development activities. Many of the same national education organizations that worked with the Department to develop the Mission and Principles of Professional Development now have sought the Department's help this year in identifying and recognizing those professional development efforts across the pre-kindergarten through twelfth grade spectrum that reflect the Mission and Principles. Given the efforts of schools and school districts throughout the Nation to pursue school reform initiatives, the Secretary agrees with these organizations that there is an urgent need to identify sites whose professional development activities can be models for other schools and districts that are working to enhance their own professional development activities.

Therefore, the Secretary announces a National Awards Program that, by January 1, 1997, will recognize up to ten schools and school districts throughout the Nation whose professional development activities are aligned with the Statement of Mission and Principles of Professional Development, and have led to improved student learning. As explained in the application material contained in Appendix B, successful applicants will be schools and school districts that: (1) Demonstrate that their professional development activities are fully aligned with the Mission and Principles of Professional Development and (2) demonstrate how, consistent with the Mission and Principles, their professional development activities benefit all affected students, and have led to improved student learning and improved teacher effectiveness. The application itself is very simple.

After an initial screening, the Department will use outside panels of experts to evaluate the quality of the application against the basic elements noted above, and conduct site visits of the highest-ranked applicants. The Secretary intends to recognize those schools and school districts with the very best professional development practices at a national ceremony in Washington, DC. Successful applicants also will receive other forms of recognition including a privately-funded monetary award that the Department anticipates will be no less than $5,000 per recipient. Recipients will be able to use these funds to support their professional development activities and make them known to others.

In announcing this program, the Department is helping to implement a decision made by these national organizations that a first national awards program for professional development extend only to schools and LEAs throughout the Nation that offer pre-K through twelfth grade education. While the Department will help to coordinate the program, non-Departmental experts will select the schools or districts to be recognized. Moreover, the monetary recognition awards that recipients will receive will be provided from private funds specifically made available for a recognition program focusing on professional development activities in the pre-K through twelfth grade spectrum. However, if the awards program continues in future years, the Secretary intends to work with the national education organizations and others in an attempt to include in the awards program professional development activities conducted in other areas such as adult or postsecondary education.

Finally, the National Awards Program depends upon the availability of sufficient funds to support a peer review and site visit process. The Department expects to have adequate funds to support this process, as needed, for applicants from schools and LEAs in States (including schools located on Indian reservations), the District of Columbia, and Puerto Rico. However, in the case of applicants from schools or LEAs in the insular areas, it is not known whether sufficient funds will be available to pay the costs of the peer review and on-site visits that are preconditions to national recognition.

Deadline for Transmittal of Applications: July 15, 1996.

Estimated Range of Awards: No less than $5,000.

Estimated Number of Awards: 10.

For Applications or Information Contact: To obtain a copy of the application, call or write Margaret O'Keefe, Office of the Secretary, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–0100. (Telephone: (202) 401 1078; For information on the program, contact Terry Dozier, Special Advisor on Teaching, Office of the Secretary, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–0100. The FAX number for obtaining further information or requesting the application packages is (202) 401–0596. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Service at GOPHER.ED.GOV (under Announcements, Bulletins,, and Press Releases) or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1221e–3.

(Catalog of Federal Domestic Assistance Number: Not applicable)

Dated: June 10, 1996.

Richard W. Riley,

Secretary of Education.

Appendix A—Mission and Principles of Professional Development; U.S. Department of Education—Professional Development Team

July 5, 1995.

Professional development plays an essential role in successful education reform. Professional development serves as the bridge between where prospective and experienced educators are now and where they will need to be to meet the new challenges of guiding *all* students in achieving to higher standards of learning and development.

High-quality professional development as envisioned here refers to rigorous and relevant content, strategies, and organizational supports that ensure the preparation and career-long development of teachers and others whose competence, expectations and actions influence the teaching and learning environment. Both pre- and in-service professional development require partnerships among schools, higher education institutions and other appropriate entities to promote inclusive learning communities of everyone who impacts students and their learning. Those within and outside schools need to work together to bring to bear the ideas, commitment and other resources that will be necessary to address important and complex educational issues in a variety of settings and for a diverse student body.

Equitable access for all educators to such professional development opportunities is imperative. Moreover, professional development works best when it is part of a systemwide effort to improve and integrate the recruitment, selection, preparation, initial licensing, induction, ongoing development and support, and advanced certification of educators.

High-quality professional development should incorporate *all* of the principles stated below. Adequately addressing each of these principles is necessary for a full realization of the potential of individuals, school communities and institutions to improve and excel.

The mission of professional development is to prepare and support educators to help all students achieve to high standards of learning and development.

Professional Development—

- Focuses on teachers as central to student learning, yet includes all other members of the school community;
- Focuses on individual, collegial, and organizational improvement;
- Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;
- Reflects best available research and practice in teaching, learning, and leadership;
- Enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;
- Promotes continuous inquiry and improvement embedded in the daily life of schools;
- Is planned collaboratively by those who will participate in and facilitate that development;
- Requires substantial time and other resources;
- Is driven by a coherent long-term plan;
- Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and this assessment guides subsequent professional development efforts.

Appendix B—Application Instructions

Overview

As part of the continuing effort to honor excellence in education, the National Awards Program for Model Professional Development will identify and disseminate information about high-quality professional development efforts which provide evidence of improved student learning and increased teacher effectiveness. Since the focus of this competition is on development programs for teachers and other educators in pre-K–12 settings, only individual schools (public or private) or school districts may apply. However, partnerships with other entities, especially higher education institutions, are encouraged. Recognition in this awards program is based on how well applicants address criteria in three areas: (1) Evidence of success; (2) program quality; and (3) usefulness to others. Subsequent recognition may focus on higher education and other education personnel.

Questions

Our goal is to identify a wide variety of pre-K–12 professional development efforts that are aligned with the attached U.S. Department of Education Mission and Principles of Professional Development. Because the purpose of the Mission and Principles is to promote excellence in teaching and learning, the most important criterion for eligibility is evidence of improved student learning and increased teacher effectiveness. Consistent with the Mission and Principles, those schools and districts have professional growth as an integral part of school culture, address the needs of ALL students, and have professional development practices that ensure equity by being accessible to all educators and free of bias.

Responses to all of the following four questions should be limited to a total of 2500 words, as opposed to 2500 words per question.

While we are not accepting attachments to this first round of the evaluation process, we do ask that, where appropriate, you *describe* the type of evidence you have on your program's effectiveness. If your school or district makes the semifinals you will be asked to provide documentation of this evidence. This may include such things as schedules, student and teacher portfolios, assessment data, videos, and audio tapes, internal and external communications, and other documents. This evidence will be necessary information to help evaluators understand the depth and scope of your program.

Completed applications must be received no later than July 15, 1996.

Note: *The criteria section that follows these questions may help you structure and focus your responses.*

(1) Describe the extent to which the Mission and Principles are reflected in your approach to professional development. Although it is not necessary to address each Principle separately, you must explain how you are working to fulfill *all* of the Principles.

(2) Portray the direct and ongoing connection between your professional development practice and improved student learning.

(3) Discuss evidence of how professional development efforts have improved teaching effectiveness and student learning.

(4) Describe any plans to strengthen and/or expand your professional development efforts and why you believe others might want to consider adopting/adapting them.

Criteria

Your response will be reviewed for how well your professional development activities are aligned with the Mission and Principles of Professional Development. While reviewers will use their best professional judgment, we anticipate that they also will use the following kinds of criteria and emphases as a guide to help them assess the quality of responses. You do not have to address each criterion separately, but you should be sure to include sufficient information throughout your responses for reviewers to make judgments about such basic factors as evidence of success, quality of the professional development activities, and usefulness to others.

Evidence of Success—50 Points

—Indicators are provided that the school or district's students are progressing toward or achieving at high standards of learning.

—Based on a range of assessments, the professional development program is shown to be connected directly to enhanced teaching effectiveness and student learning.

Related Questions

Portray the direct and ongoing connection between your professional development practice and improved student learning.

Submit evidence of how teaching practice has become more effective and student learning has improved.

Quality of the Program—30 Points

—The extent to which the school or district's professional development is aligned with the Mission and Principles of Professional Development.

Related Question

Describe the extent to which the Mission and Principles are reflected in your approach to professional development. Although it is not necessary to address each Principle separately, you must explain how you are working to fulfill *all* of the Principles.

Usefulness to Others—20 Points

—The program's content, strategies and supports can be adopted or adapted by other schools and districts working to improve their professional development practices.

—Resources are reasonable in light of expected benefits and in comparison with other professional development alternatives.

*Related Question**

Describe any plans to strengthen and/or expand your professional development efforts and why you believe others might want to consider adopting/adapting them.

* *Please note that your overall application and program description also will be used for evaluating this criterion.*

Review Process

An initial reading of applications will be done by the Professional Development Team and other knowledgeable staff of the U.S. Department of Education representing diverse expertise and perspectives related to professional development and education reform. This first reading will eliminate applications which do not respond to or minimally meet the criteria. The next stage of review will include broad outside representation of expert practitioners and policymakers. Each application will have multiple readers and will be ranked according to how well it does when judged against an evaluation framework based on the criteria and Principles. Up to twenty semifinalists will be chosen through this process, which may include telephone interviews with project contacts to discuss and clarify information. Site visits will be conducted to collect additional data on the semifinalist. This data will be used in selecting up to ten schools or districts for recognition.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1880–0534. It expires in June of 1999. The time required to complete this information collection is estimated to average 20 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimates or suggestions for improving the form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Terry Dozier, Special Advisor on Teaching, Office of the Secretary, U.S. Department, 600 Independence Avenue, SW., Washington, DC 20202–0100.

BILLING CODE 4000–01–P

APPLICATION FORM

Please give the names and positions of the Professional Development Planning Team involved in the completion of this application.

Name _____ Position _____

Applicant _____

I. If Applying At the School Level

School Address: _____

Telephone: _____

Fax: _____

E-Mail Address: _____

Name of Principal/Lead Teacher: _____

II. If Applying At the District Level

Name of Superintendent: _____

District Name: _____

District Address:

_____

District Telephone: _____

E-Mail Address: _____

Applicant's Name and Title: _____

Date: _____

Please list the sources of funding for your school or district's professional development.

Please attach your responses to the essay questions to this page.

DEMOGRAPHIC PROFILE OF PROFESSIONAL DEVELOPMENT SITES

(1) Total Number of Students: _____

(2) Type of School(s): _____

Pre-Kindergarten _____

Elementary _____

Middle _____

Junior High _____

Senior High _____

(3) Population Category:

Urban_____

Suburban _____

Rural _____

(4) Racial/ethnic composition of the students in your school(s):

___ % Native American or Native Alaskan

___ % Asian or Pacific Islander

___ % African American, not Hispanic origin

___ % Hispanic

___ % White, not Hispanic origin

(5) Limited English Proficient students in the school ___%

___ Number of languages Specify languages: _____

(6) ___ % Students who qualify for free/reduced price lunch

(7) ___ % Students receiving special education services

(8) Special characteristics of your school or district which you believe are relevant to your application.

Submit your application to Terry Dozier, Special Advisor on Teaching, Office of the Secretary, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202. *The completed application must be received no later than July 15, 1996.*

[FR Doc. 96–15129 Filed 6–13–96; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Friday
June 14, 1996

Part VIII

Nuclear Regulatory Commission

PECO Energy Company, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3; Final Director's Decision; Notices

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Peco Energy Company Peach Bottom Atomic Power Station, Unit Nos. 2 and 3; Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC) has denied in part a Petition, dated October 6, 1994, submitted by the Maryland Safe Energy Coalition (Petitioner). The Petition requested that the NRC take action regarding the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 (PBAPS). The Petition consisted of a press release which was reviewed by the NRC pursuant to 10 CFR 2.206.

The October 6, 1994, Petition requests the NRC to immediately shut down both reactors at Peach Bottom and keep them shut down until certain conditions are corrected. Specifically, the Petitioner stated that (1) the risk of fire near electrical control cables due to combustible insulation could cause a catastrophic meltdown; (2) cracks were discovered in the structural support (core shroud) of the reactor fuel in Peach Bottom Unit 3, indicating possible cracks in other parts of the reactor vessel; (3) the NRC discovered that both reactors had no emergency cooling water for an hour on August 3, 1994; and (4) other chronic problems exist at Peach Bottom according to an August 16, 1994, NRC report. The Petitioner also indicated his support for the demands from the Nuclear Information Resource Service that (a) all safety class component parts in both reactor vessels, including the cooling system, the heat transfer system, and the reactor core, be inspected and (b) the Peach Bottom operating license be suspended until an analysis of the synergistic effects of cracks in multiple parts is conducted (incorporated into Request 2).

The Director of the Office of Nuclear Reactor Regulation has denied Requests (2), (3) and (4) of the October 6, 1994, Petition. The reasons for this denial are explained in the ''Final Director's Decision Under 10 CFR 2.206'' (DD–96–05), the complete text of which is published elsewhere in this separate part of the Federal Register, and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the Peach Bottom Atomic Power Station located at the State Library of Pennsylvania, (REGIONAL DEPOSITORY) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania, 17105. A Director's Decision denying Request (1) of the October 6, 1994 Petition was issued under separate cover on April 3, 1996 (Director's Decision DD–96–03).

A copy of this Final Director's Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). As provided in that regulation, the Decision will constitute the final action of the Commission 25 days after the date of the issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 10th day of June 1996.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15150 Filed 6–13–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–277 and 50–278 (10 CFR 2.206)]

PECO Energy Company, (Peach Bottom Atomic Power Station, Unit Nos. 2 and 3; Final Director's Decision Under 10 CFR 2.206

I. Introduction

On October 6, 1994, the Maryland Safe Energy Coalition (Petitioner) issued a press release describing its concerns with the operation of PECO Energy Company's Peach Bottom Atomic Power Station (PBAPS). In the press release, the Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) take action to address those concerns. The Petitioner requested the NRC, among other things, to immediately shut down both reactors at Peach Bottom and keep them shut down until certain conditions are corrected. Specifically, the Petitioner stated that (1) the risk of fire near electrical control cables due to combustible insulation could cause a catastrophic meltdown; (2) cracks were discovered in the structural support (core shroud) of the reactor fuel in Peach Bottom Unit 3, indicating possible cracks in other parts of the reactor vessel; (3) the NRC discovered that both reactors had no emergency cooling water for an hour on August 3, 1994; and (4) other chronic problems exist at Peach Bottom according to an August 16, 1994, NRC report.

The Petitioner seeks relief from the risk of fire (Request 1) due to cable insulation on the basis of a September 30, 1994, article in the Baltimore Sun that described the indictment of Thermal Sciences, Inc., on charges of falsifying laboratory records related to Thermo-Lag. Thermo-Lag is a material used to insulate electrical cables and other equipment from fire damage. The Petition states that a fire in combustible insulation near electrical control cables could cause a catastrophic meltdown.

The Petition also seeks the correction of cracks that were discovered in the structural support (core shroud) of the reactor fuel in Peach Bottom Unit 3, indicating possible cracks in other parts of the reactor vessel (Request 2). In support of this request, the Petitioner also references an earlier demand by the Nuclear Information and Resource Service (NIRS) [1] that all safety class component parts in both reactor vessels, including the cooling system, the heat transfer system, and the reactor core, be inspected and that an analysis be conducted of the synergistic effects of cracks in multiple parts. The Maryland Safe Energy Coalition did not, however, provide any information to support the application of the NIRS Petition to PBAPS.

The Petitioner also raises equipment problems at PBAPS, stating that: (a) the NRC discovered both reactors at PBAPS had no emergency cooling water for approximately one hour on August 3,

[1] On September 19, 1994, NIRS sought relief, pursuant to 10 CFR 2.206, regarding safety class reactor internal components at Oyster Creek Nuclear Generating Station (OCNGS) on the following premises: (a) the core shroud in General Electric boiling water-reactors (BWRs) is vulnerable to age-related deterioration; (b) 12 domestic and foreign BWR owners have found extensive cracking on welds of the core shroud; (c) only 10 of 36 U.S. BWR owners have inspected their core shrouds and 9 of the 10 core shrouds had cracks at the time of the NIRS Petition; (d) 19 of 25 selected BWR internal components are susceptible to stress corrosion cracking and 6 of 19 are susceptible to irradiation-assisted stress corrosion cracking; (e) as the oldest operating General Electric Mark I BWR and the third oldest operating reactor in the United States, OCNGS has been subjected for the longest period to operational conditions that cause embrittlement and cracking; (f) according to the BWR Owners Group (BWROG), cracking of the core shroud is a warning signal that additional safety class reactor internals are increasingly susceptible to age-related deterioration; (g) cracking of any single part or multiple components jeopardizes safe operation of that nuclear station; (h) Oyster Creek did not inspect for core shroud cracking prior to the current refueling outage and other safety-class reactor internals have not been adequately inspected for cracking; and (i) a safety analysis has not been performed on the potential synergistic effects of multiple-component cracking. The relief sought in the Petition based upon these concerns was denied in a Partial Director's Decision issued on August 4, 1995 (*See General Public Utilites Nuclear Corporation* (Oyster Creek Nuclear generating Station), DD–95–18, 42 NRC 67 (1995)).

1994 (Request 3), and (b) an NRC inspection report dated August 16, 1994, which the Petitioner asserts described numerous chronic problems at PBAPS [2] (Request 4).

In a letter dated December 2, 1994, I acknowledged receipt of the October 6, 1994, Petition and denied the Petitioner's requests for immediate relief. In the acknowledgement letter I informed the Petitioner that the remaining requests were being evaluated under 10 CFR 2.206 of the Commission's regulations and that action would be taken in a reasonable time.

The issues raised by the Petitioner concerning the use of Thermo-Lag fire barriers raised by Request 1 of the October 6, 1994, Petition have been previously considered. A Director's Decision (DD–96–03) (see attachment) addressing this specific request as well as the requests of other Petitioners with concerns regarding the use of Thermo-Lag by reactor licensees, was issued on April 3, 1996.[3] The NRC staff's review of the issues related to cracking of reactor internal components and concerns regarding equipment problems raised by Requests 2, 3 and 4 of the October 6, 1994, Petition is now complete. Accordingly, I am issuing a Final Director's Decision with regard to Requests 2, 3, and 4. A discussion of the Final Director's Decision follows.

II. Discussion

A. Correction of Cracks in the Core Shroud and Assertion of Possible Cracks in Other Parts of the Reactor Vessel (Request 2)

Nuclear power reactor licensees, including PECO, are required by 10 CFR 50.55a to implement inservice inspection programs that meet the requirements set forth in the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). The scope of the inservice inspection programs for reactor pressure vessels and their internal components are prescribed by ASME Code, Section XI, Division 1, Subsections IWA and IWB. Licensees are also required by ASME Code, Section XI, Article IWA–6000, to submit the results of these inspections to the NRC within 90 days of completion. The NRC staff performs periodic audits of licensee-implemented inservice inspection programs to determine compliance with applicable codes and regulations. These audits are documented in NRC inspection reports, which are publicly available at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Inspection reports related to PBAPS are also available at the local public document room for PBAPS located at the State Library of Pennsylvania (REGIONAL DEPOSITORY), Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

The licensee's inservice inspection program contains provisions for the periodic inspection of the PBAPS reactor vessel internal components, including such components as the top guides, core shroud welds, shroud support plate access hole covers, incore instrument tubes, steam dryer drain channels, core spray piping, and jet pump assemblies. By letter dated April 8, 1986, the NRC found the Inservice Inspection Program for the Second Ten-Year Interval at PBAPS Units 2 and 3 to be satisfactory (September 1986–November 1997 and December 1985–August 1997, for Units 2 and 3, respectively).

In addition to the ASME Code design and inservice inspection program requirements, the NRC provides information to the nuclear power industry on various emerging phenomena that may potentially affect the safe operation of nuclear power plants. For example, intergranular stress corrosion cracking (IGSCC) of BWR internal components has been identified as a technical issue of concern by both the NRC staff and the nuclear industry. The core shroud is among the internal reactor components susceptible to IGSCC. Identification of cracking at the circumferential beltline region welds in several plants during 1993 led to the publication of NRC Information Notice (IN) 93–79, ''Core Shroud Cracking at Beltline Region Welds in Boiling-Water Reactors,'' issued on September 30, 1993. Several licensees inspected their core shrouds during planned outages in the spring of 1994 and found cracking at the circumferential welds. To disseminate this information to nuclear power plant licensees, the NRC issued IN 94–42, ''Cracking in the Lower Region of the Core Shroud in Boiling-Water Reactors,'' on June 7, 1994, and Supplement 1 to IN 94–42, on July 19, 1994, concerning cracking found in the core shrouds at Dresden Unit 3 and Quad Cities Unit 1. On July 25, 1994, the NRC issued GL 94–03, ''Intergranular Stress Corrosion Cracking of Core Shrouds in Boiling Water Reactors,'' requesting that BWR licensees inspect their core shrouds by the next refueling outage and justify continued operation until inspections could be completed. The NRC has been closely monitoring these inspection activities. Additional examples of NRC action regarding reactor vessel internal component reliability issues are the issuance of Bulletin 80–13, ''Cracking in Core Spray Spargers'', on May 12, 1980, after the detection of cracks in core spray system sparger piping at several operating BWRs and the issuance of IN 95–17, ''Reactor Vessel Top Guide and Core Plate Cracking,'' issued on March 10, 1995, that concerned reactor vessel top guide and core plate cracking.

Core Shroud Cracks

The licensee submitted letters dated March 14, 1994, November 7, 1994 and November 3, 1995, regarding the results of its inspections of the PBAPS Unit 2 and 3 core shrouds. The inspections revealed a moderate amount of crack indications in the Unit 2 and Unit 3 core shrouds, totaling 5 percent of the weld length examined in Unit 2 and 12 percent of the weld length examined in Unit 3. Along with the inspection results, the licensee presented an analysis of the impact of the crack indications on the structural strength of the core shrouds for Unit 2 and Unit 3. For both the Unit 2 and Unit 3 core shroud, the staff reviewed the licensee's analysis of structural loading of the as-found shroud weld which showed that the loadings were less than ASME Code allowable values. In a letter dated February 6, 1995, the NRC staff issued a safety evaluation of the 1994 Unit 2 core shroud inspection concluding that sufficient structural margin remained in the Unit 2 shroud to justify operation of PBAPS 2 for another operating cycle (current operating cycle 11 that ends in September 1996) without modification to the shroud. In a letter dated January 29, 1996, the NRC staff issued a safety evaluation of the 1995 Unit 3 core shroud inspection concluding that sufficient structural margin remained in the Unit 3 shroud to justify operation of PBAPS 3 for another operating cycle (current operating cycle 11 that ends in

[2] The Petitioner stated that the problems described in the August 16, 1994, NRC report included: cooling tower leaks, coolant injection system vibration, injection valve failures, feedwater vibrations and leakage, fuel pool hot spots, incore probe failures, auxiliary boiler unreliability, valve failures, air solenoid failure, and hydraulic leaks and malfunctions.

