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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB03

Common Crop Insurance Regulations; Pear Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published Thursday, November 7, 1996 (61 FR 57578–57583). The regulation pertains to the insurance of Pear.

EFFECTIVE DATE: January 14, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and to combine the Pear Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need for Correction

As published, the final regulations contained an error which may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication on November 7, 1996, of the final regulation at 61 FR 57578–57583 is corrected as follows:

PART 457—[CORRECTED]

§457.111 [Corrected]

On page 57583, in the second column, in §457.111, section 13 paragraph (b)(i)(ii) should be 1 and 2.

Signed in Washington, DC, on January 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1017 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–145–AD; Amendment 39–9881; AD 97–01–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that requires replacing the aileron (lateral) control transfer mechanism with a new modified mechanism, or reworking the existing mechanism. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent unexpected, significant control wheel forces and reduced travel of a control wheel due to mechanical interference within the lateral control system transfer mechanism during a jam override condition.

DATES: Effective February 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, SeattleAircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2798; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100 and –200 series airplanes was published in the Federal Register on August 28, 1996 (61 FR 44230). That action proposed to require replacing the aileron (lateral) control transfer mechanism with a new modified mechanism, or reworking the existing mechanism.

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

Support for the Proposal

Two commenters support the proposed rule.

Request for Risk Benefit Analysis

One commenter believes that the FAA should perform a risk benefit analysis before proceeding with the proposed AD. This commenter does not disagree with the requirements of the proposal; however, the commenter suggests that the proposed compliance time of 18 months could overburden competent machine facilities and lead to undesirable workmanship, which would subject the airlines and the flying public to unnecessary risk.

The FAA does not concur with the commenter's request. The commenter did not submit analyses or data to substantiate its claim that competent machine facilities would be overburdened by the requirements of this AD. The FAA has considered the costs of complying with this AD, and does not consider those costs to be

excessive to correct the unsafe condition.

Request To Revise Statement of Findings of Critical Design Review Team

One commenter requests the second paragraph of the Discussion section that appeared in the preamble to the proposed rule be revised to accurately reflect the findings of the Critical Design Review (CDR) team. The commenter asks that the FAA delete the one sentence in that paragraph, which read: ''The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as correction of certain design deficiencies.'' The commenter suggests that the following sentences should be added: ''The team did not find any design issues that could lead to a definite cause of the accidents that gave rise to this effort. The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as incorporation of certain design improvements in order to enhance its already acceptable level of safety.''

The FAA does not find that a revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of a proposed rule does not reappear in a final rule. The FAA acknowledges that the CDR team did not find any design issue that could lead to a definite cause of the accidents that gave rise to this effort. However, as a result of having conducted the CDR of the flight control systems on Boeing Model 737 series airplanes, the team indicated that there are a number of recommendations that should be addressed by the FAA as may be appropriate to any particular (or all) model(s) of the Model 737.

Request To Revise Service Bulletin Citation

One commenter requests that the FAA change the service bulletin citation from ''Boeing Service Bulletin 27–1033'' to ''Boeing Service Bulletin 737–27–1033.'' The commenter considers this to be clearer.

The FAA acknowledges that some clarification is necessary. The title that actually appears on the service bulletin document itself is ''Boeing Service Bulletin 27–1033;'' therefore, the FAA disagrees with the commenter's specific suggestion. However, to avoid any confusion on the part of operators, the FAA has revised the final rule to refer to the service bulletin as ''Boeing 737 Service Bulletin 27–1033.''

Conclusion

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

Cost Impact

There are approximately 236 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 157 airplanes of U.S. registry will be affected by this AD.

For operators that elect to accomplish the replacement, it will take approximately 20 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $15,343 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $16,543 per airplane.

For operators that elect to accomplish the rework by using new components, it will take approximately 40 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $6,500. Based on these figures, the cost impact of the rework (by using new components) on U.S. operators is estimated to be $8,900 per airplane.