[3] *All Reactor Licensees with Installed Thermo-Lag Fire Barrier Material*, DD–96–03, 43 NRC (1996). In addition to the Maryland Safe Energy Coalition, Petitioners with concerns about the use of Thermo-Lag included the Citizens for Fair Utility Regulation and the Nuclear Information and Resource Service, the GE Stockholder's Alliance and Dr. D.K. Cinquemani, the Toledo Coalition for Safe Energy, R. Benjan, B. DeBolt and the Oyster Creek Nuclear Watch. In the Decision under 10 CFR 2.206, the Director of the Office of Nuclear Reactor Regulation determined that the Petitioners' requests concerning the use of Thermo-Lag should be denied.

September 1997) without modification to the shroud.

Reactor Vessel Internals Cracking

In addition to the inspection of core shrouds, PECO performs inspections of the PBAPS Unit 2 and 3 reactor vessel internals and other internal safety-related components in accordance with the PBAPS inservice inspection program, as set forth in 10 CFR 50.55a and ASME Code, Section XI. By letter dated January 17, 1995, PECO submitted, in accordance with 10 CFR 50.55a(g)(3), a report on its inservice inspection activities conducted during the September 1994, Unit 2, refueling outage. In the report PECO listed the inspections performed and discussed the disposition of indications in certain components. In addition to the core shroud flaws described above, the licensee discovered some minor defects, such as a crack in a jet pump assembly restrainer adjustment screw tack weld, and performed an engineering evaluation to determine if a repair was needed. In the case of the jet pump restrainer adjustment screw tack weld crack, a second existing weld was found intact and no repair was necessary. The NRC staff conducted an inspection of the licensee's inservice inspection activities during the PBAPS Unit 2 refueling outage. The results of that inspection are documented in Inspection Report 50–277/94–28 and 50–278/94–28 (IR 94–28). The staff concluded that PBAPS inservice inspection programs and nondestructive examination programs were well planned, controlled, and executed for both PBAPS 2 and PBAPS 3. Therefore, the requirements of 10 CFR 50.55a and the ASME Code have been met in this area, and the results confirm that satisfactory material conditions exist for the safe operation of both units.

The NRC staff has reviewed the content and results of other licensee inspection activities, as discussed below.

NRC Bulletin 80–13, issued on May 12, 1980, requested that BWR licensees visually inspect core spray piping inside the reactor vessel at each subsequent refueling outage. During inspections conducted as requested by the staff in Bulletin 80–13, PECO detected cracks in core spray piping inside the reactor vessel in Unit 2 and Unit 3 in 1982 and 1985, respectively. In both instances, the licensee installed clamps on the affected piping to mitigate the consequences of the cracks. In letters dated June 10, 1982, and November 21, 1985, the NRC staff reviewed the licensee's analysis of the crack consequences and repair plans[4] and found them acceptable for PBAPS Units 2 and 3, respectively.

In November 1993, during subsequent inspections, PECO identified cracking in the downcomer portion of the Unit 3 core spray piping. By letters dated November 5 and November 10, 1993, the licensee provided an analysis which demonstrated that this downcomer piping had sufficient structural integrity to justify operation without repair for the subsequent operating cycle. In a letter dated November 16, 1993, the NRC found PECO's proposal to operate for one operating cycle without repairing the core spray downcomer cracks acceptable. During the September 1995 refueling outage for PBAPS Unit 3, PECO performed additional inspections of the core spray piping within the reactor vessel. As documented in its letter dated October 9, 1995, PECO stated that this inspection revealed additional cracking. In its letter of October 9, 1995, as supplemented by a letter dated October 12, 1995, PECO proposed to repair the core spray piping by installing mechanical clamps over the affected cracked welds. The NRC staff reviewed the design of the proposed clamps and found that the clamps provided the required structural integrity for the piping. The NRC staff also approved restart of the Peach Bottom Unit 3 based on PECO's installation of the clamps.[5]

Although cracking of the top guide has not been detected at PBAPS, the licensee has implemented a program to inspect the top guide and has included the top guide inspection into the PBAPS inservice inspection program.

Analysis Regarding Synergistic Effects of Cracking of Multiple Components

The Petitioner raises a concern about the lack of an analysis of the synergistic effects of cracks in multiple reactor vessel components.

Most reactor internals are fabricated from high-toughness materials such as stainless steel and were designed with significant margins on allowable stresses. Cracking must be severe to adversely impact plant safety. It is unlikely that licensee inspections would not find such severe degradation. In fact, the PECO inspections, using qualified inspectors and procedures, have been effective in identifying and sizing of the cracks in the Peach Bottom Unit 2 and Unit 3 core shrouds. In addition, after evaluating the results from internals inspections performed to date at PBAPS, the NRC staff has concluded that ASME Code structural margins have been maintained to meet ASME design requirements. Thus, these components will perform their function in the safe operation of the plants.

Implementation of an effective inservice inspection program serves to detect cracking. Upon detection of cracking, proper actions by the licensee to maintain component integrity will prevent cracks, large enough to affect operability, from existing in multiple components at the same time. Nevertheless, the NRC has asked the BWR Vessel Internals Project (BWRVIP), an industry group, to develop an assessment to address this unlikely situation. A report from the BWRVIP on this issue, ''Reactor Pressure Vessel and Internals Examination Guidelines (BWRVIP–03; EPRI Report TR–105696,'' dated November 10, 1995, is currently under NRC staff review. In addition, the NRC has undertaken a longer term evaluation of the effects of cracking in multiple internal components. This evaluation will involve appropriate probabilistic treatment of the key variables (such as material susceptibility, loading and environment).

Moreover, the licensee is not required by 10 CFR 50.55a or the ASME Code to perform an analysis that addresses the synergistic effects of cracking in multiple safety-class components. Since the NRC staff has found during reviews of the initial plant design and reviews of the licensee's response to subsequently identified cracks, as described above, that each affected component has been shown to meet the ASME design margins; the NRC staff is satisfied that these components will perform their intended function in the safe operation of the facilities. Because of this and the inspection requirements that pertain to reactor internals and the results of the inspections performed to date, the NRC staff does not consider the lack of an analysis of the synergistic effects of cracks in multiple reactor components for PBAPS, to be a substantial safety concern.

In summary, on the basis of the NRC inspections and the evaluations of the licensee inspections required by 10 CFR 50.55a and the ASME Code, the NRC staff has concluded that the licensee has taken appropriate actions to ensure the structural integrity of the PBAPS reactor vessel internal components. The NRC staff, however, continues to overview PECO's inspections, evaluations, and

[4] Correspondence regarding these cracks, including letters from PECO to the NRC dated April 29, 1982, May 11, 1982, June 4, 1982, and November 8, 1985 are available in the local public document room.

[5] The NRC staff's review of the clamp design is addressed in Inspection Report 50–277/95–18; 50–278/95–18 and in a letter dated October 13, 1995.

repairs as necessary to meet these requirements. At this time, the NRC staff has not found any reason to question the safe operation of PBAPS. Therefore, the NRC staff has concluded that the Petitioner has not presented a substantial health or safety issue to warrant taking the actions requested in the Petition.

B. Correction of Equipment Problems Identified in Recent NRC Inspection Reports (Requests 3 and 4)

Emergency Core Cooling

The Petition referred to a situation on August 3, 1994, wherein the PBAPS emergency service water (ESW) system was placed in a degraded condition. The Petitioner asserted that both reactors at PBAPS had no emergency cooling water for about one hour. The NRC resident inspectors at the Peach Bottom site conducted an inspection of this event and documented their findings in Inspection Report 50–277/94–24 and 50–278/94–24, dated September 29, 1994 (IR 94–24). In the report the NRC inspectors concluded that the discharge valve from the ESW system back to the Susquehanna River was shut and left unattended for approximately fifty minutes after maintenance and testing on the valve. In the report, the NRC staff concluded that, if an accident requiring the use of safety equipment (including emergency diesel generators and emergency core cooling equipment) had occurred during that fifty minute period, the operation of that safety equipment could have been jeopardized.

By letter dated November 21, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (EA–94–197) to PECO Energy Company regarding the circumstances surrounding the August 3, 1994, event. The NRC staff cited the licensee for failure to implement maintenance and testing procedures that were adequate to ensure that the ESW system could perform its intended function while maintenance activities were being performed. The staff noted that since the August 3, 1994, event, the licensee had restored the ESW to its intended configuration and had initiated steps to assure that future maintenance activities would not lead to a degraded ESW system. Notwithstanding the specific corrective actions implemented by the licensee, the staff imposed a civil penalty in the amount of $87,500. On December 21, 1994, PECO Energy paid the civil penalty.

Because appropriate NRC action has been taken and the licensee has restored the ESW system to its intended configuration and has implemented corrective actions to prevent recurrence of the deficiencies that occurred on August 3, 1994, no specific concern about the ability of the ESW system to perform its intended function currently exists.

Chronic Equipment Problems

The Petition also referenced a list of chronic equipment problems at PBAPS.[6] The Petition referenced an NRC report dated August 16, 1994 (NRC Inspection Report 50–277/94–17; 50–278/94–17 (IR 94–17)), as the source of the chronic problems.

In this inspection report the NRC assessed the performance of the licensee's engineering and technical support organization at Peach Bottom. The NRC inspector reviewed various facets of PECO's engineering department's performance in order to identify potential organizational weaknesses and deficiencies. The NRC uses the inspection findings to maintain a close understanding of the licensee's performance in areas that can affect safe plant operation. As such, the NRC reviews the licensee's program for identifying, addressing, and resolving recurring or ''chronic'' equipment problems. At the time that IR 94–17 was issued, the basis document for the licensee's program was the ''Chronic Equipment/System Problems'' list. This was a list of recurring problems for which the licensee had either identified the need for engineering department review and action or had determined a method for resolving the problem but had not yet implemented the solution.

The ''Chronic Equipment/System Problems'' list included equipment problems with potential safety impact as well as obvious non-safety-related problems. In assessing the management of recurring problems, the NRC evaluates the licensee's ability to address and resolve problems in a timely manner and the licensee's ability to evaluate the safety significance of each problem. The existence of a list of issues does not in itself indicate poor engineering department performance. As noted in IR 94–17, the licensee had developed solutions for a number of the problems on the list and had developed plans to implement these solutions. Further, the NRC staff assessed the PBAPS Chronic Equipment/System Problem list as a positive management feature and a commitment on the part of the licensee to improve overall plant performance.

The NRC staff, including the resident inspectors and the Region I inspection staff, periodically reevaluate the performance of the licensee's engineering department. In addition, NRC inspectors continue to review the licensee's action on many of the individual problems on the PBAPS Chronic Equipment/System Problem list. Accordingly, the NRC performed a follow-up inspection to IR 94–17. In the follow-up inspection, documented in Inspection Report 50–277/94–21; 50–278/94–21 (IR 94–21), dated November 4, 1994, the NRC staff examined the safety significance of those items that were on the Chronic Equipment/System Problem List as of September 13, 1994. The staff concluded that none of the items on the list was a significant current safety concern. The inspectors concluded that the licensee had initiated appropriate action to evaluate and correct those items detailed in IR 94–21. The staff concluded that the licensee used the Chronic Equipment/System Problem list to appropriately focus long-term engineering and management attention to known reliability problems.

In summary, the staff considers proper management of recurring equipment problems important to the continued safe operation of a nuclear power plant. Accordingly, the NRC staff views positively the licensee's activities such as the formulation of the Chronic Equipment/Systems Problem list, which was cited in the Petition. On the basis of the review efforts by the NRC staff, I conclude that no substantial health or safety issues have been raised by the Petitioner.

IV. Conclusion

The institution of proceedings in response to a request pursuant to Section 2.206 is appropriate only when substantial health or safety issues have been raised. *See Consolidated Edison Co. of New York* (Indian Point Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 176 (1975) and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7 19 NRC 899, 923 (1984). This standard has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner is warranted. With regard to the specific requests made by the Petitioner discussed herein, the NRC staff finds no basis for taking any additional actions. Rather, as explained above, the NRC staff considers that no substantial health or safety issues have been raised by the Petitioner. Accordingly, the Petitioner's requests for additional action pursuant to Section 2.206, specifically requests 2, 3, and 4, are denied. Accordingly, no action pursuant to Section 2.206 is being taken in this matter.

[6] See footnote 2.

A copy of this Final Director's Decision will be filed with the Secretary of the Commission for review in accordance with 10 CFR 2.206(c). This Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 10th day of June 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

Office of Nuclear Reactor Regulation

William T. Russell, Director

In the Matter of: All Reactor Licensees With Installed Thermo-Lag Fire Barrier Material.

Director's Decision Under 10 CFR 2.206

I. Introduction

By letter dated September 26, 1994, the Citizens for Fair Utility Regulation and the Nuclear Information and Resource Service (NIRS); by press release dated October 6, 1994, the Maryland Safe Energy Coalition; by separate letters dated October 21, 1994, the GE Stockholders' Alliance and Dr. D. K. Cinquemani; by letter dated October 25, 1994, the Toledo Coalition for Safe Energy; by letter dated October 26, 1994, R. Benjan; by letter dated November 14, 1994, B. DeBolt; and by letter dated December 8, 1994, NIRS and the Oyster Creek Nuclear Watch (the Petitioners), requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the use of Thermo-Lag by reactor licensees and that their letters be treated as Petitions pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206).

The Citizens for Fair Utility Regulation and NIRS requested that (1) Texas Utilities Electric Company (TU Electric), licensee of Comanche Peak Steam Electric Station, Unit 1, perform additional destructive analysis for Thermo-Lag configurations in proportion to the total installed amount of Thermo-Lag to determine the degree of ''dry joint'' occurrence, (2) the licensee perform fire tests on upgraded ''dry joint'' Thermo-Lag configurations for conduit and cable trays to rate the barrier as a tested configuration in compliance with fire protection regulations, and (3) the NRC immediately suspend the Comanche Peak Unit 1 license until the above corrective actions are taken. The Maryland Safe Energy Coalition requested immediate shutdown of both reactors at the Peach Bottom plant until the risk of fire near electrical control cables due to combustible insulation is corrected.[1] Dr. Cinquemani and the Toledo Coalition for Safe Energy requested that the NRC immediately shut down all reactors where Thermo-Lag is used until it has been removed and replaced. The GE Stockholders' Alliance requested shutdown of all reactors where Thermo-Lag is used until it has been removed and replaced with fire-retardant material meeting NRC standards. R. Benjan requested immediate shutdown of all reactors where Thermo-Lag is used. B. DeBolt requested shutdown of all reactors in which Thermo-Lag is used until it has been removed and replaced. NIRS and the Oyster Creek Nuclear Watch requested that NRC immediately suspend GPU Nuclear Corporation's (GPUN's) operating license for Oyster Creek Nuclear Generating Station (OCNGS) until GPUN removes Thermo-Lag fire barrier material and replaces it with a competitive product that meets current NRC fire protection regulations.

As a basis for their requests concerning Thermo-Lag 330–1 fire barrier upgrades, the Citizens for Fair Utility Regulation and NIRS Petitioners stated that (1) the licensee's records on the original installation of Thermo-Lag fire barriers on conduits and cable trays indicate that its contractor followed specifications for pre-buttering all joints; (2) NRC Inspection Reports 50–455/93–42 and 50–446/93–42 found, based on destructive analysis documents, that a concern did exist where Thermo-Lag conduit joints fell apart easily and did not appear to have any residual material of a buttered surface, indicative of a joint that had not been pre-buttered; (3) the ''dry joint'' deficiency appeared in Room 115A and other areas of the unit; (4) the licensee directly contradicts an NRC inspector's findings that were determined in part by destructive analysis; (5) the ''dry joint'' or absence of pre-buttering of Thermo-Lag panels can be determined only by destructive analysis and cannot be determined by a walkdown visual inspection; (6) the findings reported in the Comanche Peak Unit 1 Region IV Inspection Reports 50–455/93–42 and 50–446/93–42, based on the limited amount of destructive analysis conducted at the unit, constitute a substantial documentation of installation deficiencies found in Thermo-Lag fire barriers as documented in NRC Information Notice (IN) 91–79, ''Deficiencies in the Procedures for Installing Thermo-Lag Fire Barrier Materials,'' December 6, 1991, and IN 91–79, Supplement 1, ''Deficiencies Found in Thermo-Lag Fire Barrier Installation,'' August 4, 1994; (7) neither the NRC nor the industry, by its agent Nuclear Energy Institute (NEI), nor a utility, have conducted fire tests on dry-fitted or ''dry joint'' upgraded configurations of Thermo-Lag 330–1; and (8) the presence of ''dry joint'' upgraded configurations in Comanche Peak Unit 1 constitutes an untested application of Thermo-Lag fire barriers.

As a basis for the requests concerning Thermo-Lag 330–1 fire barrier upgrades, the Maryland Safe Energy Coalition stated that the manufacturer of the flame retardant (Thermo-Lag insulation) was indicted on criminal charges (of falsifying tests of the effectiveness of the insulation as a fire barrier), and fire near the electrical control cables, due to combustible Thermo-Lag insulation, could cause a catastrophic meltdown.

As the bases for their requests, Dr. Cinquemani, the Toledo Coalition for Safe Energy, the GE Stockholders' Alliance, and R. Benjan stated either individually or collectively that (1) the widespread use of Thermo-Lag in more than 70 reactors presents a safety crisis; (2) the NRC has known since 1982 that Thermo-Lag fails NRC performance standards for material that protects vital electrical cables for ampacity rating and fire resistance; (3) Thermo-Lag has failed not only NRC tests, but almost all other independent tests; (4) Thermo-Lag is combustible, contrary to NRC regulations, and is an ineffective fire barrier; (5) the use of Thermo-Lag could lead to shorts, to failure of the cables in an emergency, and to fire; (6) Thermo-Lag is faulty in that fraudulent ampacity ratings allowed utilities to use smaller cable than permitted by design requirements, causing the cable to overheat and its insulation to deteriorate; (7) the NRC has stated that fire at some nuclear power plants can contribute as much as 50 percent of the risk to a core meltdown, and a typical reactor will have three to four significant fires during its licensed lifetime; (8) Thermal Science, Inc. (TSI), the manufacturer of Thermo-Lag, and its President were indicted by a Federal grand jury on seven criminal charges related to conspiracy to defraud the U.S. Government in regard to the effectiveness of Thermo-Lag; and (9) the hourly fire watches at the Davis-Besse

[1] The Petition submitted by the Maryland Safe Energy Coalition expressed several concerns in addition to the fire hazard issue. These other issues, that is other than the fire hazard issue, will be the subject of a separate Director's Decision.

Nuclear Power Plant operated by Toledo Edison do not replace fire barrier material and do not prevent fires.

As the bases for his request, B. DeBolt stated that Thermo-Lag fails to meet NRC regulations concerning combustibility and that the manufacturer of Thermo-Lag was indicted for defrauding the Government and the utilities. Among the many bases for their request, NIRS and the Oyster Creek Nuclear Watch stated that (1) Southwest Research Institute (SwRI) conducted fire tests on Thermo-Lag 330–1 specimens for GPUN and reported that all specimens ignited approximately 2 seconds after it was inserted into the furnace and failed specified criteria because of flaming after the first 30 seconds of testing, an outside temperature rise higher than 30 °C, and a weight loss of 50 percent; (2) GPUN's operation of OCNGS with knowledge of the SwRI report is an example of GPUN's reckless disregard for fire protection and public safety; (3) in the event of fire, Thermo-Lag is likely to fail its intended function of protecting vital electrical cables running from the control room to plant safety systems used to shut down the reactor; (4) current installations of Thermo-Lag are likely to fail in less time than 1 hour (when smoke detectors and automatic sprinkler systems are present) or 3 hours (when there are no fire detection and suppression systems) that NRC regulations require for fire barriers to withstand fire; (5) the NRC Inspector General issued a report in August 1992 condemning NRC's handling of the Thermo-Lag issue and documenting the NRC staff's failure to understand the scope of the problem; (6) in April 1994, Industrial Testing Laboratories and its President pleaded guilty to five felony counts of aiding and abetting the distribution of falsified test data; (7) on September 29, 1994, the U.S. Department of Justice issued a seven-count indictment against the manufacturer of Thermo-Lag and its Chief Executive Officer for willful violations of the Atomic Energy Act, conspiracy to conceal material facts, and making false statements to defraud the United States in connection with $58 million in fire barrier material; (8) GPUN has known since at least August 11, 1992, that Thermo-Lag 330–1 as a structural base material is combustible and that GPUN was in violation of Appendices A and R to 10 CFR Part 50 and the NRC Standard Review Plan, NUREG–0800; (9) GPUN failed to report the SwRI test results in response to a request for additional information regarding Generic Letter (GL) 92–08 (''Thermo-Lag 330–1 Fire Barriers'') of February 10, 1994, when asked to describe the Thermo-Lag 330–1 fire barriers installed as required to meet 10 CFR Part 50, Appendix R; and (10) continued reliance on fire watches at OCNGS is an unreasonable and unnecessary hazard to the public health and safety because of an inoperable fire protection system for safe shutdown of the reactor and installed combustible material on the shutdown systems.

On November 7, 1994, I informed the Citizens for Fair Utility Regulation and NIRS that the request for an immediate suspension of the Comanche Peak Unit 1 operating license was denied. On December 2, 1994, I informed the Maryland Safe Energy Coalition that the request for an immediate shutdown of the Peach Bottom plant and for an immediate suspension of the Peach Bottom license was denied. On December 15, 1994, I informed the GE Stockholders Alliance, Dr. D. K. Cinquemani, the Toledo Coalition for Safe Energy, and R. Benjan that the immediate suspension of the operating licenses of all reactors where Thermo-Lag is used was denied. On January 3, 1995, I informed NIRS and the Oyster Creek Nuclear Watch that the immediate suspension of the OCNGS operating license was denied. On January 19, 1995, I informed B. DeBolt that the request for immediate suspension of the operating licenses of all reactors in which Thermo-Lag is used was denied. The decisions were based on the following: (1) the staff is addressing deficiencies in fire barriers constructed with Thermo-Lag material as part of a Commission-approved action plan and has issued several bulletins and a generic letter to the nuclear industry to provide information and guidance, (2) fire barrier systems constructed with Thermo-Lag have been identified and declared inoperable, and (3) compensatory measures (fire watches) approved by the NRC have been instituted. Additionally in the above correspondence, all Petitioners were informed that the Petitions were being treated pursuant to 10 CFR 2.206 and had been referred to this office for action pursuant to 10 CFR 2.206 of the Commission's regulations and that appropriate action would be taken within a reasonable time.

For the reasons stated below, the Petitions have been denied.

II. Background

The picture painted by the Petitioners of inaction by the NRC staff in responding to the issues presented by the use of Thermo-Lag is at odds with the facts. A review of the chronological development of the issues shows that the NRC staff has been working diligently to resolve the issues and has consistently sought to ensure that there is adequate protection of the public health and safety. It is also inaccurate to contend that Thermo-Lag generic deficiencies have been known since 1982. As can be seen from the following information, the development of the Thermo-Lag issue has been evolutionary. Reports of problems regarding Thermo-Lag began to surface in the late 1980s when Gulf States Utilities, the licensee for River Bend Station, discovered some cracks and wear damage due to installation deficiencies (Licensee Event Report 87–005, March 25, 1987) and declared the material inoperable as a fire barrier. The licensee further discovered that stress skin was missing on all 3-hour Thermo-Lag fire barriers in the turbine building as a result of an installation error. In a series of plant-specific tests performed by Gulf States Utilities in 1989, Thermo-Lag barriers failed to meet the fire endurance test acceptance criteria. Gulf States Utilities categorized all 1-hour and 3-hour barriers as indeterminate and implemented compensatory measures in the form of fire watches. Other isolated plant-specific fire protection problems had been found during NRC inspections at various utilities as early as 1982 and had been acted on by the NRC staff. These problems were treated as plant-specific issues and were not considered as indications of generic problems.

In February 1991, the NRC received allegations that Thermo-Lag did not provide fire protection for electrical cables as claimed by the vendor. In response, in May 1991, the NRC visited River Bend Station to review the installation procedures and the failed fire endurance tests and concluded that a generic concern existed with 30-inch-wide cable trays. The NRC alerted the industry of the results of the test failures in IN 91–47, ''Failure of Thermo-Lag Fire Barrier Material To Pass Fire Endurance Test,'' August 6, 1991.

In June 1991, the Office of Nuclear Reactor Regulation (NRR) established a special review team to investigate the safety significance and generic applicability of technical issues regarding allegations and operating experience concerning Thermo-Lag fire barriers. In its final report, which was issued with IN 92–46, ''Thermo-Lag Fire Barrier Material Special Review Team Final Report Findings, Current Fire Endurance Testing, and Ampacity Calculation Errors,'' June 23, 1992, the special review team reached the following conclusions:

- The fire-resistive ratings and the ampacity derating factors for the Thermo-Lag fire barrier system were indeterminate.
- Some licensees had not reviewed and evaluated the fire endurance test results and the ampacity derating test results used as the licensing basis for their Thermo-Lag barriers to determine the validity of the tests and the applicability of the test results to their plant designs.
- Some licensees had not reviewed the Thermo-Lag fire barriers installed in their plants to ensure that they met NRC requirements and guidance, such as that provided in GL 86–10, ''Implementation of Fire Protection Requirements,'' April 24, 1986.
- Some licensees used inadequate or incomplete installation procedures during the construction of their Thermo-Lag barriers.

After the special review team completed its charter, the NRC staff prepared an action plan that provided a process to resolve technical issues identified with Thermo-Lag fire barrier systems. The NEI, formerly the Nuclear Management and Resources Council (NUMARC), agreed to coordinate industry efforts to resolve the issues.

In regard to the Petitioners' allegations of NRC's inaction in responding to the issues presented by the use of Thermo-Lag, the significant progress made by the NRC staff and the nuclear reactor licensees in resolving Thermo-Lag issues speaks to the contrary. The NRC staff has issued a number of generic communications related to Thermo-Lag, which include the following: (1) two bulletins: BUL 92–01, ''Failure of Thermo-Lag 330 Fire Barrier System To Maintain Cabling in Wide Cable Trays and Small Conduits Free From Fire Damage,'' June 24, 1992, and BUL 92–01, Supplement 1, ''Failure of Thermo-Lag 330 Fire Barrier System To Perform Its Specified Fire Endurance Function,'' August 28, 1992; (2) two generic letters: GL 92–08, ''Thermo-Lag 330–1 Fire Barriers,'' December 17, 1992, and GL 86–10, Supplement 1, ''Fire Endurance Test Acceptance Criteria for Fire Barrier Systems Used To Separate Redundant Safe Shutdown Trains Within the Same Fire Area,'' March 25, 1994; and (3) 12 information notices: IN 91–47; IN 91–79; IN 91–79, Supplement 1; IN 92–46; IN 92–55, ''Current Fire Endurance Test Results for Thermo-Lag Fire Barrier Material,'' July 27, 1992; IN 92–82, ''Results of Thermo-Lag 330–1 Combustibility Testing,'' December 15, 1992; IN 94–22, ''Fire Endurance and Ampacity Derating Test Results for 3-Hour Fire-Rated Thermo-Lag 330–1 Fire Barriers,'' March 16, 1994; IN 94–86, ''Legal Actions Against Thermal Science, Inc., Manufacturer of Thermo-Lag,'' December 22, 1994; IN 95–27, ''NRC Review of Nuclear Energy Institute, Thermo-Lag 330–1 Combustibility Evaluation Methodology Plant Screening Guide,'' May 31, 1995; IN 95–32, ''Thermo-Lag 330–1 Flame Spread Test Results,'' August 10, 1995; IN 95–49, ''Seismic Adequacy of Thermo-Lag Panels,'' October 27, 1995, and IN 94–86, Supplement 1, ''Legal Actions Against Thermal Science, Inc., Manufacturer of Thermo-Lag,'' November 15, 1995.

The NRC staff, the nuclear industry, and others have expended much time and many resources to address and resolve the Thermo-Lag issues. The NRC staff developed comprehensive fire test guidance and acceptance criteria and worked with industry to improve existing ampacity test procedures. The NRC staff and industry performed about 100 fire endurance and ampacity derating tests of Thermo-Lag fire barrier materials and full-scale test assemblies. The fire endurance tests established the limitations and the true fire-resistive capabilities of certain Thermo-Lag fire barrier configurations, without relying on the fire endurance test data supplied by TSI, the manufacturer of Thermo-Lag. On the basis of some of these tests, the NRC staff concluded that existing Thermo-Lag barriers could be upgraded with some additional Thermo-Lag material to satisfy NRC regulations. Precluding all use of Thermo-Lag materials for current and future fire barrier installations would remove a realistic option for resolving safety issues. Therefore, the NRC staff does not object to the use of Thermo-Lag in specific applications, where, through upgrades, NRC requirements are satisfied. The NRC staff issued three requests for additional information (RAIs) regarding GL 92–08 to each licensee using Thermo-Lag to obtain information on the specific Thermo-Lag material installed at each plant. The NRC staff reviewed and approved comprehensive Thermo-Lag fire barrier programs proposed by TU Electric for Comanche Peak Steam Electric Station, Unit 2, and by Tennessee Valley Authority (TVA) for Watts Bar Nuclear Power Plant, Unit 1, which attests to the fact that Thermo-Lag barriers can meet NRC fire protection guidelines and requirements. The NRC staff completed toxicity tests of Thermo-Lag material. The NRC staff and the industry completed chemical composition, combustibility, and flame spread tests of Thermo-Lag materials. Finally, the NRC staff reassessed previous technical conclusions to determine the extent to which the NRC staff and industry relied on information supplied by TSI to reach these conclusions. The staff had concerns about the reliability of information and data supplied by TSI that have been or could be used to make judgments regarding Thermo-Lag materials. The NRC staff identified and categorized the issues and previous conclusions and used the results of the industry-wide testing program regarding the chemical composition of Thermo-Lag, as discussed below, to determine if the in-plant Thermo-Lag materials were consistent. The results of this reassessment indicated that previous technical conclusions were valid independent of the information provided by TSI. The staff therefore concluded that additional action to reassess the issues or reverify the previous conclusions was not needed.

The NEI testing program on the chemical composition of Thermo-Lag analyzed samples from 18 utilities representing 25 nuclear power plants. The samples represented Thermo-Lag material manufactured between 1984 and 1995. NEI performed pyrolysis gas chromatography evaluation of 169 samples to assess organic chemical composition and performed energy-dispersive X-ray spectroscopy of 33 samples to assess inorganic chemical composition. On the basis of the tests, NEI concluded that (1) all of the samples contained the constituents identified by TSI as essential to fire barrier performance; (2) the composition of the samples was consistent; and (3) the test results provided a basis on which to close NRC questions about chemical composition and product consistency and for utility use of generic test data relative to fire endurance ratings, flame spread, heat release, ampacity derating, and other material properties.

The NRC staff test program on the chemical composition of Thermo-Lag was conducted by the National Institute of Standards and Technology (NIST) during 1992 and 1995. NIST analyzed 21 samples that were either collected by the staff during site visits to plants and test laboratories or provided by TVA, Gulf States Utilities, Commonwealth Edison Company, and NEI. The analysis included elemental and ammonia analysis, pyrolysis, gas chromatography, mass spectrometry, and X-ray fluorescence. These analytical techniques indicated that all of the samples were similar in their bulk chemical composition. These results were consistent with the results of the NEI chemical testing program pertaining

to the chemical composition and uniformity of Thermo-Lag.

Industry-wide progress has generally been commensurate with the complexity of the plant-specific issues and the amounts of Thermo-Lag installed at the individual plants. Several licensees have initiated programs to replace Thermo-Lag and are performing plant-specific tests of other fire barrier materials such as Mecatiss (Florida Power & Light for Crystal River Unit 3) and Darmatt KM–1 (Carolina Power & Light for Brunswick, IES Utilities, Inc., for Duane Arnold Energy Center, Commonwealth Edison Company for LaSalle County Station, and Northern States Power Company for Prairie Island Nuclear Generating Plant). The NRC staff is reviewing the plant-specific fire endurance test programs and has recently approved the plant-specific application of Darmatt KM–1 fire barrier at the LaSalle plant. The remaining licensees have submitted to the NRC staff detailed plans and schedules for resolving the issues at their plants. Most licensees are pursuing a combination of such options as upgrading existing Thermo-Lag fire barriers to meet NRC fire barrier requirements, replacing Thermo-Lag fire barriers with another type of fire barrier, reducing or eliminating reliance on Thermo-lag fire barriers by relocating equipment and cables and by post-fire safe-shutdown reanalysis, installing additional fire protection features such as automatic sprinkler systems, and requesting configuration-specific exemptions when such exemptions are allowed by NRC regulations and are technically justified to provide a level of safety equivalent to that prescribed by the regulations. The NRC staff has completed its review of the plans for resolving fire protection issues that were proposed by most of the licensees. As with any issues as technically complex, challenging, and resource intensive as those presented by Thermo-Lag barriers, some plant-specific questions remain. However, the number of issues has steadily declined. The NRC staff and the licensees will continue to address the residual questions on a case-by-case basis as they arise, and the NRC staff will continue to follow up with individual licensees on their corrective actions, as appropriate. Every licensee with Thermo-Lag fire barriers will continue to maintain NRC-approved compensatory measures, such as fire watches, until its permanent corrective actions are implemented. Therefore, the public health and safety are protected.

The NRC's ''defense-in-depth'' fire protection concept relies on protecting safe shutdown functions by achieving a balance among three echelons or levels of protection, which are (1) fire prevention activities; (2) the ability to rapidly detect, control, and suppress a fire; and (3) physical separation of redundant safe shutdown functions. Weaknesses found in one area may be dealt with by enhancing the protection capabilities of the remaining areas.[2] The NRC foresaw cases in which fire protection features would be inoperable and required licensees, through technical specifications or approved fire protection plans controlled by license conditions, to provide compensation for the deficient condition. The concept of allowing alternative actions to compensate for an inoperable condition or component is used in various programs associated with the operation of nuclear power plants and has long been an integral part of NRC regulatory requirements.[3]

The fire endurance test results contained in NRC BUL 92–01 and NRC BUL 92–01, Supplement 1, confirmed that certain Thermo-Lag fire barrier configurations compromise one facet of the fire protection defense-in-depth concept. In response to NRC BUL 92–01 and its supplement, the licensees for plants using Thermo-Lag fire barriers established fire watches in accordance with their technical specifications or license conditions as a compensatory measure. Fire watches are personnel trained by the licensees to inspect for the control of ignition sources, fire hazards, and combustible materials; to look for signs of incipient fires; to provide prompt notification of fire hazards and fires; and to take appropriate actions to begin fire suppression activities. Generally, therefore, by providing additional fire prevention activities through enhanced detection capabilities to find fire hazards and in the case of a fire, augmented suppression activities before a barrier's ability to endure a fire is challenged, fire watches compensate for degraded fire barriers.

The NRC staff has carefully evaluated the issues associated with continued use of Thermo-Lag material, including the use of fire watches to compensate for any degradation in the effectiveness of required fire barriers. Such compensatory actions provide an adequate level of fire protection without an undue risk to the health and safety of the public. Licensees have established fire watches to compensate for degraded and possibly inoperable fire barriers. Also, licensees rely on a defense-in-depth concept that incorporates multiple safety measures. Automatic fire detection and suppression systems are provided in most areas that have safe shutdown equipment. Trained fire brigades are required 24 hours a day at all plants. All areas that have safe shutdown equipment have manual fire suppression features. Fuels that can feed a fire and ignition sources to start a fire are controlled. The combination of fire watches and the defense-in-depth fire protection features provides an adequate level of fire protection until licensees implement permanent corrective actions.

Taken together, these factors represent an adequate means of fire protection at the plants using Thermo-Lag to ensure, with margin,[4] that operation can be conducted without an undue risk to the health and safety of the public. Nevertheless, with these considerations in mind, the NRC staff addressed below the Petitioners' specific concerns to demonstrate that no substantial health and safety issue has been raised.

III. Response to Specific Concerns

The Petitioners alleged that (1) the NRC has been slow to enforce its own regulations, (2) fire watches do not replace fire barriers and continued reliance on fire watches is an unreasonable and unnecessary hazard to the public health and safety because of an inoperable fire protection system for safe shutdown of the reactor and installed combustible material on the shutdown systems, (3) utilities are in violation of NRC requirements because Thermo-Lag is combustible and could contribute to a fire instead of protecting from it, and, in spite of the danger, the NRC allows continued use of Thermo-Lag, (4) faulty ampacity ratings could result in the use of inappropriate cables, which, if undersized, could overheat and cause its insulation to deteriorate, (5) the licensee for Oyster Creek did not report to the NRC its findings regarding the combustibility of Thermo-Lag and, (6) the Thermo-Lag barriers have been improperly installed at Comanche Peak Unit 1, which contributes further to the poor performance of Thermo-Lag.

[2] The ''defense-in-depth'' concept is detailed in the ''NRC Standard Review Plan,'' NUREG–0800, Section 9.5.1, ''Fire Protection Program,'' page 9.5.1–10.

[3] NRC GL 91–18, ''Information to Licensees Regarding Two NRC Manual Sections on Resolution of Degraded and Nonconforming Conditions and Operability,'' issued November 7, 1991, and NRC Inspection Manual, Part 9900, ''Resolution of Degraded and Nonconforming Conditions,'' issued October 31, 1991.

[4] The fact that Thermo-Lag barriers, as installed, will provide protection for some period of time is supported by, among others, the fire endurance test results documented in IN 92–55.

The NRC staff acknowledged and has stated that certain Thermo-Lag fire barrier configurations have failed to demonstrate the ability to perform their fire resistance functions. In this regard, the NRC staff, in BUL 92–01, Supplement 1, has stated that Thermo-Lag fire barriers should be treated as inoperable until licensees can declare the fire barriers operable on the basis of successful, applicable tests. Given the foregoing deficiencies identified for Thermo-Lag, the NRC staff concluded that compensatory measures are necessary until a licensee can declare fire barriers operable on the basis of applicable tests that demonstrate successful barrier performance.

The Petitioners also asserted that (1) the NRC should have protected the public and not Rubin Feldman, the President of the company manufacturing Thermo-Lag, and (2) public safety has been compromised by NRC's seeming complicity with utilities.[5]

A. Regulatory Compliance

The NRC staff acknowledges that certain fire endurance tests have demonstrated that Thermo-Lag barriers may not meet the fire endurance rating criteria set forth in Section III.G. of Appendix R to 10 CFR Part 50. This acknowledgment does not mean, however, that there no longer is reasonable assurance of protection of the public health and safety or that such actions as the shutdown of all reactors using Thermo-Lag and the suspension of Comanche Peak, Peach Bottom, and Oyster Creek operating licenses are warranted.

It should first be noted that Appendix R, which sets forth criteria for specific fire protection features to protect safe shutdown systems, is applicable only to facilities that commenced operation prior to 1979. Facilities commencing operation on or after January 1, 1979, although not bound by Appendix R, generally are bound by licensing commitments to follow the criteria set forth in Appendix R through license conditions.[6]

Even assuming that all of the plants in which Thermo-Lag is installed and that commenced operation prior to 1979 are not in compliance with Appendix R, it does not follow that the failure to comply with a regulation indicates the absence of adequate protection. The Commission has explained that—

> [W]hile it is true that compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an ''undue risk'' to the public health and safety.
>
> (Ohio Citizens for Responsible Energy, DPRM 88–4, 28 NRC 411 (1988).)

All the plants using Thermo-Lag have instituted fire watches as required by their action statements regarding inoperable barriers contained in their technical specifications or fire protection programs subject to license conditions. Generally, action statements provide alternative remedial actions to shutting down a plant when limiting conditions for operation are not met. Compliance with the required remedial actions provides reasonable assurance that the public health and safety is protected notwithstanding the plant's continued operation and its failure to meet the respective limiting condition for operation. Here, since all of the plants using Thermo-Lag have implemented the required fire watches in accordance with plant-specific requirements, their continued operation does not pose an undue risk to the public health and safety.

The Petitioners assert that fire watches do not replace fire barriers and continued reliance on fire watches is a hazard to public safety. The NRC staff acknowledges that fire watches do not replace fire barriers. However, as will be discussed in greater detail later in this Decision, fire watches are judged by the NRC to be acceptable compensatory measures and are legally sanctioned remedial actions based on 10 CFR 50.36(c)(2).[7]

In sum, notwithstanding the failure to have operable fire barriers meeting the fire endurance rating criteria specified by Section III.G. of Appendix R, a plant is not necessarily unsafe to continue operation. To the contrary, fire watches are judged by the NRC to be adequate remedial measures that provide reasonable assurance that the public health and safety is protected. By reason of compliance by all facilities using Thermo-Lag with their technical specifications or fire protection program action statements requiring the implementation of fire watches, protection of the public health and safety is still reasonably ensured for such plants. Because the Commission has discretion regarding enforcement of its regulations, and given the circumstances here in which no significant health and safety issues have been raised, enforcement action of the nature requested by the Petitioners is not warranted.

B. Ability of Fire Watches To Compensate for a Degraded Barrier

One of the Petitioners' allegations is that the measures taken by licensees to compensate for degraded barrier conditions, specifically fire watches, are not adequate to protect the public health and safety. The Petitioners have questioned the continued reliance on fire watches in the light of an inoperable fire protection system for safe plant shutdown and the combustibility of Thermo-Lag. In addition, the Petitioners claim that a fire watch does not replace a fire barrier in that fire watches are not preventive.

Despite the acknowledged shortcomings identified with certain Thermo-Lag fire barriers and after fully considering the arguments presented by the Petitioners regarding the ability of fire watches to provide adequate compensation, the NRC staff has determined that compensatory measures using fire watches are adequate and acceptable to ensure public health and safety until permanent corrective measures are implemented.

The use of fire watches in instances of degraded or inoperable barriers is an integral part of NRC-approved fire protection programs. In general, these NRC staff-approved compensatory measures specify the establishment of a continuous fire watch or an hourly fire watch in cases in which automatic detection systems protect the affected components. Although it is true that Thermo-Lag is intended as a barrier and fire watch personnel cannot act as physical shields, a fire watch provides more than simply a detection function. Personnel assigned to fire watches are trained by the licensee to inspect for the control of ignition sources, fire hazards, and combustible materials; to look for signs of incipient fires; to provide prompt notification of fire hazards and fires; and to take appropriate action to begin fire suppression activities. Fire watch personnel are capable of

[5] These statements could be interpreted as the appearance of unwarranted favoritism toward the manufacturer of Thermo-Lag and complicity with utilities. Therefore, the Petitions were referred to the NRC Office of the Inspector General.

[6] In addition, there are a very limited number of plants which commenced operation on or after January 1, 1979, that are not subject to specific license conditions but whose licensees have made commitments to comply with NRC fire protection requirements, including Section III.G. of Appendix R. The NRC is elevating these commitments to license conditions.

[7] In instances in which fire protection programs have been moved from technical specifications and are now subject to license conditions, the NRC's approval of the fire protection programs subject to license conditions provides the legal basis for the implementation of fire watches as a remedial measure.

determining the size, the actual location, the source, and the type of fire—valuable information that cannot be provided by an automatic fire detection system.

During a plant fire, compartment temperatures are likely to be less severe at the early stages. On the basis of enhanced capabilities provided by fire watches and notwithstanding that the level of barrier-type protection may be reduced, the NRC staff has determined that there is an adequate margin of safety to ensure protection in cases in which fire watches are approved.

The goal of the NRC staff's Thermo-Lag Action Plan is directed towards restoring the functional capability of fire barriers as soon as practicable. There is not a time limit associated with the use of fire watches as a compensatory measure. Given the margin of safety a fire watch brings to a fire protection program, as discussed above, the NRC staff has determined that continuing the use of fire watches while barriers are inoperable is acceptable. However, the NRC believes that notwithstanding interim reliance on compensatory measures, appropriate actions must be taken by licensees to restore operability of Thermo-Lag barriers. Individual licensees have provided schedules for restoring operability and these are being tracked by the NRC staff.