For operators that elect to accomplish the rework by machine shop rework of the components, it will take approximately 70 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,450. Based on these figures, the cost impact of the rework (by machine shop rework of the components) on U.S. operators is estimated to be $5,650 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–01–10 Boeing: Amendment 39–9881. Docket 96–NM–145–AD.

Applicability: Model 737–100 and –200 series airplanes; as listed in Boeing 737 Service Bulletin 27–1033, dated February 13, 1970; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent an unexpected, significant control upset due to mechanical interference

within the lateral control system transfer mechanism, which could result in reduced travel of a control wheel and above normal control wheel forces during a jam override, accomplish the following:

(a) Within 18 months after the effective date of this AD: Accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing 737 Service Bulletin 27–1033, dated February 13, 1970.

(1) Replace the aileron control transfer mechanism, part number (P/N)

65–54200–4 or –5, with a new modified mechanism in accordance with Procedure II of the Accomplishment Instructions of the service bulletin.

(b) As of the effective date of this AD, no person shall install an aileron control transfer mechanism having P/N 65–54200–4 or –5 unless it has been reworked in accordance with the requirements of paragraph (a)(2) of this AD.

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

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

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

(e) The replacement and rework shall be done in accordance with Boeing 737 Service Bulletin 27–1033, dated February 13, 1970. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

1(f) This amendment becomes effective on February 19, 1997.

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–537 Filed 1–14–97; 8:45 am]

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14 CFR Part 39

[Docket No. 96–NM–166–AD; Amendment 39–9880; AD 97–01–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A321 series airplanes. This action requires repetitive inspections to detect cracking and delamination of the doors that contain the left and right emergency evacuation slides located at certain emergency exits; and repair or replacement, if necessary. This action also requires the accomplishment of a modification that serves as terminating action for the repetitive inspections. This amendment is prompted by a report indicating that a slide aboard an airplane deployed during flight and consequently separated from the airplane. The actions specified in this AD are intended to prevent the loss of these slides during flight, which could make certain exits unusable in the event of an emergency, and also damage the empennage.

DATES: Effective January 30, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 1997.

Comments for inclusion in the Rules Docket must be received on or before March 17, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.96–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A321 series airplanes. The DGAC advises that one operator of Model A321 series airplanes reported the loss of an emergency slide during flight. The airplane was climbing through flight level (FL) 200 when a loud noise was heard; it was caused by an escape slide, located at the right Number 2 emergency exit, unfolding and floating in the airstream. After approximately five minutes, the slide was torn off the airplane and lost on ground.

Visual inspection of the slide inflation system's bottle valve gauge revealed that the bottle had not discharged, thereby confirming that the slide inflation system had not been activated inadvertently. Further investigation revealed that the slide enclosure door (referred to commonly as the ''blow out door'') had been forced open, evidenced by the retained floating pin receptacles of the pneumatic ball locks (which are installed as a back-up device in the event that the pneumatic release fails).

A subsequent inspection of other Model A321 series airplanes in the affected operator's fleet revealed:

1. a blow out door that was damaged on the inside;

2. snap buttons on slide packs that were open; and

3. lacing cord on slide pack covers that was loosened.

These findings established that the loss of the slide during flight was the result of either excessive internal pressure on the blow out door, or excessive pressure to the outside of this door due to an incorrectly adjusted boarding ramp or gangway. (The exit had been used to board passengers.)

Deployment and separation of an emergency evacuation slides at emergency exits Number 2 or 3 during flight could make these exits unusable in the event of an emergency, and also could cause damage to the empennage.

Explanation of Relevant Service Information

Airbus has issued All Operator Telex (AOT) 25–11, dated January 4, 1996, and Revision 01, dated January 8, 1996. These documents describe procedures for conducting repetitive detailed visual and coin tap inspections to detect cracking and delamination of the left and right blow out doors at emergency exits Number 2 and 3.They also describe procedures for necessary repairs if

either of these discrepancies are detected during an inspection. If cracking or delamination exceeds certain limits, the AOT's recommend replacement of the affected slide container with a serviceable container prior to further flight.

The DGAC classified the AOT's as mandatory and issued French airworthiness directive (C/N) 96–054–078(B), dated March 13, 1996, in order to assure the continued airworthiness of these airplanes in France.

Additionally, Airbus has issued Service Bulletin A320–25–1167, dated June 24, 1996, which describes a modification of the evacuation system at doors 2 and 3. (This service bulletin references Air Cruisers Service Bulletin S.B. 005–25–04, dated May 24, 1996, for additional procedural information.) Among other things, the modification entails:

1. a revised packing procedure;
2. relocating snaps on the lacing cover;
3. installing longer lanyard straps; and
4. replacing the frangible washers in the blow-out door with solid ring retainers.

This modification will preclude the types of problems associated with the slide system that were previously experienced. The DGAC has classified this service bulletin as ''recommended.''

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the FederalAviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of an evacuation slide during flight. This AD requires repetitive visual and coin tap inspections to detect cracking and delamination of the blow out doors at emergency exits Number 2 and 3; and repair or replacement, as necessary. These actions are required to be accomplished in accordance with either of the Airbus AOT's described previously.

This AD also requires the accomplishment of the modification of the escape slide system in accordance with Airbus Service Bulletin A320–25–1167. This modification constitutes terminating action for the required repetitive inspections.

Differences Between the FAA's Action and the DGAC's Action

Operators should note that this AD requires the modification of the escape slide system as terminating action for the inspections; whereas, the parallel French CN 96–054–078(B) does not require it. The adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, the FAA has decided to require, whenever practicable, modifications necessary to remove the source of the problem addressed. The modification requirement of this AD is in consonance with that decision.

Cost Impact

None of the Airbus Model A321 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required inspections, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of the inspection requirements of this AD would be $120 per airplane per inspection.

Accomplishment of the required terminating modification would take approximately 5 work hours, at an average labor charge of $60 per work hour. Required parts cost would be provided at no charge to operators by the manufacturer of the slide system (Air Cruisers Company). Based on these figures, the cost impact of the modification requirements of this AD would be $300 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**.

All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–166–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–01–09 Airbus: Amendment 39–9880. Docket 96–NM–166–AD.

Applicability: Model A321 series airplanes; as listed in Airbus Industrie All Operator Telex (AOT) 25–11, Revision 01, dated January 8, 1996, and Airbus Service Bulletin A320–25–1167, dated June 24, 1996; on which Airbus Modification 25369 has not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the left and right emergency evacuation slides at emergency exits Number 2 and 3 during flight, which could make these exits unusable in the event of an emergency and also could cause damage to the empennage, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, conduct a detailed visual inspection to detect cracking, and a coin tap inspection to detect delamination, of the left and right enclosure doors of the containers in which the emergency evacuation slides are packed (''the blow out doors'') at emergency exits Number 2 and 3, in accordance with Airbus Industrie All Operator Telex (AOT) 25–11, dated January 4, 1996; or Revision 01, dated January 8, 1996.

(1) If no crack or delamination is detected, or if any crack or delamination is detected and it does not exceed 3 inches (75 mm) in length: Repeat the inspections thereafter at intervals not to exceed 18 months.

(2) If any crack or delamination is detected, and it is greater than 3 inches (75 mm) in length, but not greater than 10 inches (250 mm) in length: Prior to further flight, repair the door in accordance with the AOT.

(3) If any crack or delamination is detected, and it is greater than 10 inches (250 mm) in length: Prior to further flight, replace the door in accordance with the AOT.

(b) Within 36 months after the effective date of this AD, modify the escape slide system in accordance with Airbus Service Bulletin A320–25–1167, dated June 24, 1996. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Airbus Service Bulletin A320–25–1167 references Air Cruisers Service Bulletin S.B. 005–25–04, dated May 24, 1996, for additional procedural information.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The inspections and repair shall be done in accordance with Airbus Industrie All Operator Telex 25–11, dated January 4, 1996; or Airbus Industrie All Operator Telex 25–11, Revision 01, dated January 8, 1996. The modification shall be done in accordance with Airbus Service Bulletin A320–25–1167, dated June 24, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 30, 1997.