The NRC staff has carefully evaluated the use of fire watches to compensate for any degradation in the effectiveness of required fire barriers and has concluded that fire watches continue to ensure protection of the public health and safety. Therefore, the Petitioners' assertion that the measures taken by licensees to compensate for degraded fire barrier conditions, specifically fire watches, are a hazard is without merit.

C. Combustibility

The Petitioners alleged that, contrary to NRC regulations, Thermo-Lag is combustible.

The NRC staff recognizes that Thermo-Lag is combustible. To assess Thermo-Lag combustibility, the NRC staff conducted a testing program at the National Institute of Standards and Technology (NIST) based on the American Society for Testing and Materials (ASTM) Standard E–136. Under this testing standard, the material is considered to be ''combustible'' if three out of four samples tested exceed the following criteria: (1) the recorded temperature of the specimen's surface and interior thermocouples, during the test, rises 54 °F (30 °C) above the initial furnace temperature; (2) there is flaming from the specimen after the first 30 seconds of irradiance; and (3) the weight loss of the specimen, due to combustion during the testing, exceeds 50 percent. Of the four Thermo-Lag specimens tested, all experienced a weight loss of greater than 50 percent and flaming continued in excess of 30 seconds. IN 92–82, which provided licensees with the results of the E–136 tests and confirmed the combustibility of Thermo-Lag, restated the NRC fire protection requirements of Section III.G. of Appendix R to 10 CFR Part 50 and asked that licensees review the information for applicability to their facilities.

The NRC's basic fire protection regulation for commercial nuclear power plants is Section 50.48 of 10 CFR Part 50 ''Fire protection.'' Section 50.48 references General Design Criterion (GDC) 3 of Appendix A to 10 CFR Part 50, ''Fire protection,'' Appendix R to 10 CFR Part 50 ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' and various NRC fire protection guidance documents. Specifically, Section 50.48(a) states that each operating nuclear power plant must have a fire protection plan that satisfies GDC 3, and Section 50.48(b) states that Appendix R to 10 CFR Part 50 establishes fire protection features required to satisfy GDC 3 with respect to certain generic issues for nuclear power plants licensed to operate prior to January 1, 1979.[8] These issues are addressed in Section III.G, ''Fire protection of safe shutdown capability,'' Section III.J, ''Emergency lighting,'' and Section III.O, ''Oil collection system,'' of Appendix R. Of these three sections of Appendix R, Section III.G addresses the use of fire barriers to protect one train of systems necessary to achieve and maintain hot shutdown conditions in the event of a fire and, therefore, is the regulation of interest here.

Section 50.48(a) notes that fire protection guidance for nuclear power plants is contained in two NRC documents. These are (1) Branch Technical Position (BTP) Auxiliary Power Conversion Systems Branch (APCSB) 9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants,'' for new plants docketed after July 1, 1976, and (2) Appendix A to BTP APCSB 9.5–1, ''Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976.'' These two NRC documents specify preferred methods for fire protection program design including the use of fire barriers to satisfy Section III.G of Appendix R. Fire barriers that meet the criteria of Section III.G of Appendix R to 10 CFR Part 50 and these NRC guidance documents satisfy GDC 3. NUREG–0800, ''Standard Review Plan,'' (SRP) Section 9.5–1, ''Fire Protection Program,'' incorporates the guidance of BTP APCSB 9.5–1 and Appendix A to BTP APCSB 9.5–1 and the criteria of Section III.G of Appendix R to 10 CFR Part 50. Therefore, fire barriers that meet the guidelines of SRP Section 9.5–1 also satisfy 10 CFR 50.48 and GDC 3.

As stated in 10 CFR 50.48(a), the purpose of the fire protection plan is ''to limit fire damage to structures, systems, or components important to safety so that the capability to safely shut down the plant is ensured.'' In general, a fire protection plan consists of administrative controls and procedures, personnel for implementing the plan and for fire prevention and manual fire suppression activities, fire detection systems, automatic and manually operated fire suppression systems and equipment, and fire barriers.

Section III.G of Appendix R to 10 CFR Part 50 is the only part of the fire protection regulations that addresses the use of fire barriers. It addresses the use of fire barriers to protect one train of systems necessary to achieve and maintain hot shutdown conditions in the event of a fire. Fire barriers are required to have either a 1-hour or 3-hour rating depending on the specific requirement. However, Section III.G does not provide acceptance criteria for fire barriers, nor does it address the combustibility of fire barrier materials. The criteria are set out in BTP APCSB 9.5–1, Appendix A to BTP APCSB 9.5–1, and SRP Section 9.5–1. These NRC documents do not preclude the use of combustible materials for construction of fire barriers required to have a 1-hour or 3-hour rating. On March 25, 1994, the staff consolidated and clarified in Supplement 1 to Generic Letter (GL) 86–10, the fire barrier criteria specified in the BTPs and the SRP. This GL supplement provides detailed staff guidelines for assessing the combustibility of fire barrier materials, but it does not preclude the use of combustible materials for fire barriers required to satisfy a 1-hour or 3-hour rating. In fact, the fire barrier criteria are appropriately focused on the performance of the fire barrier and its ability to achieve its intended design function, that is, its ability to limit temperature rise within the barrier enclosure and to prevent the passage of flame or gasses hot enough to adversely

[8] While Appendix R is applicable only to facilities that commenced operation prior to January 1, 1979, as discussed earlier in this Director's Decision, facilities commencing operation on or after January 1, 1979, are bound to satisfy the criteria of Appendix R through license conditions or licensing commitments.

affect the functionality of the safe shutdown components (e.g., cables) enclosed within the fire barrier.

Thermo-Lag 330–1 is a sacrificial material. When it is exposed to elevated temperatures, such as those experienced during a fully-developed room fire, it sublimes and transitions from a solid to a vapor. The vapors go through an endothermic decomposition process (pyrolysis) which absorbs heat from the fire. As a result of the pyrolysis, the unreacted Thermo-Lag material is replaced by an insulating char layer which is composed of small interconnecting cells having a large surface area. The char layer re-radiates energy and limits heat transfer through the Thermo-Lag material. The low thermal conductivity of the char layer provides additional thermal insulation. Therefore, even though Thermo-Lag is classified as a combustible material when testing in accordance with the guidance of Supplement 1 to GL 86–10, properly designed, qualified, and installed Thermo-Lag can yield fire barriers with a 1-hour or 3-hour rating which will protect safe shutdown components from the effects of the fire. Therefore, such barriers can satisfy the requirements of 10 CFR 50.48 and GDC 3.

To provide reasonable assurance that Thermo-Lag fire barriers installed in the nuclear power plants can meet their intended function, representative Thermo-Lag fire barrier assemblies have been subjected to full-scale qualification-type fire endurance tests conducted in accordance with the guidance of Supplement 1 to GL 86–10. This guidance provides standard and uniform test methods and acceptance criteria for assessing the fire-resistive capabilities of these barriers. The staff has found the use of Thermo-Lag acceptable as a fire barrier material when it is used in accordance with existing NRC regulations and guidance and where supported by appropriate tests and analyses.

However, there are two types of applications where the use of Thermo-Lag material is not appropriate. These are (1) Enclosing combustible materials (e.g., insulated cables) within Thermo-Lag fire barriers to eliminate the combustible materials as a fire hazard and (2) using Thermo-Lag as radiant energy heat shields inside noninerted containments.

Section III.G of Appendix R (and the equivalent SRP guidance) specifies three options for protecting redundant trains of systems necessary to achieve and maintain hot shutdown conditions located within the same fire area outside of containment. Two of the three options (Sections III.G.2.a and c) rely on the use of fire barriers with a 1-hour or 3-hour rating, as discussed above. The third option, Section III.G.2.b, specifies the separation of redundant safe shutdown trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. (A typical example of intervening combustibles is a cable tray loaded with cables, because cable jacket materials are combustible.) Therefore, spacial separation, and not fire barriers, are used to meet Section III.G.2.b. However, to meet this requirement, some licensees have enclosed combustibles that are installed between redundant shutdown trains within a fire barrier. In theory, the fire barrier prevents an exposure fire from igniting the intervening combustible materials and spreading along them from one redundant train to the other. Thus the fire barrier effectively eliminates the intervening combustible as a fire hazard. If the fire barrier itself is noncombustible and the redundant safe shutdown trains are separated by a horizontal distance of more than 20 feet, then the configuration meets Section III.G.2.b of Appendix R. However, if the fire barrier material used to enclose the intervening combustibles is also combustible, such as Thermo-Lag, then the licensee has simply installed one combustible material over another and has not eliminated the intervening fire hazard. In a limited number of cases, licensees have enclosed intervening combustibles within Thermo-Lag fire barriers under the incorrect assumption that the Thermo-Lag fire barrier would eliminate the intervening combustibles as a fire hazard. Corrective actions will be required in these cases.

As an alternative to the three options discussed above, Section III.G.2.f of Appendix R (and the equivalent SRP guidance) provides a fourth option for noninerted containments, that is, the separation of redundant safe shutdown components with noncombustible radiant energy heat shields. Thermo-Lag is classified as a combustible material when tested in accordance with the guidance of Supplement 1 to GL 86–10. Therefore, it does not meet the criteria for radiant energy heat shields. Licensees using Thermo-Lag in this fashion will also be required to take corrective action.

To assure that corrective actions are taken in these cases, the NRC staff issued IN 95–27. In that IN, the staff addressed enclosing combustible materials within Thermo-Lag fire barriers in an attempt to eliminate the combustible materials as a fire hazard and using Thermo-Lag to construct radiant energy heat shields inside noninerted containments. The staff identified such solutions for reevaluating the use of Thermo-Lag for these applications as: (1) Reanalyzing post-fire safe shutdown circuits inside containment and their separation to determine if the Thermo-Lag radiant energy shields are needed, (2) replacing Thermo-Lag barriers installed inside the containment with noncombustible barrier materials, (3) replacing Thermo-Lag barriers used to create combustible-free zones with noncombustible barrier materials, (4) rerouting cables or relocating other protected components, or (5) requesting plant-specific exemptions where technically justified.

One of the Petitioners also asserted that subsection 5a(3) of Section 9.5–1 of the SRP states that fire barrier designs ''should utilize only non-combustible materials.'' This section of the SRP does not apply to fire barriers which are used to separate redundant safe shutdown components located *within* a nuclear power plant fire area. Rather, it applies to fire barrier penetration seals, which are typically installed in fire area boundaries. Thermo-Lag 330–1 is not used in such applications.

The principal consideration for 1-hour and 3-hour rated fire barriers installed to meet NRC fire protection requirements and guidelines is that they can achieve their intended design function. That is, that they can limit temperature rise within the barrier enclosure and prevent the passage of flame or gasses hot enough to adversely affect the functionality of the safe shutdown components enclosed within the fire barriers. The fact that Thermo-Lag material is combustible does not preclude Thermo-Lag fire barriers from achieving the intended function of preventing fire damage if the fire barriers are properly designed, qualified, and installed. The Petitioners' contention that Thermo-Lag material should not be used because it is combustible is without basis.

D. Ampacity Derating

The Petitioners assert that Thermo-Lag could contribute to starting a fire instead of protecting from it. They further alleged that faulty ampacity derating factors could result in the use of inappropriate cables that, if undersized, could overheat and cause its insulation to deteriorate.

Ampacity derating is the lowering (derating) of the current-carrying capacity of power cables enclosed in electrical raceways protected with fire barrier materials because of the insulating effect of the fire barrier material. This insulating effect may

reduce the ability of the cable insulation to dissipate heat. If not accounted for in the plant design, the increased cable insulation temperature could lead to premature insulation failure. Other factors also affect ampacity derating, including the extent of cable fill in the raceway, cable type, raceway construction, and ambient temperature. The National Electrical Code, Insulated Cable Engineers Association (ICEA) publications, and other industry standards provide ampacity derating factors for open air installations. These standards do not provide derating factors for fire barrier systems. Although a national standard test method is in the process of being developed but has not yet been established, ampacity derating factors for raceways enclosed with fire barrier material are determined by testing for the specific installation configurations.

TSI, the manufacturer of Thermo-Lag, has documented a wide range of ampacity derating factors that were determined by testing, for raceways enclosed within Thermo-Lag fire barrier materials. On October 2, 1986, TSI informed its customers that, while conducting tests in September 1986 at Underwriters Laboratories, Inc. (UL), it found that the ampacity derating factors for Thermo-Lag barriers were greater than previous tests indicated. However, the cable fill and tray configurations were different for each test than those tested previously. In addition, the NRC staff learned that UL performed a duplicate cable tray test that resulted in an even higher derating factor. The NRC staff also learned of the determination of other derating factors during its review of other tests conducted at Southwest Research Institute (SwRI).[9]

The NRC special review team concluded that the ampacity derating test results completed at the time of the review, including the UL test results, were indeterminate. This conclusion was based on observed inconsistencies in the derating test results of the various testing laboratories. The special review team found that there was no national consensus test standard (e.g., Institute of Electrical and Electronics Engineers (IEEE) or American National Standards Institute (ANSI)) for conducting these tests, and that some licensees had not adequately reviewed ampacity derating test results to determine the validity of the tests and the applicability of those test results to their plant design. The special review team recognized that, in hypothetical cases, nonconservative ampacity derating factors could have been instrumental in the installation of inappropriate cables, which as a result, could suffer premature cable jacket and cable insulation failures over a period of time. However, since that time, the NRC staff has determined that in practice the ampacity derating factor resulting from Thermo-Lag insulating properties represents only one of many variables used in determining the design ampacity for power cable systems and that, as discussed below, sufficient margin exists in this area to preclude any immediate safety concerns.

For actual installations, various derating factors are typically applied to the ICEA ampacity values provided for each cable size. In general, the cables typically used in actual installations have higher current-carrying capacity than the ICEA ampacity values.[10] Also, cables are sized based on full-load current plus a 25 percent margin to account for starting current requirements of the load. Given the short duration of typical equipment starts, this margin is available to compensate for any errors in ampacity derating. Further, use of a cable size larger than normal may be required as a result of voltage drop considerations for long circuit lengths. In typical applications this also provides additional current-carrying capacity. Given these conservatisms inherent in the design ampacity of cable systems and in addition the fact that most power cables required for safe shutdown are not normally energized, but are typically operated during surveillance testing for short time periods, the likelihood that cables could ignite as a result of Thermo-Lag ampacity derating errors has been judged by the NRC staff to be unlikely. In addition, based on these conservatisms and the currently available information on existing plants, ampacity design, and operating history, the NRC staff believes that the ampacity derating issue is not an immediate safety issue but rather is an aging issue to be resolved over the long term.[11]

E. Oyster Creek Failed To Report Test Results on Combustibility to the NRC

The Petitioners requested that Oyster Creek's license be suspended based on the following: (1) SwRI conducted fire tests on Thermo-Lag 330–1 specimens for GPUN, the licensee for Oyster Creek, and reported that all specimens ignited approximately 2 seconds after they were inserted into the furnace and failed specified criteria because of flaming after the first 30 seconds of testing, an outside temperature rise higher than 30 °C, and a weight loss of 50 percent; (2) GPUN's operation of Oyster Creek with knowledge of the SwRI report is an example of GPUN's reckless disregard for fire protection and public safety; (3) in the event of fire, Thermo-Lag is likely to fail its intended function of protecting vital electrical cables running from the control room to plant safety systems used to shut down the reactor; (4) current installations of Thermo-Lag are likely to fail in less time than the 1 hour (when smoke detectors and automatic sprinkler systems are present) or 3 hours (when there are no fire detection and suppression systems) that NRC regulations require for fire barriers to withstand fire; (5) the NRC Inspector General issued a report in August 1992 condemning NRC's handling of the Thermo-Lag issue and documenting the NRC staff's failure to understand the scope of the problem; (6) in April 1994, ITL and its President pleaded guilty to five felony counts of aiding and abetting the distribution of falsified test data; (7) on September 29, 1994, the U.S. Department of Justice issued a seven-count indictment against the manufacturer of Thermo-Lag and its Chief Executive Officer for willful violations of the Atomic Energy Act, conspiracy to conceal material facts, and making false statements to defraud the United States, in connection with $58 million in fire barrier material; (8)

[9] The test procedures and test configurations differed among the testing laboratories. Therefore, the results from the different ampacity tests may not be directly comparable to each other.

The NRC staff is concerned that the ampacity derating factors, as determined in UL tests for Thermo-Lag barrier designs, are inconsistent with TSI results for similar designs because different times were allowed for the temperature to stabilize before taking current measurements. Inconsistent stabilization times would call into question the validity of previous TSI results. The NRC also noticed during the review of the Industrial Testing Laboratories (ITL) test reports that ambient temperature and maximum cable temperature were allowed to vary widely for some tests. Therefore, those tests in which the ambient and maximum cable temperatures were not maintained within specified limits may be questionable. Additionally, a licensee discovered a mathematical error for the ampacity derating factor published in an ITL test report. A preliminary assessment of the use of a lower-than-actual ampacity derating factor indicates that higher-than-rated cable temperatures are possible for Thermo-Lag installations. Higher-than-rated cable temperatures could accelerate the aging effects experienced by the cable.

[10] ICEA ampacity values include conservatisms to compensate for skin and proximity effects and shield and/or sheath losses which may or may not apply in specific situations.

[11] Generic Letter 92–08 requires licensees to review the ampacity derating factors used for all raceways protected by Thermo-Lag 330–1 (for fire protection of safe shutdown capability or to achieve physical independence of electrical systems) and to determine whether the ampacity derating test results relied upon are correct and applicable to the plant design. Presently, the staff is conducting reviews of followup actions to close out ampacity derating concerns with licensees pursuant to GL 92–08.

GPUN has known since at least August 11, 1992, that Thermo-Lag 330–1 as a structural base material is combustible and that it was in violation of Appendices A and R to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) and the NRC Standard Review Plan, NUREG–0800; (9) GPUN failed to report the SwRI test results in response to GL 92–08 of February 10, 1994, when asked to describe the Thermo-Lag 330–1 fire barriers installed as required to meet 10 CFR Part 50, Appendix R; and (10) continued reliance on fire watches at Oyster Creek is an unreasonable and unnecessary hazard to the public health and safety because of an inoperable fire protection system for safe shutdown of the reactor and installed combustible material on the shutdown systems.

Several of the issues listed above have been addressed earlier in this decision. Therefore, the NRC staff will only address below the remaining plant-specific issues. As discussed earlier in this decision, the NRC issued IN 92–82 to inform the industry of the results of combustibility tests performed by NIST in early August 1992. These tests confirmed the combustibility of Thermo-Lag. As a result of discussions with the NRC staff on the subject of Thermo-Lag combustibility, GPUN decided to independently verify the results of the E–136 tests performed by NIST and contracted SwRI to perform the E–136 tests. The results of these tests, as documented by the telecopy transmittal sheet submitted with the Petition, confirmed the combustibility of Thermo-Lag. Contrary to the Petitioners' allegations, the NRC staff does not require that licensees report the results of their independent testing. It should be noted here that, prior to the SwRI testing that confirmed combustibility, the NRC was aware of the combustibility of Thermo-Lag and that the NRC was also well aware of the results of the E–136 tests performed by GPUN through telephone conversations with GPUN personnel, even though there was no requirement for GPUN to report these test results.

The Petitioners also alleged that GPUN did not report to NRC its findings of the SwRI test results in its ''Response to Request for Additional Information Regarding Generic Letter 92–08, 'Thermo-Lag Fire Barriers,' '' (RAI) dated February 10, 1994.

The RAI quoted by the Petitioners did not request that GPUN report to NRC its findings of the SwRI test results and, in addition, the NRC staff does not require that licensees report the results of their independent testing. Therefore the NRC staff has concluded that, contrary to the Petitioners' allegation, GPUN did not have to report to the NRC its findings of the SwRI test results.

For the reasons stated above, the suspension of Oyster Creek's license, as requested by the Petitioners, is not warranted.

F. Dry-Joint Issue at Comanche Peak Unit 1

The Petitioners requested that (a) the Comanche Peak Unit 1 license be suspended, (b) the licensee perform additional destructive analysis for Thermo-Lag configurations, and, (c) the licensee perform fire tests on upgraded ''dry-joint'' Thermo-Lag configurations based on the following: (1) the licensee's records on the original installation of Thermo-Lag fire barriers on conduits and cable trays indicate that its contractor followed specifications for pre-buttering all joints; (2) NRC Inspection Report Nos. 50–445/93–42; 50–446/93–42 found, based on destructive analysis documents, that a concern did exist where Thermo-Lag conduit joints fell apart easily and did not appear to have any residual material of a buttered surface, indicative of a joint that had not been pre-buttered; (3) the ''dry joint'' deficiency appeared in Room 115A and other areas of the unit; (4) the licensee directly contradicts an NRC inspector's findings that were determined in part by destructive analysis; (5) the ''dry joint'' or absence of pre-buttering of Thermo-Lag panels can be determined only by destructive analysis and cannot be determined by a walk down visual inspection; (6) the findings reported in the Comanche Peak Unit 1 Region IV Inspection Reports 50–445/93–42 and 50–446/93–42, based on the limited amount of destructive analysis conducted at the unit, constitute a substantial documentation of installation deficiencies found in Thermo-Lag fire barriers as documented in NRC IN 91–79 and Supplement 1; (7) neither the NRC nor the industry, by its agent NEI, nor a utility, have conducted fire tests on dry fitted or ''dry joint'' upgraded configurations of Thermo-Lag 330–1; and (8) the presence of ''dry joint'' upgraded configurations in Comanche Peak Unit 1 constitutes an untested application of Thermo-Lag fire barriers.

These allegations were based on the Petitioners' interpretation of NRC Inspection Report 93–42 issued on February 21, 1994. By letter of November 29, 1994, TU Electric, the licensee for Comanche Peak Unit 1, sent a letter to the NRC staff responding to the Petition.