Issued in Renton, Washington, on January 3, 1997.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–538 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 178

[Docket No. 91F–0356]

Indirect Food Additives: Adhesives and Components of Coatings; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite as an antioxidant in adhesives and in the preparation of polymers intended for contact with food. This action responds to a petition filed by Ethyl Corp.

DATES: Effective January 15, 1997; written objections and requests for a hearing by February 14, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3084.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 30, 1991 (56 FR 49484), FDA announced that a food additive petition (FAP 1B4281) had been filed on behalf

of Ethyl Corp., c/o 1150 17th St. NW., Washington, DC 20036. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) and § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite as an antioxidant in adhesives and in the preparation of polymers intended for contact with food.

Subsequent to the filing of the petition, Ethyl Corp. was reorganized to form Albemarle Corp., an independent corporation. As a result of this reorganization, FDA was informed that Albemarle Corp. (c/o Lowell Harmison, Gallery House, 2022 R St. NW., Washington, DC 20009) is now the petitioner of record for this food additive petition.

In FDA's evaluation of the safety of 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite (CAS Reg. No. 118337–09–0), the agency reviewed the safety of the additive, including impurities that might be present in the additive. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of methylene chloride, which is a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as methylene chloride, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called ''general safety clause'' of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned uses of the additive, 2,2′-ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite will result in exposure to the additive of no greater than 0.70 parts per million in the daily diet (3 kilograms) which corresponds to an estimated daily intake of no greater than 2.1 milligrams per person per day (mg/person/day) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological studies. Based on its review of these studies and the low level of exposure to the additive, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by the carcinogenic chemical, methylene chloride, that may be present as an impurity in the additive. This risk evaluation of methylene chloride has two aspects: (1) Assessment of the worst-case exposure to this impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the condition of worst-case exposure to humans.

A. Methylene Chloride

FDA has estimated the hypothetical worst-case exposure to methylene chloride from the petitioned uses of the additive to be no greater than 0.9 microgram (μg)/person/day (Ref. 3). The agency used data from the National Toxicology Program report (Ref. 4) of an inhalation bioassay on methylene chloride to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the petitioned additive. The results of the bioassay demonstrated that methylene chloride was carcinogenic for mice under the conditions of the study. The test material induced benign and malignant neoplasms in both the liver and lung of both sexes.

The agency also evaluated data from a second study in mice of the same strain as used in the inhalation study. In this study, in which methylene chloride was administered in the drinking water of the mice (Ref. 5), there was no significant increase in the incidence of neoplasms at any site examined. However, assuming that methylene chloride would induce neoplasia at a dose just above the highest level tested in the drinking water study, a maximum potency can be estimated. This estimate is approximately the same as the potency calculated from the data of the inhalation study, providing confidence that using the inhalation study for upper-bound risk assessment is not likely to underestimate any potential risk due to ingested methylene chloride (Ref. 6).

Based on the estimated worst-case exposure of 0.9 μg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the uses of this additive is 6.6×10^{-9}, or 6.6 in 1 billion (Ref. 7). Because of numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to methylene chloride is likely to be substantially less than the worse-case exposure, and therefore even the upper-bound limit of lifetime human risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to methylene chloride would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of methylene chloride present as an impurity in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which methylene chloride may be expected to remain as an impurity, the agency would not expect this impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to methylene chloride, even under worst-case assumptions, is very low (less than 7 in 1 billion).

III. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as an antioxidant used in adhesives and in the preparation of polymers intended for contact with food is safe, and that the additive will achieve its intended technical effect.

Therefore, the agency concludes that the regulations in §§ 175.105 and 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

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

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 14, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. 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. Memorandum from R. M. Jenkins, Chemistry Review Branch, to D. Harrison, Indirect Additives Branch, dated July 23, 1992.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Hombuger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum from R. M. Jenkins, Chemistry Review Branch, to D. Harrison, Indirect Additives Branch, dated March 22, 1993.

4. ''Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) (CAS Reg. No. 75–09–2) in F344/N Rats and B6C3F1 Mice (Inhalation Studies),'' NTP Technical Report 306, National Institutes of Health, Publication No. 86–2562, 1986.

5. Memorandum from C. S. Lin, Food Additives Evaluation Branch, to R. Lorentzen, Executive Secretary, Cancer Assessment Committee, dated August 21, 1985.

6. Memorandum from the Quantitative Risk Assessment Committee to W. G. Hamm, Director, Office of Toxicology, dated November 15, 1985.

7. Memorandum from D. N. Harrison, Indirect Additives Branch, to S. H. Henry, Quantitative Risk Assessment Committee, dated November 8, 1993.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 175 and 178 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * *	* * *
2,2′-Ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite (CAS Reg. No. 118337–09–0).	For use as an antioxidant and/or stabilizer only.
* * * *	* * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

3. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

4. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

Substances	Limitations
* * *	* * * *
2,2′-Ethylidenebis(4,6-di-*tert*-butylphenyl)fluorophosphonite (CAS Reg. No. 118337–09–0).	For use only: 1. As provided in § 175.105 of this chapter. 2. In all polymers used in contact with food of types I, II, IV–B, VI–A, VI–B, VII–B, and VIII, under conditions of use B through H described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.25 percent by weight of polymers. 3. In polypropylene complying with § 177.1520(c) of this chapter, item 1.1, in contact with food of types III, IV–A, V, VII–A, and IX, under: (a) Conditions of use B through H described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.25 percent by weight of the polymer; or (b) Condition of use A, limited to levels not to exceed 0.1 percent by weight of the polymer; provided that the food-contact surface has an average thickness not exceeding 375 micrometers (0.015 inch). 4. In olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1a or 3.2a, and containing not less than 85 percent by weight of polymer units derived from propylene, in contact with food of types III, IV–A, V, VII–A, and IX, and under: (a) Conditions of use C through G, described in Tables 1 and 2 of § 176.170(c) of this chapter, limited to levels no greater than 0.2 percent by weight of the copolymers; or (b) Conditions of use A, B, and H, limited to levels no greater than 0.1 percent by weight of the olefin copolymers; provided that the food-contact surface has an average thickness not exceeding 375 micrometers (0.015 inch). 5. In olefin polymers complying with § 177.1520(c) of this chapter, items 1.2 or 1.3 in contact with food of types III, IV–A, V, VII–A, and IX, under conditions of use A through H, described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.1 percent by weight of the polymers; provided that the food-contact surface has an average thickness not exceeding 375 micrometers (0.015 inch). 6. In polyethylene complying with § 177.1520(c) of this chapter, items 2.1 or 2.2, having a density of not less than 0.94, in contact with food of types III, IV–A, V, VII–A, and IX, and under: (a) Conditions of use B through H, described in Tables 1 and 2 of § 176.170(c) of this chapter limited to levels not to exceed 0.2 percent by weight of the polymers; or (b) Condition of use A, described in Tables 1 and 2 of § 176.170(c) of this chapter, limited to levels not to exceed 0.1 percent by weight of the polymer; provided that the food-contact surface has an average thickness not exceeding 125 micrometers (0.005 inch). 7. In olefin copolymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.2a, or 3.2b, containing not less than 85 percent by weight of polymer units derived from ethylene and having a density of not less than 0.94, in contact with food of types III, IV–A, V, VII–A, and IX, and under: (a) Conditions of use C through G, described in Tables 1 and 2 of § 176.170(c) of this chapter limited to levels not to exceed 0.2 percent by weight of the copolymers; or (b) Conditions of use A, B, and H, limited to levels not to exceed 0.1 percent by weight of the copolymers; provided that the food-contact surface has an average thickness not exceeding 125 micrometers (0.005 inch). 8. In olefin polymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.2a, or 3.2b containing not less than 85 percent by weight of polymer units derived from ethylene, in contact with food of types III, IV–A, V, VII–A, and IX, under conditions of use A through H, as described in Tables 1 and 2 of § 176.170(c) of this chapter at levels not to exceed 0.1 percent by weight of the copolymer; provided that the food-contact surface has an average thickness not exceeding 75 micrometers (0.003 inch). 9. In polyethylene phthalate polymers complying with § 177.1630 of this chapter in contact with food of types III, IV–A, V, VI–C, VII–A, and IX, and under: (a) Conditions of use B through H, described in Tables 1 and 2 of § 176.170(c) of this chapter, limited to levels not to exceed 0.3 percent by weight of the polymers; or (b) Condition of use A with food of types III, IV–A, V, VII–A, and IX, and limited to levels not to exceed 0.1 percent by weight of the polymers; provided that the film thickness does not exceed 875 micrometers (0.035 inch).
* * *	* * * *