The term ''joint'' refers to the interface between two adjacent Thermo-Lag surfaces. Comanche Peak Unit 1 installation procedures for Thermo-Lag fire barriers specify that, during the initial installation process, the joints should be pre-buttered (or covered) with Thermo-Lag trowel grade material before the mating surfaces are joined to ensure adhesion of the surfaces. The term ''dry joint'' refers to the lack of Thermo-Lag trowel grade material in a joint. The failure to pre-butter a joint with trowel grade Thermo-Lag could result in a weakening of the joint during a potential fire exposure and could provide an exposure path in the fire barrier envelope. The NRC performed an inspection at Comanche Peak Unit 1 on November 2–5, and 23–24, 1993, and January 26–28, 1994, to compare the Thermo-Lag test specimens with the upgraded Thermo-Lag configurations on site. The results of this inspection are documented in NRC Inspection Report 93–42. The report stated that there appeared to be a large number of deficiencies with the installed fire barriers and that an example of these deficiencies involved dry joints on conduit overlays installed on pedestal hangers. The NRC inspector did not personally observe the dry joints in question. His statements were based on observations made by TU Electric and documented in an Operations Notification and Evaluation (ONE) form. However, the ONE form in question did not identify a dry joint. Instead, the ONE form identified a condition that was conservatively reported as an apparent dry joint. Upon further evaluation of the ONE form, TU Electric determined that the joint in question had in fact been pre-buttered with trowel grade Thermo-Lag. These facts are discussed in more detail below.

On November 25, 1992, a speed memo was written by a TU Electric contractor identifying ''apparent unsatisfactorily conditions on Unit 1 commodities.'' This memorandum identified ''an apparent'' dry joint on an oversize coupling section (on top of a pedestal hanger). The speed memo also stated that, ''we have decided that the best vehicle to call attention to these apparent deficiencies would be a letter to your attention for further evaluation of the situation. * * *'' The letter was forwarded to the appropriate TU Electric engineering section.

The cognizant TU Electric engineer performed a walkdown of the described areas and evaluated the commodities. He conservatively initiated a ONE form (the process used by TU Electric to report problems and develop resolution for the identified problems). A comprehensive evaluation of this condition determined that the joint had been pre-buttered. Therefore, the

engineering resolution for this condition was that ''this is not a deficient condition, and there are no generic implications.''

The originator of the speed memo initially believed that the condition in question was a dry joint because of the appearance of the joint. During alignment of Thermo-Lag panels, the leading edge of one panel contacts the outer edge of a preceding panel and forces most of the trowel grade along the initial contact edge toward the inside of the Thermo-Lag envelope. Subsequent shrinkage of the trowel grade in the joint can give the appearance of a dry joint because the trowel grade material is not visible. Therefore, contrary to the Petitioners' allegation, there was no ''dry joint'' deficiency on the pedestal hanger.

The Petitioners also alleged that dry joints appear in other Thermo-Lag installations at Comanche Peak Unit 1. In response to the Petition, TU Electric performed an electronic search of its ONE form data base. The search did identify additional ONE forms related to dry joints. However, Thermo-Lag rework crews and the quality control inspectors at Comanche Peak Unit 1 have used the term ''dry joints'' and ''no visible trowel grade material'' synonymously. Upon further investigation of these ONE forms, it was determined that trowel grade material had in fact been applied to the joints in question. Therefore, these ONE forms were also dispositioned as ''not a nonconforming condition.'' These findings support the NRC staff's conclusion that, contrary to the Petitioners' allegations, there is no evidence of dry joints at Comanche Peak Unit 1. The Petitioners' allegations regarding dry joints at Comanche Peak Unit 1 are based on premises that are faulty and contrary to the information contained in Inspection Report 93–42.

In regard to the Petitioners' request that the licensee perform fire tests on upgraded ''dry joint'' Thermo-Lag configurations and additional destructive analysis, the NRC staff has reviewed the documentation provided by the licensee in response to the RAIs regarding GL 92–08 and concluded that the licensee's quality assurance program gave adequate confidence that the as-installed Thermo-Lag configurations at Comanche Peak Unit 1 conform with NRC specification requirements for both material and installation attributes.

Accordingly, suspension of the Comanche Peak Unit 1 license, as requested by the Petitioners, is not warranted.

G. Protection of Rubin Feldman

The Petitioners assert that, rather than protecting the public, the NRC is protecting Rubin Feldman, President of the company that manufactures Thermo-Lag.

As discussed earlier, the NRC received allegations in 1991 that questioned the adequacy of Thermo-Lag fire barriers. In response (1) the Office of the Inspector General (OIG) and the Office of Investigations (OI) formed a joint task force to investigate the allegations and (2) the Office of Nuclear Reactor Regulation (NRR) established a special team to review the safety issues raised by the allegations. Throughout its review, the special team gave expert technical advice and assistance to the OIG/OI task force. The Director of NRR tasked the NRR staff to resolve the technical issues raised by the special team. The NRC staff continued to cooperate fully with the investigative task force. Further, the NRR staff carried out a full-scale test program and developed other technical data and information for the investigative task force. These NRC staff efforts contributed significantly to a referral to the Department of Justice of possible wrongdoing by TSI. The referral resulted in a seven-count criminal indictment of TSI, the manufacturer and supplier of Thermo-Lag fire barriers and of its President, Rubin Feldman, by a Federal Grand Jury. The NRC staff continued to support the Department of Justice throughout the criminal case.[12] In addition, throughout the trial, the NRC staff continued to pursue corrective actions consistent with its action plan for the resolution of the Thermo-Lag issues. The above facts contradict the Petitioners' assertion that the NRC was protecting Rubin Feldman.

H. NRC Seeming Complicity With Utilities

The Petitioners also assert that there is seeming complicity between the NRC and the licensees and that licensees seek to avoid costly replacement of the Thermo-Lag.

In May 1991, the NRC Office of the Inspector General performed an inspection of the NRC's staff performance in regard to Thermo-Lag barriers and found indications of inadequate performance by the NRC staff in the acceptance and review of Thermo-Lag barriers. Subsequently, the NRC staff initiated an aggressive program of corrective actions to rectify the deficiencies identified in the review and response process, as summarized earlier in this decision.

In addition, the staff has expended considerable time and effort to address and resolve Thermo-Lag issues to ensure that licensees return to compliance with existing NRC fire protection requirements. The NRC staff issued three requests for additional information regarding GL 92–08 to each licensee using Thermo-Lag to obtain information on the specific Thermo-Lag material installed at each plant, details about the corrective actions each licensee intended to take to return to compliance with NRC fire protection requirements, and schedules for the implementation of these corrective actions. The response of each licensee was evaluated by the NRC staff. As a consequence of this substantial NRC staff effort, a number of licensees have already returned to compliance with NRC requirements by a variety of means which include replacing, rerouting, or upgrading existing Thermo-Lag barriers, performing post-fire safe shutdown reanalysis, and installing additional fire detection and suppression features. All of these measures involve some burden on licensees. In addition, some licensees have initiated costly programs to perform plant-specific fire endurance tests of other fire barriers with the intention of replacing Thermo-Lag with these barriers. All licensees who utilize Thermo-Lag will need to expend resources commensurate with their reliance on Thermo-Lag to come into compliance with NRC fire protection requirements. NRC staff oversight will ensure that this is the case.

The Petitioners' assertion of seeming complicity with utilities on the part of the NRC staff is unfounded in the light of the significant NRC staff efforts to ensure that licensees expend the resources necessary to return to compliance with NRC requirements.

IV. Conclusion

The Petitioners request that the NRC order the immediate shutdown of all reactors using Thermo-Lag and the suspension of Oyster Creek, Peach Bottom Units 1 and 2, and Comanche Peak Unit 1 operating licenses.

For the reasons discussed above, I find no basis for taking such actions. Rather, on the basis of the review efforts by the NRC staff, I conclude that the issues raised by the Petitioners are being addressed by licensees in a manner which assures adequate protection of the public health and safety. Accordingly, the Petitioners' requests for action pursuant to 10 CFR 2.206 are denied.

[12] The jury returned a verdict of ''not guilty'' on all counts of the indictment against TSI and Mr. Feldman.

A copy of this Decision will be placed in the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the Local Public Document Room for the named facilities. A copy of this Decision will also be filed with the Secretary for the Commission's review as provided in 10 CFR 2.206(c) of the Commission's regulations.

As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 3rd day of April 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15149 Filed 6–13–96; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Friday
June 14, 1996

Part IX

Environmental Protection Agency

40 CFR Parts 35, 270, 271

Authorization of Indian Tribe's Hazardous Waste Programs Under RCRA Subtitle C; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35, 270 and 271

[EPA/OSW–FRL–5509–8]

RIN 2050–AD07

Authorization of Indian Tribe's Hazardous Waste Programs Under RCRA Subtitle C

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today's proposed rule will further the Policy for the Administration of Environmental Programs on Indian Reservations (Nov. 8, 1984) (''EPA's Indian Policy'') by clarifying the eligibility of Tribal governments to obtain authorization from EPA to implement a Subtitle C hazardous waste program in lieu of EPA under RCRA section 3006, and to obtain Federal grants to support the development and implementation of such a program under RCRA section 3011. This proposal identifies the standards and procedures that would govern the submission and review of Indian Tribes' authorization applications. It also discusses the circumstances under which Tribes could be approved to operate a partial Subtitle C hazardous waste program.

DATES: Comments on this proposed rule must be submitted on or before August 13, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number x-96-xxxx-xxxxx to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460 or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: RCRA–Docket@epamail.epa.gov. These comments should be identified by the docket number x-96-xxxx-xxxxx, and submitted as an ASCII file to avoid the use of special characters and encryptions.

Please do not submit any Confidential Business Information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC) located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, please make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies will cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (800) 424–9346; TDD (800) 553–7672 for the hearing impaired; in the Washington, D.C. metro area, the telephone number is (703) 412–9810, TDD 703–412–3323.

For more detailed information, contact Felicia Wright, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; telephone (703) 308–8634.

SUPPLEMENTARY INFORMATION: In this document, EPA is proposing amendments to the RCRA Subtitle C regulatory definitions, authorization standards, and authorization procedures, which are codified in subpart A of 40 CFR part 270 and in subpart A of 40 CFR part 271.

The index is available on the Internet. Please follow these instructions to access the information electronically:
Gopher: gopher.epa.gov WWW: http://www.epa.gov
Dial-up: (919) 558–0335.
This report can be accessed from the main EPA Gopher menu in the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste/...../.....
FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet Address
Files are located in /pub/gopher/OSWRCRA

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, with all of the comments received in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

EPA's responses to comments, whether written or electronic, will be printed in the Federal Register, or in a ''response to comments document'' placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to clarify electronic comments that may be garbled during transmission or conversion to paper form.

I. Overview of This Proposed Rulemaking

This proposal further implements the Agency's 1984 Indian Policy by amending certain definitions, standards, and procedures within the regulations promulgated pursuant to RCRA Subtitle C (42 USC 6921—6939e) that govern EPA's authorization of States' hazardous waste programs. The overall effect of these amendments would be to clarify that Indian Tribes may obtain full or partial authorization from EPA to operate Tribal hazardous waste management programs in lieu of EPA's Federal regulatory program, and to clarify that authorized Indian Tribes, in the same manner as authorized States, may obtain RCRA section 3011 grant funds to aid the development and implementation of their Subtitle C management programs.

This notice proposes to add definitions of ''*Indian Tribes*'' and ''*Indian Country*'' to the Subtitle C program definitions codified at 40 CFR 270.2. Moreover, the existing definition of ''States'' in section 270.2 would be amended to extend to ''Indian Tribes'' the ability to obtain program authorization from EPA under RCRA section 3006, and financial assistance from EPA under RCRA section 3011.

EPA proposes to amend several sections of subpart A of 40 CFR part 271, which contains the standards and procedures for EPA's authorization of ''State'' hazardous waste programs. A new subsection in (§ 271.1(k)) would be added to clarify that the substantive standards and procedures that apply to States' programs and authorization submissions apply to Tribal programs and submissions, unless there is a specific provision that would address Tribal programs differently.

The specific procedures which EPA believes are appropriate for Tribal program authorizations and submissions would be set out in a new § 271.27. Proposed § 271.27(a) identifies several minor changes to the authorization application documents and agreements (i.e., Governor's letter, Program Description, Memorandum of Agreement, and Attorney General's Statement) which EPA requires States to submit in support of their applications

for program authorization. The proposed changes arise from a recognition of tribal sovereignty and differences in the structure of Tribal governments, and from circumstances unique to Indian Tribes.

Proposed § 271.27(b) establishes criteria under which Indian Tribes may be authorized to operate a partial RCRA hazardous waste program. This authority enables a Tribe, for example, to obtain authorization for a program that regulates only generators and transporters of hazardous waste, with EPA retaining responsibility for regulating and enforcing requirements for any hazardous waste treatment, storage, and disposal facilities. Under this proposal, only Indian Tribes would be eligible for partial program authorization. States will continue to be precluded from seeking and obtaining partial authorization. Other provisions in § 271.27 address the core program requirements of a partial program, the sharing of authority with EPA, and other requirements that follow from the inclusion of partial program authority in this proposed rule.

II. Authority

Today's rule is being proposed under the authority of sections 2002, 3006, and 3011 of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended. Section 2002(a) authorizes the Administrator to prescribe such regulations as are necessary to carry out functions under Subtitle C of RCRA. Section 3006 of RCRA allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Section 3011 of RCRA authorizes EPA to make grants to the States for the purpose of assisting the States in the development and implementation of authorized State hazardous waste programs.

III. Background

A. Current Subtitle C Authorization Program

EPA has primary responsibility for implementing and enforcing the RCRA Subtitle C hazardous waste program. Federal law, including the issuance and enforcement of permits for hazardous waste facilities, will be implemented by the Federal EPA until EPA authorizes a State for a hazardous waste program, at which point primary authority rests with the State.

The statute and regulations currently support two types of State program authorization. The first type, ''interim authorization,'' is a temporary authorization which is granted if EPA determines that the State program is ''substantially equivalent'' to the Federal program (section 3006(c), 42 U.S.C. 6926(c)). Interim authorization is currently available only for requirements imposed pursuant to the Hazardous and Solid Waste Amendments (HSWA) of 1984. HSWA Interim Authorization will expire in January, 2003 unless extended by rule.

The second type of authorization is ''final'' (permanent) authorization. Final authorization may be granted by EPA if the Agency determines, among other things, that the State program: (1) Is equivalent to the Federal program; (2) is consistent with the Federal program and other authorized State programs; and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)) 7004, 3006(f). States, and now under this proposal, Tribes, need not have obtained interim authorization in order to qualify for final authorization.

To date, 46 States, Guam and the District of Columbia have been authorized for the ''base'' RCRA Subtitle C program (i.e., the program in place before the enactment of HSWA in 1984). In these States, the authorized State programs operate in lieu of the corresponding Federal program and, if Federal enforcement is necessary, EPA must enforce the authorized State program requirements.

B. EPA's 1984 Indian Policy

Today, EPA is proposing to extend to Indian Tribes the opportunity to apply for and receive hazardous waste program authorization similar to that currently available to States. Providing Tribes with this opportunity is consistent with the EPA's Indian Policy. This policy, formally adopted in 1984, and reaffirmed on March 14, 1994 by EPA Administrator Carol M. Browner, ''* * * views Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved the interests and/or participation of State governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.''

A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal administration of Federal environmental programs. Today's proposal represents another step in the Agency's continuing commitment towards achieving this goal. However, EPA recognizes, in the spirit of Indian self-determination and the government-to-government relationship, that not all Tribes will choose to apply for and receive hazardous waste program authorization at this time. Regardless of the choice made, the Agency remains committed to providing technical assistance and training when possible to Tribal entities as they work to resolve their hazardous waste management concerns.

C. Legal Basis for Subtitle C Authorization of Indian Tribes

EPA believes that adequate authority exists under the Act to allow Tribes to seek hazardous waste program authorization. EPA's interpretation of RCRA is governed by the principles of *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. Interpreting RCRA to allow Tribes to apply for hazardous waste program authorization satisfies the *Chevron* test.

RCRA does not explicitly define a role for Tribes under section 3006 and reflects an undeniable ambiguity in Congressional intent. Indeed, the only mention of Indian Tribes anywhere in RCRA is in section 1004(13), a part of the ''Definitions'' of key terms in RCRA. Section 1004(13) defines the term ''municipality'' to mean:

> A city, town, borough, county, parish, district or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, *or any Indian tribe or authorized tribal organization or Alaska Native village or organization*[.]

The term ''municipality'', in turn, is used in section 4008(a)(2) of RCRA with specific reference to the availability of certain Federal funds and technical assistance for hazardous and solid waste planning and management activities by municipalities. Section 4008(a)(2) authorizes EPA to provide financial and technical assistance to municipalities on hazardous and solid waste management. Although Congress apparently intended to make explicit that Indian Tribes could receive funds and assistance when available in the same manner as municipal governments (by the inclusion of Tribes in section 1004(13)), Congress did not explicitly recognize any other role for Tribes under other provisions. There is no accompanying legislative history which explains why

Indian Tribes were included in section 1004(13) and nowhere else.

EPA does not believe that Congress, by including Indian Tribes in section 1004(13), intended to prohibit EPA from allowing Tribes to apply for hazardous waste program authorization under Subtitle C. First of all, it is clear that Indian Tribes are not ''municipalities'' in the traditional sense. Indian Tribes are not ''public bodies created by or pursuant to State law.'' Indeed, Indian Tribes are not subject to State law except in very limited circumstances. *See, California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). Indian Tribes are sovereign governments. *See Worcester* v. *Georgia,* 31 U.S. (10 Pet.) 515 (1832); and *United States* v. *Mazurie,* 419 U.S. 544, 557–58 (1975). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by defining them as ''municipalities'' under RCRA; i.e., that Congress intended section 1004(13) to subject Indian Tribes to State law for RCRA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which are ambiguous as to whether they abridge Tribal powers of self-government must be construed narrowly in favor of retaining Tribal rights. F. Cohen, *Handbook of Federal Indian Law,* 224 (1982); *See, e.g., Ramah Navajo School Board* v. *Bureau of Revenue,* 458 U.S. 832, 846 (1982).

EPA believes that inclusion of Indian Tribes in section 1004(13) was a definitional expedient, to avoid having to include the phrase ''and Indian tribes or tribal organizations or Alaska Native villages or Organizations'' wherever the term ''municipality'' appeared, not to change the sovereign status of Tribes for RCRA purposes. In particular, the references in section 4008(a)(2) to state ''assistance'' to municipalities does not suggest that Congress intended Indian Tribes to be subject to State governmental control. Furthermore, given the limited number of times the term ''municipality'' appears in RCRA, it does not appear that Congress was attempting to define a role for Tribes for all potential statutory purposes.

The ambiguity in RCRA regarding Indian Tribes also is evident in the 1984 RCRA amendments. In these amendments, while silent on the role for Tribes in implementing any RCRA programs, Congress expressed a strong preference for a State lead for implementing and ensuring compliance with the Federal Subtitle D revised criteria (as it had earlier in providing for State authorization in RCRA Subtitle C).[1] Yet, the legislative history of the 1984 amendments does not suggest that Congress intended to approve States to implement such programs in Indian country or that Congress considered the legal principle that States generally are precluded from such implementation. Similarly, RCRA Subtitle C does not contain an explicit delegation of authority to States to implement hazardous waste programs in Indian country. *Washington Dept. of Ecology* v. *EPA,* 752 F.2d 1465, 1469 (9th Cir. 1985) (RCRA Subtitle C does not constitute an explicit delegation of authority to States to implement hazardous waste programs on Indian lands); *accord, Nance* v. *EPA,* 745 F.2d 701 (9th Cir. 1981). Thus, while Congress has otherwise put States in a primary role for both Subtitle C hazardous waste program implementation and Subtitle D permit programs, on Indian lands, it failed to define how Tribes participate where States lack authority. EPA believes it necessary to harmonize the conflicts and resolve the ambiguities created by these provisions.

Failure to authorize Tribal hazardous waste programs would deny Tribes the option currently available to States to administer their programs ''in lieu of the Federal program.'' With this proposal, however, Subtitle C regulated activities and facilities in Indian country would be under the jurisdiction of the closest sovereign with permitting and enforcement authority, the Tribe, rather than the Federal government.[2]

EPA has worked to revise other environmental statutes (e.g., the Clean Water Act) to define explicitly the role for Tribes under these programs. EPA also has stepped in on at least two occasions to allow Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA. 55 FR 30632 (July 26, 1990). EPA reasoned that since EPCRA has no federal role to backup State planning activities, failure to recognize Tribes as the authority under EPCRA would leave gaps in emergency planning in Indian country. 54 FR 13000–01 (March 29, 1989).

EPA filled a similar statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian reservations under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. *See Nance* v. *EPA* (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time made *no* reference whatsoever to Indian Tribes or their status under the Act.[3]

One Court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps in Indian reservations. In *Nance,* the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian reservations from the redesignation process. 745 F.2d 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities in Indian reservations. *Id.* at 714.

Today's proposal is analogous to the rule upheld in *Nance.* EPA is proposing to fill a statutory gap regarding the role of Tribes in the implementation of Subtitle C in Indian country. As with the redesignation program, authorizing Tribal hazardous waste programs ensures that the Federal government is not the entity exercising authority that Congress intended to be exercised at a local level. Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra.* Second, the Supreme Court emphasized since *Nance* that Indian Tribes may regulate activities in Indian country, including those of non-Indians on fee lands where the conduct directly threatens the health

[1] *See, e.g.,* Solid Waste Disposal Act Amendments of 1979, 125 Cong. Rec. 13,241, 13,252 (1979) (''one of the real advantages of State assumption of these programs envisioned by Congress in the Act, over a more uniform Federal program, is that States are better able to tailor their programs to meet local circumstances * * *'').

[2] EPA has approved one tribal program under RCRA—the Campo Band of Mission Indian's municipal solid waste landfill permit program (60 FR 21191 (May 1, 1995)). This action has been challenged in the United States Court of Appeals for the D.C. Circuit. See, *Backcountry Against Dumps* v. *E.P.A.,* No. 95–1343 (D.C. Cir. Filed July 6, 1995).

[3] Congress ratified EPA's regulation in 1977 by explicitly authorizing Tribes to make PSD redesignations; the 1990 Amendments to the Act authorize EPA to allow Tribes to apply for approval to implement any programs EPA deems appropriate.

and safety of the Tribe or its members. *Montana* v. *United States,* 450 U.S. 544, 565 (1981).

Extending the ability to receive program authorization to Tribes is consistent with the general principles of Federal Indian law and the Agency's Indian Policy which states that environmental programs (e.g., RCRA Subtitle C) in Indian country will be implemented to the maximum extent by Tribal governments. Thus, as in *Nance,* EPA believes that allowing Tribes to apply for hazardous waste authorization reflects the sovereign authority of Tribes under Federal law.