Dated: January 6, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–1021 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 93F–0309]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an

antioxidant/stabilizer for olefin polymers and for rubber articles intended for repeated use in contact with food. This action is in response to a petition filed by Sandoz AG (currently, Clariant Huningue S.A.).

DATES: Effective January15, 1997; written objections and requests for a hearing by February 14, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 7, 1993 (58 FR 52315), FDA announced that a food additive petition (FAP 3B4395) had been filed by Sandoz AG (currently, Clariant Huningue S.A.), c/o Registration and Consulting Co., Ltd., CH–4452 Itingen/Basel, Switzerland. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant/stabilizer for olefin polymers and for rubber articles intended for repeated use in contact with food.

Based on more precise analytical data on the isomeric composition of the antioxidant, the petitioner has obtained a new CAS Reg. No. for the subject additive. This final rule, therefore, uses the new, corrected, CAS Reg. No., 119345–01–6.

FDA has evaluated data in the petition and other relevant material. The agency concludes that: (1) The proposed use of the additive is safe, (2) the food additive will have the intended technical effect, and (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before February 14, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for ''Di-*tert*-butylphenyl phosphonite condensation product with biphenyl * * *'' under the heading ''Substances'' and by revising entries ''1.'' and ''4.'' and adding a new entry ''5.'' under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

Substances	Limitations
* * * * *	
Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 119345–01–6) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 mg KOH/gm, and a melting range of 85 °C to 110 °C (185 °F to 230 °F).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 1.3, 3.2b, 3.3a, 3.3b, 3.4, 3.5, and 3.1a (where the density is not less than 0.85 gram per cubic centimeter and not more than 0.91 gram per cubic centimeter); and 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, and 3.6 (where the density is not less than 0.94 gram per cubic centimeter) and 5. * * * * * 4. At levels not to exceed 0.15 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, and 3.6 (where the polyethylene component has a density less than 0.94 gram per cubic centimeter). 5. At levels not to exceed 0.1 percent by weight of repeated use rubber articles complying with § 177.2600 of this chapter.
* * * * *	

Dated: December 19, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–946 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in February 1997.

EFFECTIVE DATE: February 1, 1997.

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: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during February 1997.

For annuity benefits, the interest assumptions will be 5.90 percent for the first 25 years following the valuation date and 5.00 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The above annuity interest assumptions represent an increase (from those in effect for January 1997) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for January 1997) of .25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

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

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during February 1997, the PBGC finds that good cause exists for making the assumptions 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 in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

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

2. In appendix B, a new entry is added to Table I, and Rate Set 40 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, 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.]

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 =
* * *	*		*	*		*
February 1997	.0590	1–25	.0500	>25	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (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 (where 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, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where 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, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where 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, and thereafter the immediate annuity rate shall apply.]