A Tribe submitting an application to receive authorization for any or all parts of the RCRA Subtitle C hazardous waste program will be subject to the standards of this rule, when finalized. A Tribe which has received authorization prior to promulgation of the final rule will not lose its authorization status. However, if there are subsequent changes in either the Federal or Tribal program (including, for example, the acquisition of significant amounts of non-reservation land by the Tribe), such a Tribe may be required to revise its authorized program in accordance with the standards set forth in 40 CFR part 271.

IV. Detailed Discussion of the Proposed Rule

A. Overview

This proposed rule announces several changes to the regulatory definitions (40 CFR 270.2) that define the scope of the Subtitle C authorization program. Today's proposal also specifies the standards and procedures that EPA would follow in approving, revising and withdrawing authorization of Tribal hazardous waste programs, as well as the requirements that tribal programs must meet to be authorized by the Administrator under sections 3006(b) of RCRA.

Generally, Tribes would have to meet the same criteria as do the States. Consequently, except where otherwise expressly indicated, the REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS (40 CFR part 271) are applicable to Tribes as well. However, today's proposal recognizes the uniqueness of Tribes and Indian country and revises several existing requirements, and adds appropriate requirements to certain sections of the rule.

This part of the preamble discusses in detail changes in the definitions which EPA believes are necessary to clarify the role of Indian Tribes in Subtitle C authorization, and the other substantive and procedural regulatory amendments which are needed to make the 40 CFR part 271 requirements more suited to the unique circumstances of Tribes and Indian Country.

B. Tribal Regulatory Authority

To have its hazardous waste program authorized by EPA under today's proposal, a Tribe would have to have adequate authority over the regulated activities. The jurisdiction of Tribes clearly extends ''over both their members and their territory.'' *United States* v. *Mazurie,* 419 U.S. 544, 557 (1975). However, Indian reservations may include lands owned in fee by non-members. ''Fee lands'' are privately owned by non-members and title to the lands can be transferred without restriction. The extent of Tribal authority to regulate activities by non-tribal members on fee lands has been the subject of considerable discussion. The Supreme Court has said that there are two situations where a Tribe is able to exercise civil jurisdiction over non-member owned fee lands within Indian reservations. The Court stated, in *Montana* v. *U.S.,* 450 U.S. 544, 566–67 (1981) (citations omitted):

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements * * *. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

The Court applied the latter part of this test in *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation,* 492 U.S. 408 (1989). In that case, both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by non-tribal members. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

Specifically, the Court did recognize Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); *id.* at 449–450 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities ''would not threaten the Tribe's * * * health and welfare.'' *Id.* at 432 (White, J., writing for the Court). Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v. *United States.*

In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by non-members but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale* and applicable Federal law. The extent of such Tribal authority depends on the effect of that activity on the Tribe. As discussed above, in the absence of a contrary statutory policy, a Tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. *Montana,* 450 U.S. at 565–66.

However, as discussed by EPA in the context of the Clean Water Act, the Supreme Court, in a number of post-*Montana* cases, has explored several criteria to assure that the impacts upon Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis,* although to date the Court has not agreed, in a case on point, on any one reformulation of the test. *See* 56 FR 64876, 64878 (December 12, 1991). In response to this uncertainty, the Agency will apply, as an interim operating rule, a formulation of the *Montana* standard that will require a showing that the potential impacts of regulated activities of non-members on the Tribe are serious and substantial. *See* 56 FR at 64878. EPA will thus require that a Tribe seeking RCRA Subtitle C authorization demonstrate jurisdiction, i.e., make a showing that the potential impacts on the Tribe from hazardous waste management activities of non-members on fee lands are serious and substantial.

The choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se. See* 56 FR at 64878. Moreover, as discussed below, the Agency believes that the activities regulated under the various

environmental statutes, including RCRA, generally have potential direct impacts on human health and welfare that are serious and substantial. As a result, the Agency believes that Tribes usually will be able to meet the Agency's operating rule, and that use of such a rule by the Agency should not create an improper burden of proof on Tribes.

Whether a Tribe has jurisdiction over activities by non-members on fee lands will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances and will likely vary from Tribe to Tribe.

Nonetheless, the Agency also may take into account the provisions of environmental statutes and any legislative findings that the effects of the activity are serious and substantial in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control environmental quality in Indian Country. *See, e.g., Keystone Bituminous Coal Association* v. *DeBenedictis,* 480 U.S. 470, 476–77 and nn.6, 7 (1987). The Agency may also rely on its special expertise and practical experience regarding the importance of hazardous waste to the protection of Tribal environments and the health and welfare of Tribal members. As a result, the reservation-specific demonstration required of a Tribe may, in many cases, be relatively simple. EPA's approach to determining Tribal jurisdiction over the activities of nonmembers on fee lands within reservation boundaries was recently upheld in *Montana* v. *EPA*, No. CV 95–56–M-CCL, 1996 U.S. Dist. LEXIS 4753 (D. Mont. March 27, 1996), which involved an EPA decision to approve a Tribal application to administer the water quality standards program under section 303 of the Clean Water Act.

EPA believes that Congress established a strong Federal interest in effective management of hazardous waste throughout the country by enacting RCRA. For example, one of the primary objectives of the statute is ''to promote the protection of health and the environment and to conserve valuable material and energy resources by * * * assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment.'' RCRA section 1003(a), 42 U.S.C. 6902(a). EPA also notes that many of the environmental problems caused by mismanagement of hazardous waste (e.g., groundwater contamination or the release of hazardous constituents into the air) by their nature present potential direct impacts that are serious and substantial in areas that are outside the place where the hazardous waste management originally occurred. In other words, any environmental hazards that result from hazardous waste management by non-members on fee lands within a reservation are very likely to present direct impacts to Tribal environments, health and welfare that are serious and substantial. EPA also believes that a ''checkerboard'' system of regulation, whereby the Tribe and State split up regulation of hazardous waste on Indian lands, would exacerbate the difficulties of assuring compliance with RCRA requirements.

In light of the Agency's statutory responsibility for implementing the environmental statutes, its interpretations of the intent of Congress regarding Tribal management of solid waste within the reservation are entitled to substantial deference. *Washington Dep't of Ecology* v. *EPA,* 752 F.2d 1465, 1469 (9th Cir. 1985); *see generally Chevron, USA, Inc.* v. *NRDC,* 467 U.S. 837, 843–45 (1984).

The Agency also believes that the effects on Tribal health and welfare necessary to support Tribal regulation of non-Indian activities on Indian lands may be easier to establish in the context of environmental regulation than with regard to zoning, which was at issue in Brendale. There is a significant distinction between land use planning and environmental regulation of hazardous waste under RCRA. The Supreme Court has explicitly recognized such a distinction: ''Land use planning in essence chooses particular uses for the land; environmental regulation * * * does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits.'' *California Coastal Comm'n* v. *Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that States retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by federal law. *Id.* at 587–89.

Further, management of hazardous waste serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well established.[4] By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. *See, e.g., Brendale,* 492 U.S. at 420 n.5 (White, J.). (listing broad range of consequences of state zoning decision). Moreover, hazardous waste may affect ground water, which is mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

The process that the Agency will use for Tribes to demonstrate their authority over non-members on fee lands includes a submission of a statement in the Tribal Legal Certification (§ 271.27(a)) explaining the legal basis for the Tribe's regulatory authority. However, EPA will also rely on its generalized findings regarding the relationship of hazardous waste management to Tribal health and welfare. Thus, the Tribal submission will need to make a showing of facts that there are or may be activities regulated under RCRA Subtitle C engaged in by non-members on fee lands within the territory for which the Tribe is seeking authorization, and that the Tribe or Tribal members could be subject to exposure to hazardous waste from such activities through, e.g., groundwater, soil, air, and/or direct contact. The Tribe must explicitly assert and demonstrate jurisdiction, i.e., make a showing, that improper management of hazardous waste by non-members on fee lands could have direct impacts on the health and welfare of the Tribe and its members that are serious and substantial. Once a Tribe meets this initial burden, EPA will, in light of the facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of proper hazardous waste management in Indian country, presume that the Tribe has made an adequate showing of jurisdiction over non-member activities on fee lands, unless an appropriate governmental entity (e.g., an adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between Tribes and States can be complex and difficult and that it will, in some circumstances, be forced to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of human health and the environment. In view of the mobility of environmental problems, and the interdependence of

[4] This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. See *Keystone Bituminous Coal Ass'n* v. *DeBenedictis,* 480 U.S. 470, 491 n. 20 (1987); *id.* at 512 (Rehnquist, C.J., dissenting).

various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

C. Implementing the Government-to-Government Relationship With EPA

Under the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Clean Air Act (CAA), Congress has specified certain criteria by which EPA is to determine whether a Tribe may be treated in the same manner as a State. These criteria generally require that the Tribe (1) be recognized by the Secretary of the Interior; (2) have an existing government exercising substantial governmental duties and powers; (3) have adequate civil regulatory jurisdiction over the subject matter and entities to be regulated; and (4) be reasonably expected to be capable of administering the federal environmental program for which it is seeking approval.

As discussed below, EPA is requiring Tribes seeking grant funds under RCRA 3011 or program authorization under RCRA 3006 to demonstrate in the Program Description that they meet the four criteria listed above. The process EPA is proposing for Tribes to make this showing, however, generally is not an onerous one.

The Agency has simplified its process for determining Tribal eligibility to administer environmental programs under several other environmental statutes. See 59 FR 64339 (December 14, 1994) (''Treatment as a State (TAS) Simplification Rule''). The proposed process for determining eligibility for RCRA Subtitle C programs parallels the simplification rule. Generally, the fact that a Tribe has met the recognition or governmental function requirement under another environmental statute allowing for Tribal assumption of environmental programs or grants (e.g., the Clean Water Act, Safe Drinking Water Act, Clean Air Act) will establish that it meets those requirements for purposes of RCRA Subtitle C authorization. To facilitate review of tribal applications, EPA therefore requests that the Tribe demonstrate, in proposed 40 CFR 271.27(a)(3)(ii), that it has been approved for ''TAS'' (under the old ''TAS'' process) or been deemed eligible to receive authorization (under the simplified process) for any other program.

If a Tribe has not received ''TAS'' approval or been deemed eligible to receive authorization, the Tribe must demonstrate, pursuant to proposed § 271.27(a)(3)(ii), that it meets the recognition and governmental function criteria described above. A discussion on how to make these showings can be found at 59 FR 64339 (December 14, 1994).

EPA believes, on the other hand, that the Agency must make a separate determination that a Tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each Tribal program.

In particular, if the Tribe is asserting jurisdiction over hazardous waste activities conducted by non-members on fee lands within Reservation boundaries, it must explicitly show, in its submission, that the activities of non-members on fee lands regarding hazardous waste could have direct effects on the health and welfare of the Tribe that are serious and substantial. Copies of all documents, such as treaties, constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertions of jurisdiction must also be included. EPA will review this documentation and any comments given during the public comment period, and then will make a determination whether there has been an adequate demonstration of Tribal jurisdiction over Tribal, and if asserted, non-member hazardous waste activities on fee lands within the boundaries of the reservations.

Finally, capability is a determination that will be made on a case-by-case basis. Ordinarily, the information provided in the application for RCRA Subtitle C permit program approval submitted by any applicant, Tribal or State, will be sufficient (see the program description requirements under § 271.6 and the discussion on pages 51–55 for the elements of programmatic capability in the context of RCRA Subtitle C authorization). Nevertheless, EPA may request, in individual cases, that the Tribe provide a narrative statement or other documents showing that the Tribe is capable of administering the program for which it is seeking approval. See 59 FR 44339 (December 14, 1994).

D. Definitions

The key purpose of this proposed rulemaking is to clarify the ability of Indian Tribes to obtain authorization from EPA of their hazardous waste management programs under RCRA section 3006. The proposal would further clarify that Indian Tribes may obtain Federal grants under RCRA section 3011 to assist Tribes in developing and implementing their authorized programs.

The proposal would provide this clarification through changes to the governing definitions in 40 CFR 270.2 and 40 CFR 35.105. The most significant of the changes is the proposed inclusion of ''Indian Tribes'' within the list of governmental entities defined as ''States'' in 40 CFR 270.2. Under the Statute, both program authorization under section 3006 and financial assistance under section 3011 are available to States. Therefore, the proposed change to the regulatory definition of ''States'' would make it clear that EPA interprets the Act as providing EPA with sufficient authority to authorize and to issue grants to qualified Indian Tribes.

EPA is also proposing to add to § 270.2 new definitions for ''Indian Tribes'' and ''Indian Country.'' The proposed definition of ''Indian Tribe'' or ''Tribe'' would include any Indian Tribe, band, group or community recognized by the Secretary of the Interior and having a governmental body carrying out substantial governmental duties and powers.

Second, ''Indian country'' would be defined as in 18 U.S.C. 1151, to mean (A) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation, (B) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (C) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. EPA notes that the meaning of the term ''reservation'' must be determined in light of relevant case law. EPA considers trust lands formally set apart for the use of Indian Tribes to be ''Indian country'' even if the trust land has not been formally designated as a ''reservation.'' *See Oklahoma Tax Comm'n* v. *Citizen Band of Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991).

These definitions are important not only for determining what entities may apply for Subtitle C authorization, but also for determining the territorial and legal reach of a Tribe's authorized program. They are also important in establishing the necessary government-to-government relationship with Tribes, and in addressing the issue of tribal regulatory authority. EPA requests comment on these proposed definitions, and the appropriateness of extending to Tribes the availability of Subtitle C

authorization and RCRA section 3011 grants.

Available Alternatives to Authorization

EPA recognizes that most Tribes will choose not to pursue Subtitle C authorization at this time. Several mechanisms already exist whereby Tribes may engage in a partnership with the Agency in implementing hazardous waste management activities. These mechanisms include cooperative agreements, Memoranda of Understanding and Memoranda of Agreement. Under all these mechanisms, Indian Tribes can develop and implement their hazardous waste regulatory authorities and exercise their sovereign authority with respect to their environments. These mechanisms may also provide Tribes opportunities to increase their capacity to manage environmental programs by participating with EPA in hazardous waste activities, while maintaining the government-to-government relationship described in EPA's Indian Policy. Authorization is distinguished from the other types of relationships, because it would confer on the Tribal government the authority to operate its program in lieu of EPA operating all or part of the Federal hazardous waste program.

E. Funding

EPA recognizes that, assuming current funding levels remain the same, the effect of this proposal could be to make available to Tribes Federal funds that otherwise would be allocated only to State hazardous waste programs. Tribes that assume the burdens of a RCRA hazardous waste program assume these burdens in lieu of EPA acting directly, so the Agency believes it is appropriate for Indian Tribes to obtain RCRA section 3011 funds that are commensurate with these burdens.

While Congress explicitly authorized grants to municipalities (including Tribes) under RCRA subtitle D, EPA does not believe it is precluded from interpreting RCRA to authorize grants to authorized Tribes under RCRA subtitle C section 3011. Section 3011 does not provide for grants to municipalities because of the nature of these grants, which are for the development of broad hazardous waste programs. There is nothing in RCRA or the legislative history to indicate that Congress intended to limit Tribal grants to only those provisions for which municipalities may receive grants. Under the statutory scheme, section 3011 grants are specifically designed to aid in developing and implementing authorized hazardous waste programs. Given the Agency's interpretation that RCRA section 3006 is properly read to allow EPA to authorize qualifying Tribes to administer RCRA programs in lieu of EPA, it follows that these Tribes should also be eligible to receive grant funding under RCRA section 3011 to assist ''in the development and implementation of authorized * * * hazardous waste programs.'' The Agency's interpretation is consistent with the well established general principle of statutory construction that ambiguous statutes should be construed in favor of Tribes. *See, e.g., Ramah Navajo School Board* v. *Bureau of Revenue*, 458 U.S. 832, 846 (1982); *see also*, F. Cohen, *Handbook of Federal Indian Law*, 224–25 (1982).

EPA requests comments that would assist it in allocating RCRA section 3011 funds equitably to authorized States and Tribes. The Agency is especially interested in suggestions that would mitigate any potential negative effects on funding of authorized State programs.

F. Program Application Elements

Because of the uniqueness of Tribal governments, EPA is proposing in this rule to modify some of the program application elements required under § 271.5 for Tribal applications. These modifications are explained in detail below.

1. Program Description

The proposed rule adds a new subsection to § 271.6 which requires a Tribe to include a map, legal description, or other information sufficient to identify the full extent of the lands over which the Tribe is asserting jurisdiction. In addition, the Tribe would identify in the Program Description the location of any generator, storage, treatment or disposal facilities subject to RCRA Subtitle C, including any facilities on fee lands owned by non-members. Finally, in those instances where a Tribe asserts jurisdiction over hazardous waste activities conducted by non-members on fee lands within reservation boundaries, the proposal would require the Program Description to identify clearly the activities and areas affected by such a claim of jurisdiction, and to assert and explain how the activities of non-members will have a serious and substantial effect on the health and welfare of the Tribe.

2. Attorney General's Statement

EPA recognizes that the ''Attorney General'' designation in 40 CFR 271.7 may not be appropriate for all Tribes, since some Tribal governments may not have an Attorney General. Therefore, the proposal would add § 271.27(a)(4), which clarifies that the requirement of an Attorney General's Statement is satisfied for Indian Tribes when the Statement is signed by the Tribal attorney or by an equivalent legal counsel retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. This amendment adds sufficient flexibility to the existing procedures to enable the necessary legal certifications to be prepared and reviewed, without imposing the undue rigor of requiring a submission by an attorney with a particular title, office, or position. The essential consideration is that the Statement be signed by an attorney who has been retained to represent the Tribe on matters pertaining to the Tribe's program authorization. The Tribe's attorney should include in the Statement an assertion that he/she has the necessary authority to represent the Tribe with respect to the application, and to certify that the laws of the Tribe provide adequate authority to carry out the program.

3. Memorandum of Agreement

This proposal includes several modifications to the § 271.8 provisions that describe the content of the Memorandum of Agreement that is entered into by EPA and authorized States. This Memorandum generally addresses such matters as the transfer of program documents to the State upon authorization, as well as the type and frequency of coordination and oversight that will occur after authorization of a State.

40 CFR 271.16 requires that, in order to obtain authorization for its hazardous waste program, States must have criminal enforcement authority over ''any person'' committing certain enumerated acts and have the authority to impose a fine of $10,000 per violation. Federal law bars Indian Tribes from trying criminally or punishing non-Indians in the absence of express authority in a treaty or statute to the contrary. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). In addition, the Indian Civil Rights Act prohibits any Indian court or Tribunal from imposing for any one offense a criminal penalty greater than $5,000 on Indians within its jurisdiction (25 USC 1302(7)).

The Agency realizes that requiring Tribes to demonstrate the same criminal authority as States would affectively prohibit any Tribe from obtaining program authorization. The Agency therefore proposes to add provision 271.27(a)(5) so that Tribes are not required to exercise comprehensive

criminal enforcement jurisdiction as a condition for hazardous waste program authorization. Under this rule, Tribes are required to provide for the timely and appropriate referral of criminal enforcement matters to the Regional Administrator when Tribal enforcement authority does not exist or is not sufficient (e.g., those concerning non-Indians or violation meriting penalties over $5,000) This section also requires that such procedures be established in the formal Memorandum of Agreement with the Regional Administrator required by 40 CFR 271.8. This approach is the same that the Agency has taken in the context of Tribal programs under the SDWA and CWA.

It should be noted that, as in authorized States, EPA retains the authority to take necessary enforcement action if an authorized Tribe did not (or could not) take such action or did not enforce adequately (e.g., did not or could not impose a sufficient penalty). EPA emphasizes that this referral mechanism is available only in those cases where the limitation on Tribal enforcement arises under Federal law. A Tribe that encumbers its own enforcement authority with limitations based on laws adopted by the Tribe would be subject to the same ''adequacy of enforcement'' review standard that applies to States under RCRA section 3006 and the part 271 regulations.

EPA seeks comment on whether the authorization requirements set out for States in 40 CFR part 271 are appropriate for Tribes and whether any of these requirements will inappropriately restrict Tribes from seeking authorization. EPA also requests comment on proposed § 271.27(a), and particularly, the modifications proposed for an Indian Tribe's Program Description, Attorney General Statement, and Memorandum of Agreement submissions.

G. Partial Authorization Authority

1. Background

Under this proposal, Indian Tribes would be eligible to obtain authorization from EPA to operate partial RCRA hazardous waste programs. This aspect of the proposal introduces authority for Tribes that is not now available to the States and Territories of the United States which currently have or are eligible for RCRA Subtitle C authorization. The proposal would amend 40 CFR § 271.1(h), which currently prohibits partial State hazardous waste programs from operating under RCRA Subtitle C final authorization. The proposed rule would exempt only Tribal hazardous waste programs which meet the proposal's criteria from the effects of the current prohibition. Other ''States'' (i.e., States and Territories) would remain subject to the partial program prohibition.

EPA does not interpret RCRA section 3006 to preclude the operation of partial RCRA programs. The current regulatory prohibition in 40 CFR 271.1(h) was adopted as a policy matter within EPA's discretion in 1979, in the face of the Act's silence on the precise issue.

Indeed, when EPA developed its RCRA authorization regulations, the Agency initially proposed that States could obtain partial authorization. *See* 43 FR 4366 (February 1, 1978). The 1978 proposal would have allowed States ''to receive partial authorization for selected major components of the full hazardous waste program, but only if the State meets the requirements of equivalency, consistency, and enforceability for each such major component.'' Id. at 4368. Commentors on the 1978 proposed rule voiced strong opposition to this proposal, based primarily on the burden and confusion that would result to the regulated community due to shared EPA/State implementation responsibilities over partial programs. In the face of these comments, EPA announced in the 1979 final rule the current partial program prohibition. *See* 44 FR 34259, (June 14, 1979).

In enacting the Hazardous and Solid Waste Amendments (HSWA) of 1984, Congress added revisions to the section 3006 authority for State program authorization. HSWA added language to section 3006(b) of the Act that allows the Administrator to base his or her findings of a state program's equivalency with the Federal program on the Federal program in effect one year prior to the submission of the state's application. While this language could be construed as a mandate that States eventually adopt the entire Federal program, EPA believes that the better view of the 1984 amendment's purpose was to afford States some relief from the need to continually update their applications to reflect recent changes in the Federal program. In effect, this amendment provided states with a grace period, allowing states to defer including Federal changes that occurred within one year of the submission of their applications. Understood in this context, EPA does not believe that the section 3006(b) revision was intended to address the partial program issue. Therefore, EPA believes that it retains the discretion to allow Indian Tribes to obtain partial program authorization.

2. Rationale for Partial Tribal Programs

The Agency believes that there are compelling reasons for allowing Indian Tribes to operate partial RCRA programs. Fundamentally, as set out in the EPA Indian Policy, the Agency is committed to make every reasonable effort to recognize the sovereignty of Indian Tribes and to eliminate any administrative barriers to the Tribes' primary administration of programs such as RCRA Subtitle C. EPA believes that it is a reasonable step in implementing this important policy to remove the barrier imposed by the current regulatory prohibition of partial RCRA programs as it affects authorization of Indian Tribes. Otherwise, EPA believes that few, if any Tribes would participate in RCRA Subtitle C authorization.

Indian Tribes typically have much smaller populations than States, and there are generally limited industrial and commercial operations conducted within the Tribe's jurisdiction. This tends to limit not only the likelihood of substantial hazardous waste generation activities within Indian country, but it also limits the sources of revenues to support the activities of Tribal governments. Therefore, Indian Tribes would not typically possess the resources to develop and carry out a full RCRA Subtitle C program. Particularly in those areas where the full RCRA program requires special expertise (e.g., experts in hydrogeology to oversee RCRA corrective actions), skills and resource shortages common among Indian Tribes would preclude most Tribes from participating in RCRA authorization, if partial authorization were not an option. EPA believes that it would make little sense to require Tribal governments to develop authorities and capabilities to regulate facilities that are not now and are unlikely ever to be present on Tribal lands.

EPA solicits comment on the removal of the § 271.1(h) partial program prohibition only for Indian Tribes. EPA recognizes that some States and the Insular territories may believe that they also should be allowed to obtain partial authorizations, because of their size, limited involvement with hazardous waste operations, or limited need and capability to operate a full RCRA hazardous waste program. While EPA understands these interests, the Agency believes that these factors are present to a greater degree with Indian Tribes than with the States and Territories. In addition, the EPA Indian Policy is a distinguishing factor which supports this limited proposal, since it represents EPA's commitment to eliminate

administrative impediments to authorizing Tribal programs. Finally, EPA is concerned that a more general relaxation of the partial program prohibition would result in many States either electing not to assume new RCRA program requirements which they view as burdensome (thereby leaving EPA with the most significant implementation burdens), or transferring previously authorized program components back to EPA.

3. Criteria for Partial Program Authorization

Today's proposed rule includes criteria that would govern the evaluation of Tribes' requests for partial program authorization. This section explains these criteria.

a. *Composition and size of the regulated community.* EPA believes that the most critical consideration in evaluating the appropriateness of a partial program authorization is the composition and size of the regulated community. The components of a Tribal hazardous waste management program should reflect the types of facilities and the magnitude of hazardous waste operations that are actually present, or likely to establish operations, within the Tribal jurisdiction. This criterion should be considered both in the context of the authorities and capabilities which the Tribe should demonstrate in its application, and in evaluating the allocation of regulatory oversight burdens between a Tribe and EPA.

For example, if a Tribe's regulatory universe consists solely of hazardous waste generators and transporters, this proposal would permit the Tribe to demonstrate in its application the authorities and capability to regulate these types of facilities. Such a Tribe would need to develop regulatory counterparts to EPA's generator standards in 40 CFR parts 262 and 268, as well as transporter standards corresponding to EPA's part 263 requirements. However, the application would not need to include regulatory authorities for hazardous waste landfills, incinerators, or other types of hazardous waste management facilities which do not currently exist, and which are not likely to ever operate within a Tribe's territorial jurisdiction.

EPA believes that partial authorization is warranted only in instances where the Tribe has responsibility for regulating all the facilities within a particular program. For example, Tribes which are authorized solely for generators and transporters would be responsible for all persons or entities that fall into those programs. Although it would be appropriate for EPA to provide limited technical expertise and to implement its statutory responsibilities under HSWA at facilities regulated by the Tribal program, it would not be appropriate for EPA to assume nearly all the regulatory burdens at such sites.

The omission from a Tribe's application of an entire class of existing facilities may raise questions about the appropriateness of a partial program authorization. In such cases, EPA would assess the regulatory burden associated with the Tribe's proposed program, and the burdens which EPA would retain as a result of regulating the class of facilities omitted from the Tribal program. On a case-by-case basis, EPA would determine whether the significant sovereignty interests reflected in authorization and the regulatory burdens being assumed by the Tribe outweigh the circumstances of EPA retaining direct implementation responsibilities for a class of facilities. However, where the omission of such a class of facilities would result in EPA bearing a disproportionate regulatory burden, this proposal would view this as grounds for a negative determination on that Tribe's request for partial authorization. EPA solicits comments on how it should strike the appropriate balance between Tribal and EPA interests when evaluating partial program applications that involve some, but not all, of a Tribe's regulated community.

b. *Extent to which program components are severable.* EPA's 1979 decision to prohibit partial RCRA programs was based primarily on concerns which the regulated community identified about the confusion which would result under a system of joint State and EPA implementation. This concern remains today, and is perhaps even more prominent than in 1979, given the increased growth and complexity of the RCRA Subtitle C management program since that date. On the other hand, the interest of avoiding dual RCRA programs should not become an insurmountable obstacle to EPA's implementation of its Indian Policy, particularly since dual State/EPA implementation of Subtitle C has become fairly commonplace under the mandate of the 1984 HSWA amendments.

EPA believes that the severability of the program elements applied for by a Tribe is an important criterion in evaluating the merits of a Tribe's request for a partial program authorization. In this context, ''severability'' means that there is a distinct set of requirements for which the Tribe is exclusively responsible for program implementation. Severability is important in avoiding or minimizing the confusion and burdens arising from joint Tribal/EPA implementation of RCRA. Therefore, a Tribal application will be evaluated to determine that, as far as possible, the Tribe's application includes the authorities that are needed to fully regulate the class or classes of facilities for which the Tribe is seeking authorization. When this occurs, there should be minimal confusion insofar as the particular roles and responsibilities of the Tribe and EPA.

EPA recognizes that total severability of roles and responsibilities may not be fully achievable. Nevertheless, an acceptable partial program application is one that tends to clarify, not confuse, regulatory responsibilities for hazardous waste management activities that the Tribal program would regulate.

To meet this criterion, a Tribe seeking authorization, for example, to regulate hazardous waste generators would need to include authorities in its program corresponding to regulations found in several distinct parts of Volume 40 of the *Code of Federal Regulations* (CFR). While management standards specific to generators are set forth in 40 CFR part 262, generators also become subject to RCRA permit requirements when they store or treat hazardous wastes in tanks or containers for a period exceeding 90 days (or 180 days for certain small quantity generators). In these cases, counterparts to part 264 general facility, tank, and container permitting standards might also be appropriate. Likewise, generators are subject to certain waste analysis, certification, and other requirements included in EPA's Part 268 Land Disposal Restrictions (LDRs), and these additional generator requirements should also be reflected in the Tribe's legal authorities.

EPA requests comment on the proposed criterion under which maximum severability of Tribal and EPA regulatory responsibility for hazardous waste management activities would be a persuasive factor in evaluating Tribes' requests for partial program authorization. Under this proposal, EPA could recognize exceptions for particular facility requirements (e.g., HSWA corrective action) where direct EPA oversight is needed to ensure the availability of a special technical expertise or resources which a Tribe could not reasonably be expected to develop and retain. This criterion is discussed in the section which follows.

c. *Extent to which EPA-retained elements require special expertise.* As discussed in the preceding section, the

requirement of special implementation expertise may be a circumstance warranting EPA's retention of direct oversight responsibilities for a particular facility, of for a class of facilities. Thus, under this proposal, EPA could approve a Tribal program that lacked regulatory authorities to oversee existing landfills, land treatment units, surface impoundments, or waste piles, where the Tribe's application demonstrates that the regulation of these facilities would require the substantial involvement of hydrogeologists or other specialists that are not reasonably available to the Tribe. These areas of expertise could come into play, for example, in the oversight of Subtitle C facilities' groundwater monitoring and protection requirements, and in overseeing the HSWA corrective action mandates to address releases of hazardous constituents from the solid waste management units of facilities seeking RCRA permits (40 CFR part 264, subpart F). In addition, the need for special EPA expertise could also be present in instances where a treatment facility is seeking authorization to operate treatment processes that require a significant chemical or mechanical engineering expertise to evaluate and permit.

EPA believes that it should scrutinize closely those requests for partial program authorization that propose to exclude authority to regulate an entire class of existing facilities because of a need for special expertise. In many such instances, the special expertise might only be needed occasionally, and could be provided by EPA or by contractor as technical support to the Tribe.

More typically, special EPA expertise may be asserted as a basis for EPA's retention of its HSWA authority for facilities otherwise subject to a Tribe's authorized RCRA Subtitle C program. The special technical expertise associated with the HSWA corrective action and LDR programs may justify joint EPA/Tribal administration of RCRA at facilities with corrective action needs or with significant involvement in highly technical treatment processes. Under this proposal, EPA could authorize partial Tribal programs that excluded HSWA corrective action and LDR treatment standards, and the Tribe could be authorized to regulate the non-HSWA aspects of the facilities' operations.

EPA requests comments on the proposal to include special EPA expertise as a criterion for authorizing a partial Tribal program. The Agency also solicits specific comments that would aid EPA in identifying those elements of the RCRA Subtitle C or HSWA regulatory programs that are suitable candidates for EPA retention, and those that should be included within a Tribe's authorized program.

d. *Extent to which there is a bona-fide waste management program for which the Tribe possesses the necessary capability.*

The final criterion proposed in this notice requires the Tribe to demonstrate to EPA's satisfaction that there is a real and significant presence of regulated hazardous waste management activities within the Tribe's jurisdiction, so that the Tribe's hazardous waste management program will constitute a bona-fide regulatory program. This criterion also requires the Tribe to demonstrate that it has the necessary capability to administer the partial program for which it is seeking authorization.

The requirement of a real and significant involvement with hazardous waste operations is not intended to suggest a quantity threshold on the amount of waste generated or the numbers of facilities that must be present. Rather, this requirement is intended to connote that there must be a real or imminent universe of hazardous waste management activities subject to regulation. As such, a speculative possibility or interest does not meet this criterion.

Further, to be authorized, a program must also be able to demonstrate the necessary capability to oversee the universe of regulated hazardous waste activities, and administer the program's legal authorities and guidance. Capability is a concept that addresses, among other factors, the mix of resources and skills which a Tribe will need to implement successfully its hazardous waste program. EPA currently applies capability criteria to States that seek RCRA Subtitle C authorization. The capability implications of this proposal are discussed below in section IV.H.6 of this preamble.

4. Minimal Program Considerations

EPA believes that there are certain RCRA hazardous waste program elements which, at a minimum, must be present in every application for a partial RCRA program authorization. In other words, there is a ''floor set'' of program elements, which if not included in an application, could constitute grounds for rejection of a Tribal program application.

EPA proposes that Tribal counterparts to the following Federal program elements would constitute the minimal program for which a Tribe could seek partial program authorization:

- The appropriate subset of definitions in 40 CFR part 260 corresponding to the hazardous waste program within the Tribe's application;
- Waste identification requirements in 40 CFR part 261;
- Generator requirements in 40 CFR parts 262 and 268; and
- Transporter requirements in 40 CFR part 263.

Additionally, Interim Status Standards, 40 CFR part 265, cover two types of units, newly regulated units (recently included as a RCRA Subtitle C facility due to new regulations) and non-notifiers (such as those operating as illegal Subtitle C units which become identified through inspections or other means). Units identified as subject to RCRA Subtitle C which were not previously regulated will be subject to parts 264 and 265 closure requirements. U.S. EPA will be responsible for permitting and/or closure of those units subject to part 265 for Tribes that choose not to adopt these regulations as part of their authorized program. Tribes that become authorized for part 265 will be responsible for permitting and/or closure (whichever is appropriate) of these units.

EPA requests comments on the appropriateness of these minimum program elements for defining an acceptable partial RCRA Subtitle C program for Tribes.

5. Financial Assurance Requirements for Tribally Owned and Operated Facilities

RCRA Subtitle C requires owners and operators of hazardous waste treatment, storage, and disposal facilities to provide financial assurance for closure, post-closure care, liability for injury to third persons and corrective action.

The Federal financial assurance regulations exempt State and federally-owned or operated facilities from the financial assurance requirements (See 40 CFR 264.140(c)), because it is EPA's belief that State and Federally-owned or operated facilities will always have adequate resources to conduct closure and post-closure care activities properly (See 45 FR 33154, 33198, May 19, 1980). Notwithstanding that today's proposal would give Tribes, like States, the authority to operate a hazardous waste regulatory program in lieu of the Federal program, it would not change the applicability of the existing requirements by exempting tribally-owned or operated facilities from the financial assurance requirements. Tribally-owned or operated facilities subject to an authorized Tribal hazardous waste regulatory program, therefore, would continue to have to comply with the financial assurance

requirements like all other owners and operators of treatment, storage or disposal facilities, private or public, that are not State or federally-owned or operated facilities.

EPA is not proposing to extend the State/Federal exemption to Tribes because EPA believes that the financial resources that would be available to a specific Tribe in the event closure, post-closure, or liability obligations were triggered should be evaluated. EPA believes that Tribal members will not enjoy an equivalent degree of protection from a tribally operated program unless there are assurances provided that there will be adequate resources to address these obligations. Because at this time many Tribes may not have the tax base or other means of raising revenue as do the States and the Federal government, EPA believes that, as a general matter, it would not be prudent to extend to Tribally owned or operated facilities the financial assurance exemption. The financial assurance requirements ensure that certain protections will be available to persons who might be negatively affected by a facility. EPA believes that financial compensation should be available to members of Indian Tribes (as they are for citizens of States) for third party injuries or for clean-ups if needed. The costs associated with closure and post-closure care activities, not to mention liability compensation to injured parties, could greatly burden Tribal administrations and, if unavailable, could compromise Tribal members' health and environment.

EPA is, however, soliciting comment on the possibility of developing a special financial test for tribally owned/operated facilities subject to RCRA Subtitle C, identical or similar to that developed for MSWLFs Local Government (''LOGO'') Test under § 258.74(f). The ''LOGO'' consists of a (1) financial component, (2) a public notice component, and (3) a record keeping and reporting component. A local government must satisfy each of the three components to pass the test and must pass the test on an annual basis.

EPA is also interested in receiving comments on other options that would provide the same level of protection to tribal citizens currently afforded by the financial requirements of § 264.140(c).

6. EPA's Retained Authority

Under this proposal, EPA would retain responsibility for implementing the RCRA and HSWA program authorities not included in a Tribe's authorized partial program. For example, if a Tribe received authorization for only a generator, transporter, and non-HSWA storage facility program, EPA would retain responsibility for regulating any incinerators, landfills, or other treatment or disposal facilities, and for implementing the HSWA corrective action requirements at all TSD facilities. This situation contrasts significantly from that which occurs in States, where partial program authorizations are not available. In authorized States, for example, the States regulate all types of treatment, storage, or disposal facilities (TSDFs). In these States, EPA implements only the HSWA program, *and only until* the States receive authorization for the HSWA authorities. EPA emphasizes that this proposal would not diminish the scope of the overall RCRA Subtitle C program applicable in Indian Country. A Tribe's approved partial program components, considered together with the program components retained by EPA, would define a complete RCRA hazardous waste program with the authority and flexibility to respond to the full gamut of facilities, releases, or other circumstances.

7. Capability Considerations

In administering the Subtitle C authorization program under RCRA section 3006, EPA realizes that a State or Tribal hazardous waste management program cannot be judged solely by whether it has equivalent legal authorities and whether it can provide acceptable forms of documentation. Indeed, EPA's overarching objective in authorization is to approve quality programs that are protective of health and the environment. Therefore, EPA looks beyond the elements of a State's authorities (i.e., its legal codes, policies, forms) and evaluates the capability of the State agencies to implement and manage their substantive Subtitle C program responsibilities.

Under current policies and procedures, EPA conducts a capability assessment both when a State seeks its initial or ''base program'' authorization, and subsequently when the State adopts program revisions which the EPA Region determines may have major impacts on the State's hazardous waste program. The adoption of rules bringing a significant class of new generators or permitted facilities into the State's program, or the adoption of the HSWA corrective action program, are examples of revisions that would likely trigger a new capability assessment.

Capability is a fluid concept that does not typically lend itself to precise measurement. While capability can fluctuate in the short-term due to a response to budget cuts or loss of key staff, EPA's goal in conducting capability assessments is to focus on the overall, long-term performance of a State's program, and the expected future performance. The emphasis is placed on a program's long-term (typically 3 years or more) effectiveness, its ability to meet its commitments over the long term, indicators of constant improvement over time, as well as consistency in performance. Critical program areas that are assessed include enforcement, permitting, corrective action, and program management. In each area, current guidance suggests factors that are indicative of a capable program, and factors that may be indicative of a capability problem. For example, in the enforcement area, the assessment would examine a State's enforcement strategies, its record for completing quality inspections, its violation classification plan and record, its record of taking timely enforcement responses that are appropriate to the severity of violations, and its proven ability to meet its grant commitments in the enforcement area. In the management area, EPA examines whether sufficient resources are committed to the hazardous waste program, whether there is a proper mix of staff and skills to carry out the program, whether the State provides appropriate training, and whether the State maintains the necessary information management systems to oversee the program. Additional criteria are suggested for the permitting and corrective action areas. See *RCRA State Authorization Capability Assessment Guidance*, revision dated October, 1991.

EPA is proposing to apply the same capability assessment criteria to Tribal programs that it currently applies to States. However, capability will be evaluated only with respect to the program components for which an Indian Tribe is seeking authorization. As is currently the practice with States, the assessment should be conducted at the time of a Tribe's initial authorization application, as well as at subsequent times when the Tribe is adopting program revisions that may have a significant impact on its authorized program.

Because of the availability in this proposal of partial program authorization, capability considerations may have quite different effects for Indian Tribes as they do for States. First, capability may fundamentally affect the scope of the Subtitle C program for which a Tribe seeks authorization. Under this proposal, a Tribe need not develop capabilities to permit or oversee all types of RCRA facilities. In some instances, the Tribe may never need to

concern itself with certain types of facilities, while in other instances, the skills and capabilities may be more appropriately retained and implemented by EPA. In either case, the lack of a particular capability would not necessarily be viewed as an impediment to authorization; rather, it may only affect the scope of the program for which the Tribe would be eligible to obtain authorization. In practice, Tribes would be expected to limit their program applications to those areas where they can demonstrate the requisite capability. EPA would also have the discretion to authorize less than all the program components applied for by a Tribe, where capability issues specific to one or more components of an application are not resolved to EPA's satisfaction.

The relationship of capability to partial programs is a very significant aspect of this proposal. This approach to capability assessments is consistent with the EPA's Indian Policy mandate that EPA remove administrative impediments to Tribal primacy in administering environmental programs such as RCRA.

EPA believes, however, that there are limits on the extent to which it should tailor a program authorization to a Tribe's demonstrated capability. A hazardous waste program that is exceedingly narrow in scope may not be appropriate for authorization, despite the importance attached to authorization as a means of recognizing a Tribe's sovereignty. Therefore, EPA believes that the minimal program considerations discussed above in section IV.H.4 of this preamble are helpful in determining the minimal capabilities that must be present to warrant an authorization review. Likewise, in cases where the allocation of program burdens that would result from a partial authorization would leave EPA with disproportionate and substantial responsibilities, EPA may also withhold partial authorization. This follows from the fact that the investment by EPA of resources in overseeing an approved program of very narrow scope would only drain resources that might be better used by EPA to discharge its own implementation responsibilities.

EPA's evaluation of capability may also consider if applicable, the relationship between the existing or proposed Tribal agency that will implement the hazardous waste program and any potential regulated Tribal entities. It is not uncommon for a Tribe to be both regulator and regulated entity, which may result in a potential conflict of interest. Independence of the regulator and regulated entity best assures effective and fair administration of a hazardous waste program. Tribes will generally not be required to divest themselves of ownership of any regulated entities to address any potential conflict. Nor is the Agency intending to limit Tribal flexibility in creating structures that will ensure adequate separation of the regulator and regulated entity. Instead, this discussion is intended to alert Tribes at an early date about potential problems in obtaining program authorization.

8. Review Standards

While EPA is today proposing to allow Indian Tribes to obtain partial RCRA program authorization, the Agency is not proposing any alteration to the review standards that will be used to evaluate the merits of Tribes' applications. That is, unless otherwise noted, the Tribe's application must demonstrate that each component of the Tribe's partial program meets the statutory authorization criteria. Specifically, the Tribe must show that each program component is equivalent to the corresponding Federal program requirements. Each component must be consistent with the Federal program and with the RCRA Subtitle C programs applicable in other authorized states. In addition, the Tribe must show that the components are no less stringent than the corresponding Federal program requirements, except for those requirements (e.g. civil or criminal enforcement) to which the Tribe agrees in the MOA to transfer to EPA.

To the extent that an Indian Tribe's partial program would include permitting authority for treatment, storage, or disposal facilities (TSDFs), the Tribe's program would also be required to meet the statutory requirements for public participation in the issuance of RCRA permits. RCRA also requires, pursuant to section 3006(f), that the Tribes demonstrate that their program provides for the public availability of information regarding hazardous waste management facilities and sites, in substantially the same manner, and to the same degree, as EPA would provide information to the public under the Federal Freedom of Information Act, 5 U.S.C. 301, 552, 553, 40 CFR part 2.

9. Obligation to Adopt Program Revisions

The current authorization regulations at 40 CFR part 271 impose a continuing obligation on authorized states to update their authorized programs to reflect revisions made to the Federal regulatory program. Under 40 CFR 271.21, there are schedules imposed by which States must adopt counterparts to Federal program changes, and procedures for submitting these program revisions to EPA for authorization. In addition, § 271.21(a) requires that an authorized State notify EPA of any proposed modifications to its basic statutory or regulatory authority, as well as to its forms, procedures, or priorities. The obligation to keep EPA informed of proposed program changes applies both to changes proposed in response to Federal program revisions, and to proposed changes that are initiated solely as a matter of state law or policy.

EPA proposes that these same obligations would apply to Indian Tribes' authorized partial programs. Tribes would be required to notify EPA of any significant, proposed changes to their basic legal authorities, policies, forms, or priorities, and to modify their programs in response to Federal program revisions according to the schedules in § 271.21. However, the obligation to modify a partial program and seek EPA authorization of revisions would be more limited than in the case of other authorized States. An Indian Tribe's obligation would extend only to Federal revisions which directly affect the components of the Tribe's authorized program. For example, a partial program which regulates only RCRA generators and transporters would need to undergo a revision to address a change to the Hazardous Waste Uniform Manifest promulgated by EPA, since that change affects directly the waste management requirements for generators and transporters. However, the same partial program would not need to undergo a revision to address new Federal standards for incinerator emissions, since incinerators are beyond the scope of the approved partial program.

EPA recognizes that there is the potential for some confusion in identifying the extent to which approved partial programs must undergo revision to address Federal program changes. The Agency believes that Tribes and the EPA regions will need to confer closely on Federal program revisions, and reach an understanding on those that will trigger the need for a Tribal program modification. An agreement on the scope of the Tribe's responsibility to modify its approved program should be included in the annual workplan that would be negotiated by EPA and the Tribe in conjunction with the Tribe's receipt of RCRA 3011 grant funds to administer its authorized hazardous waste program. Of course, Federal program changes that are determined

not to affect the Tribe's partial program would remain EPA's responsibility to implement. Therefore, there would be no loss of overall program coverage, since the Tribe's partial program and the program retained by EPA should together constitute a full RCRA Subtitle C program.

EPA requests comment on the proposal to subject Indian Tribe's partial programs to the same review standards and schedules for program modifications that apply currently to States. The Agency is particularly interested in comments that suggest ways to reduce the potential for confusion in implementing the review of partial programs and in defining Tribes' responsibilities to update their partial programs.

V. Other Regulatory Requirements

A. Compliance with Executive Order

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA believes that today's proposed rule raises a novel policy issue, one which arises out of the President's priority to build relationships with Tribal governments.

EPA has concluded that this rule is ''significant'' and is therefore subject to OMB review pursuant to Executive Order 12866. In addition, EPA believes that today's proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act) (15 U.S.C. 8091 *et seq.* Pub. L. 96–534, September 19, 1980) requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of a proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small business entities, no such analysis is required.

EPA has determined that this proposal will not impact significantly a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

EPA's determination of no significant impact is based on the fact that this proposal affects only the determination of what government entity shall administer the RCRA program in Indian country. It does not affect the regulatory requirements to which hazardous waste management facilities, including any small business entities, are subject.

This proposed regulation, if promulgated, does not require the Indian Tribes to obtain authorization to operate a hazardous waste program. The decision whether to obtain authorization rests with each individual Indian Tribe. If a Tribe determines that obtaining authorization to operate a hazardous waste program will not be advantageous, including economically advantageous, to the Tribe, the Tribe may decide not to seek authorization. In addition, EPA believes that the number of Indian Tribes that will apply for authorization to operate a hazardous waste program under this proposed rule, if promulgated, will be small as compared with the total number of Indian Tribes potentially eligible for authorization.

Notwithstanding the voluntary nature of the authorization, the Agency also considers alternatives to a full program authorization. As an alternative to obtaining authorization to operate a full hazardous waste program, the Agency is proposing to allow a Tribe to apply for and receive authorization to operate a *partial* hazardous waste program. Allowing a Tribe the option to apply for and obtain authorization to operate a partial hazardous waste program will lessen the impact, if any, on the Tribe as a result of this proposed rule.

The proposed regulation will not have a significant adverse impact on a substantial number of small businesses or small organizations. Since RCRA already imposes requirements on all owners and operators of hazardous waste treatment, storage, and disposal facilities in Indian country, EPA believes that the proposed rule, if promulgated, will not add requirements beyond those already imposed under the Federal RCRA requirements. Although it is conceivable that an Indian Tribe could impose greater requirements upon an owner or operator of a hazardous waste facility, such situations are likely to be rare. Moreover, any additional impacts, including economic impacts, resulting from implementation of this proposed rule, if promulgated, is expected to be negligible, since Tribal regulation of these activities is limited to areas within Tribal jurisdiction.

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. *1778.01*) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740.

In order to extend to Indian Tribes the opportunity to become authorized to administer hazardous waste programs in lieu of EPA, EPA needs to make a determination that the proposed program fully meets federal criteria. In general, to obtain authorization, Tribes must meet the same criteria as the States as outlined in 40 CFR part 271, including a demonstration of capability, which is assessed in the same manner as those from States.

To make a final determination, EPA must collect information in the form of an application from Tribes. Pursuit of authorization is entirely voluntary, and the universe of respondents involved in this information collection will be limited to those Tribes seeking approval of their hazardous waste programs. However, interested Tribes must submit all of the required information to EPA in order for EPA to make a final determination. The information which Tribes would submit is public information; therefore, no problems of confidentiality or sensitive questions arise.

Each respondent would only have to respond once, and the EPA is estimating the number of responses at six per year for the three year period covered by this ICR, for a total of eighteen. The

projected annual cost and hour burden per respondent for the submittal of an application is approximately 358 hours, at a cost of $7,990. The projected totals for all eighteen estimated respondents over three years are approximately 6,444 hours and $143,832. In addition, cost estimates for the annual respondent reporting and recordkeeping per respondent range from $219 (low end) to $6,369 (high end). The projected respondent reporting and recordkeeping total range, also with six respondents a year for three years, is from $3,942 to $114,642.

These costs represent start-up or capital costs. There are no operation and maintenance reporting or purchase of services costs associated with the proposed RCRA Subtitle C Indian Authorization Rule. Given these parameters, the bottom line respondent burden and cost estimate is for 6,444 hours and ranges from $147,774 to $258,474 over three years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR ch. 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 14, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by July 15, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Act generally excludes from the definition of a ''Federal intergovernmental mandate'' (in sections 202, 203, and 205) duties that arise from participation in a voluntary Federal program. Tribal requests for authorization of their RCRA Subtitle C programs are voluntary and impose no Federal intergovernmental mandate within the meaning of the Act. Rather, by having its hazardous waste program authorized, a Tribe gains the authority to implement its hazardous waste program in lieu of the federal hazardous waste program within its jurisdiction. Thus, because today's rule does not constitute a ''Federal intergovernmental mandate'' under the Act, EPA has not conducted the analyses required by section 202 and 205 of the Act.

As to section 203 of the Act, the authorization of a Tribal program will not significantly or uniquely affect small governments other than the applicants. As to the applicants, Tribes have received notice of the requirements of an authorized program (through this rulemaking process), and will have meaningful and timely input into the development of their individual program requirements throughout the authorization process. The Tribes therefore are fully informed as to compliance with the authorized program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

List of Subjects

40 CFR Part 35

Environmental protection, Hazardous waste.

40 Parts 270 and 271

Environmental protection, Administrative practice and procedure, Hazardous waste, Indians-lands, Reporting and recordkeeping requirements.

Dated: May 20, 1996.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR parts 35, 270 and 271 be amended as follows:

PART 35—STATE, TRIBAL AND LOCAL ASSISTANCE

Subpart A—Financial Assistance for Containing Environmental Programs

1. The authority citation for part 35, subpart A, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9, and 300–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

2. Section 35.105 is amended by adding a sentence to the end of the definition of ''Eligible Indian Tribe,'' and by revising the definition of ''Indian Tribe'' to read as follows:

§ 35.105 Definitions.

* * * * *

Eligible Indian Tribe means, * * * For purposes of the Resource Conservation and Recovery Act Subtitle C, any federally recognized Indian Tribe

that meets the requirements set forth at § 35.515.

* * * * *

Indian Tribe means, for purposes of the Public Water System Supervision, Underground Water Source Protection, or Hazardous Waste Management grants, any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and having a governmental body carrying out substantial governmental duties or powers over a defined area. For purposes of grants under the Clean Water Act, the term ''Indian Tribe'' means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and having a governmental body exercising substantial governmental duties and powers over a Federal Indian reservation.

* * * * *

§ 35.500 [Amended]

3. In § 35.500 by removing the words ''(as defined in section 1004 of the Act).''

4. Section 35.515 is added under the heading ''Hazardous Waste Management'' (Section 3011) to read as follows:

§ 35.515 Eligible Indian Tribes.

The Regional Administrator may award Resource Conservation and Recovery Act section 3011(a) grants to Indian Tribes that meet the definition of ''Indian Tribe'' set forth in 40 CFR 35.105 and that have submitted the information described at 40 CFR 271.27(a)(3)(ii).

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

5. In § 270.2, by revising the definition of ''State,'' and by adding in alphabetical order definitions for ''Indian Tribes'' and ''Indian country'' to read as follows:

§ 270.2 Definitions.

* * * * *

Indian country means: (1) All lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

* * * * *

Indian Tribe means any Indian Tribe, band, nation, or community that is recognized by the Secretary of the Interior and that has a governmental body exercising substantial governmental duties and powers.

* * * * *

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands. For purposes of Sections 3006 and 3011 of RCRA, the term State also extends to Indian Tribes.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE AND TRIBAL HAZARDOUS WASTE PROGRAMS

The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

6. In § 271.1 by revising paragraph (h) and adding paragraph (k) to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(h) Partial State programs are not allowed for programs operating under RCRA final authorization, except as provided in § 271.27 for partial programs operated by Indian Tribes. However, in many cases States will lack authority to regulate activities in Indian country. This lack of authority does not impair a State's ability to obtain full program authorization in accordance with this subpart, i.e., inability of a State to regulate activities in Indian country does not constitute a partial State program. EPA will administer the program in Indian country if neither the State or Indian Tribe has program authority.

* * * * *

(k) The substantive provisions and procedures specified in this subpart for State program submissions, and for EPA's approving, revising, and withdrawing authorization of State programs apply to programs operated by Indian Tribes. Additional substantive and procedural requirements that are applicable only to programs operated by Indian Tribes are set forth at § 271.27 of this subpart.

7. By adding § 271.27 to read as follows:

§ 271.27 Requirements for Indian Tribe Programs.

(a) The substantive requirements and procedures established in Subpart A for State hazardous waste programs shall apply to Indian Tribe programs, except that:

(1) The disallowance of partial RCRA programs contained in § 271.1(h) shall not apply to partial Indian Tribe programs that meet the criteria in paragraph (b) of this section.

(2) The Tribal Chairman or equivalent official shall be substituted for the Governor of the State in requesting program authorization under § 271.5(a)(1).

(3) (i) The Program Description discussed in § 271.6 shall also include a map, legal description, or other information sufficient to identify the geographical extent of the Indian country over which the Indian Tribe seeks jurisdiction. This information shall also identify the location of any generator, transporter, and treatment, storage, or disposal facility subject to RCRA Subtitle C requirements.

(ii) The Program Description discussed in § 271.6 shall also include a demonstration that the Tribe; is recognized by the Secretary of the Interior; has an existing government exercising substantial governmental duties and powers; has adequate civil regulatory jurisdiction over the subject matter and entities to be regulated; and is reasonably expected to be capable of administering the federal environmental program for which it is seeking authorization. If the Administrator has previously determined that a Tribe has met these prerequisites for another EPA program authorization, then that Tribe need provide only that information unique to the RCRA hazardous waste program.

(4) (i) The Tribal Legal Certification (the equivalent to the Attorney General's Statement described in § 271.7) shall be submitted and signed by the Tribal attorney or by an equivalent official retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. The Certification shall include an assertion that the attorney has the authority to represent the Tribe with respect to the Tribe's authorization application.

(ii) Where an Indian Tribe asserts its jurisdiction over activities on non-member fee lands within the boundaries of a reservation, the Tribal Legal

Certification shall clearly identify the activities and areas affected by that claim. The Tribal Legal Certification shall also include an analysis of the Tribe's authority to implement the permitting and enforcement provisions of subpart C on those non-member fee lands.

(5) The Memorandum of Agreement described in § 271.8 shall be executed by the Indian Tribe's counterpart to the State Director; e.g. the Director of the Tribal Environmental Office, Program or Agency. Indian Tribes are not required to meet the requirements of § 271.16(a)(3)(ii) for the purposes of criminal authority over non-Indians or for the purposes of imposing criminal fines over $5,000.00. The Memorandum of Agreement required in 271.8 shall include a provision for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Tribe does not have authority (i.e., those addressing criminal violations by non-Indian or violations meriting penalties over $5,000.00). The Agreement shall also identify any enforcement agreements that may exist between the Tribe and any State.

(b) Indian Tribes may apply for and receive authorization from EPA to operate a partial RCRA program. A partial program may be approved when the Indian Tribe's application demonstrates to EPA's satisfaction that the following factors are present:

(1) The composition and size of the Indian Tribe's regulated community warrant the development and operation of a partial program.

(2) The components for which the Indian Tribe seeks authorization are severable from the remainder of the program retained by EPA, so that the respective roles and responsibilities of the Indian Tribe and EPA will be reasonably ascertainable and implementable.

(3) The program components applicable to the Indian Tribes' regulated community that would be retained by EPA, reasonably require a special expertise that is not readily available to the Indian Tribe.

(4) The program components for which the Indian Tribe seeks authorization define a bona-fide and significant hazardous waste management program for which the Indian Tribe possesses the capability to implement and manage.

(c) A partial RCRA program may not be approved under paragraph (b) of this section, unless it includes, at a minimum, counterparts to the following Federal program requirements:

(1) Appropriate definitions in 40 CFR part 260.

(2) Waste identification requirements of 40 CFR part 261.

(3) Generator requirements set forth in 40 CFR parts 262 and 268.

(4) Transporter requirements contained in 40 CFR part 263.

(5) Facility permitting standards in 40 CFR part 264, appropriate for the types of hazardous waste management facilities within the Indian Tribe's jurisdiction. However, specific facility permitting standards may be waived if EPA has retained permit issuance authority for the treatment, storage, and disposal facilities within the Tribe's jurisdiction.

(d) When a partial RCRA program is approved under this section, EPA retains direct implementation and enforcement responsibilities for those program components which are not included in the Indian Tribe's approved program.

(e) The provisions of § 271.21 on program revisions apply to Indian Tribe programs, except that an Indian Tribe's obligation to modify its authorized program to address subsequent Federal program changes extends only to those Federal program changes that directly affect the components of the Indian Tribe's authorized program. Subsequent Federal program changes promulgated under non-HSWA authority shall not take effect in an authorized Indian Tribe until the Indian Tribe has adopted the change under its laws and EPA has approved the program revision. However, amendments to HSWA provisions for which a Tribe is not authorized shall take effect under Federal authority immediately upon the effective date of the rule.

[FR Doc. 96–15186 Filed 6–13–96; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday
June 14, 1996

Part X

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD69

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 1996–97 hunting season. This supplement to the proposed rule describes the Service's proposed regulatory alternatives for the 1996–97 duck hunting season and announces the Service's intent to consider establishing a special youth waterfowl hunting day.

DATES: The Service Migratory Bird Regulations Committee will consider and develop proposed regulations for early-season migratory bird hunting on June 25, 26, and 27, and for late-season migratory bird hunting on July 31, August 1, and 2. The Service will hold public hearings on proposed early- and late-season frameworks at 9:00 a.m. on June 27 and August 2, 1996, respectively. The Service Migratory Bird Regulations Committee will discuss the proposed regulatory alternatives for the 1996–97 duck hunting season and the special youth waterfowl hunting day at the June 25, 26, and 27 meetings.

The comment period on the proposed regulatory alternatives for the 1996–97 duck hunting season ends on July 5, 1996. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons, including the consideration of a proposed youth hunting day, ends on July 25, 1996. The comment period for late-season frameworks ends on September 3, 1996. The Service will publish the final regulatory alternatives for the 1996–97 duck hunting season in a July supplemental containing the Service's proposed early-season frameworks.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The Service will hold public hearings in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Parties should submit written comments on the proposals and/or a notice of intent to participate in either hearing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634, ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1996

On March 22, 1996, the Service published in the Federal Register (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 13 supplement also provided detailed information on the 1996–97 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

This document is the third in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. The Service will propose early-season frameworks in late June and late-season frameworks in early August. The Service will publish final regulatory alternatives for the regular duck hunting season on or about July 15, 1996. The Service will publish final regulatory frameworks for early seasons on or about August 14, 1996, and those for late seasons on or about September 23, 1996.

This supplement describes the Service's proposed regulatory alternatives for the 1996–97 duck hunting season and the Service's consideration of a proposed youth waterfowl hunting day. The Service published specific Flyway Council recommendations regarding the formation of these regulatory alternatives in the June 13 Federal Register. The Service will consider all comments in the regulations-development process and will publish responses to proposals, written comments, and public-hearing testimony when developing final regulatory alternatives and final frameworks.

New proposals and modifications to previously described proposals are discussed below. The headings correspond to the numbered items in the March 22, 1996, Federal Register.

1. Ducks

A. Harvest Strategy Considerations

In the March 22, 1996, Federal Register, the Service described the underlying principles of Adaptive Harvest Management (AHM) and the progress made on its implementation in 1995. In addition, the Service reported recommendations made by an AHM technical working group for the 1996–97 regulatory process. Comprised of representatives from the Service and the four Flyway Councils, the working group was established in 1992 to develop technical recommendations for improving duck harvest regulations.

One of the recommendations of the AHM working group for the 1996–97 regulatory process was to continue the regulatory alternatives used in 1995, with a minor exception in the Pacific Flyway. In 1995, the Service limited the choice of regulatory alternatives for the 1995–96 regular duck hunting season to three sets of frameworks similar to those in effect during the 1979–93 hunting seasons. These three sets of frameworks, or regulatory alternatives, were described in a relative sense as restrictive, moderate, and liberal. In general, specific guidelines for selection of one of the regulatory alternatives are based on the size of the mallard breeding population and habitat conditions.

In the June 13, 1996, Federal Register, the Service reported that all four Flyways continued to express support for the AHM approach to setting duck hunting regulations. The Mississippi, Central, and Pacific Flyway Councils recommended some specific modifications to the regulatory alternatives recommended by the working group and these recommendations were identified in the June 13, 1996, document.

For the 1996–97 regular duck hunting season, the Service proposes the three regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. The Service will publish final regulatory alternatives in July and propose a specific regulatory alternative when survey data on waterfowl population and habitat status are available.

G. Special Seasons/Species Management

The long-term conservation of North America's migratory bird resources depends on the future paths and actions of today's youth. To assist in the formation and development of a conservation ethic in future generations, the Service is considering proposing the establishment of a ''Youth Waterfowl Hunting Day'' and is seeking public comment on such an action. The special day would provide an opportunity for young hunters (16 or under), accompanied by an adult (18 or older), to experience a safe, quality waterfowling experience. The hunt day would have to be on a weekend or holiday when youth hunters would have the maximum opportunity to participate. Both the youth hunters and accompanying adults (who could not duck hunt) would have to be licensed according to State law. The intent of establishing this special day would be to introduce youth to the concepts of ethical utilization and stewardship of waterfowl and other natural resources, encourage youngsters and adults to experience the outdoors together, and contribute toward the long-term conservation of the migratory bird resource. Because the special 1-day hunt would be limited to youths, the Service believes that waterfowl populations could support the additional harvest and that the hunt would produce long-term benefits to the resource.

To facilitate public comment, the Service is considering proposing the following guidelines:

1. States may select 1 day, designated as ''Youth Waterfowl Hunting Day'', in addition to their regular duck seasons.
2. The day must be held outside of any regular duck season on either a weekend or holiday when youth hunters would have the maximum opportunity to participate.
3. The day could be held up to 10 days before or after any regular duck season or within any split of a regular duck season.
4. The daily bag limit may be no more than 4 ducks. Flyway species restrictions would remain in effect.
5. Youth hunters must be 16 years of age or younger.
6. An adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt.
7. Both the youth hunter and the accompanying adult must be fully licensed to hunt according to State law.
8. The special youth hunt day will be considered a trial for its initial season and will be evaluated by the Service.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests and wants to obtain comments from all interested areas of the public, as well as other government agencies. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

However, special circumstances involved in the establishment of these regulations limit the amount of time the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes allowing comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process, whenever practical. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The Service will consider all comments received and will try to acknowledge received comments, but may not provide an individual response to each commenter.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, Federal Register (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service will design hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations will be included in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final frameworks will reflect any such modifications. The Service's biological opinions resulting from its consultation under Section 7 are public documents available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the Federal Register dated March 22, 1996, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and the Executive Order. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1995 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $258 and $586 million at small businesses in 1995. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Service examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Authorship

The primary author of this proposed rule is Ron W. Kokel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1996–97 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: June 7, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310–55–F

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1996-97 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Begining Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28	SEP 28
Closing Date	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19	JAN 19
Season Length	30	40	50	30	40	50	39	51	60	59	79	93
Daily Bag/ Possession	3 6	4 8	5 10	3 6	4 8	5 10	3 6	4 8	5 10	4 8	5 10	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/1	5/1	2/1	3/1	4/1	3/1	4/1	5/1	3/1	4/1	7/1
Pintail	1	1	1	1	1	1	1	1	1	1	2	2
Black Duck	1	1	1	1	1	1	--	--	--	--	--	--
H. Merganser	1	1	1	1	1	1	1	1	1	--	--	--
Canvasback	<---------- --PENDING REVIEW OF POPULATION, HABITAT, AND HARVEST DATA---------->											
Redhead	2	2	2	1	1	2	1	1	2	--	--	--
Wood Duck	2	2	2	2	2	2	2	2	2	--	--	--
Whistling Ducks	1	1	1	--	--	--	--	--	--	--	--	--
Harlequin	Closed	Closed	Closed	--	--	--	--	--	--	--	--	--
Mottled Duck	1	1	1	3	3	3	1	1	1	--	--	--

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Under the restrictive package, the number of additional days would be 12, 16 for the moderate package and 23 for the liberal package. Under all options, additional days must be after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway with the exception of season length. Under all options, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the restrictive option and 8-10 for the moderate and liberal packages. There would be no restrictions on pintails and canvasback limits will follow those for the remainder of the Pacific Flyway. Under all options, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

[FR Doc. 96–15172 Filed 6–13–96; 8:45 am]
BILLING CODE 4310–55–C

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