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
* *	*	*		*	*		*	
40	02–1–97	03–1–97	4.75	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of January 1997.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–1062 Filed 1–14–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 150

Courts of Criminal Appeals Rules of Practice and Procedure

AGENCY: Defense.

ACTION: Final rule.

SUMMARY: This rule of practice and procedure is issued pursuant to Article 66(f), Uniform Code of Military Justice (10 U.S.C. 866(f) (1994)). It is a uniform rule of practice and procedure for all military Courts of Criminal Appeals.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Colonel Charles B. Heimburg—(202) 767–1550, 172 Luke Avenue, Bolling Air Force Base, Washington, D.C. 20332.

SUPPLEMENTARY INFORMATION: The anticipated citation of the rules will be 32 CFR Part 150. The notification of opportunity to review and comment on these rules was published in the Federal Register on December 13, 1995 at 60 FR 64031–02. Comments were received and considered.

These rules are not subject to Executive Order 12866, ''Regulatory Planning and Review,'' Public Law 96–354, ''Regulatory Flexibility Act;'' or Public Law 96–511, ''Paperwork Reduction Act.''

List of Subjects in 32 CFR Part 150

Administrative practice and procedure, Courts, Military law.

Accordingly, 32 CFR part 150 is revised to read as follows:

PART 150—COURTS OF CRIMINAL APPEALS RULES OF PRACTICE AND PROCEDURE

Sec.

Appendix A to Part 150—Format for Direction for Review in a Court of Criminal Appeals

Appendix B to Part 150—Format for Assignment of Errors and Brief on Behalf of Accused (§ 150.15)

Authority: Article 66(f), Uniform Code of Military Justice (10 U.S.C. § 866(f) (1994)).

§ 150.1 Name and seal.

(a) The titles of the Courts of Criminal Appeals of the respective services are:

(1) ''United States Army Court of Criminal Appeals.''

(2) ''United States Navy-Marine Corps Court of Criminal Appeals.''

(3) ''United States Air Force Court of Criminal Appeals.''

(4) ''United States Coast Guard Court of Criminal Appeals.''

(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.

§ 150.2 Jurisdiction.

(a) The jurisdiction of the Court is as follows:

(1) *Review under Article 66.* All cases of trial by court-martial in which the sentence as approved extends to:

(i) Death; or

(ii) Dismissal of a commissioned officer, cadet or midshipman, dishonorable or bad-conduct discharge, or confinement for 1 year or longer; and in which the accused has not waived or withdrawn appellate review.

(2) *Review upon direction of the Judge Advocate General under Article 69.* All cases of trial by court-martial in which there has been a finding of guilty and a sentence:

(i) For which Article 66 does not otherwise provide appellate review, and

(ii) Which the Judge Advocate General forwards to the Court for review pursuant to Article 69(d), and

(iii) In which the accused has not waived or withdrawn appellate review.

(3) *Review under Article 62.* All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings, or directs the disclosure of classified information, imposes sanctions for nondisclosure of classified information, or refuses to issue or enforce a protective order sought by the United States to prevent the disclosure of classified information.

(4) *Review under Article 73.* All petitions for a new trial in cases of trial by court-martial which are referred to the Court by the Judge Advocate General.

(b) *Extraordinary writs.* The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis.

(c) *Effect of rules on jurisdiction.* Nothing in this part shall be construed to extend or limit the jurisdiction of the Courts of Criminal Appeals as established by law.

§ 150.3 Scope of review.

In cases referred to it for review pursuant to Article 66, the Court may act only with respect to the findings and sentence as approved by the convening authority. In reviewing a case or action under Article 69(d) or in determining an appeal under Article 62, the Court may act only with respect to matters of law. The Court may, in addition, review such other matters and take such other action as it determines to be proper under substantive law.e

§ 150.4 Quorum.

(a) *In panel.* When sitting in panel, a majority of the judges assigned to that panel constitutes a quorum for the purpose of hearing or determining any matter referred to the panel. The determination of any matter referred to the panel shall be according to the opinion of a majority of the judges participating in the decision. However, any judge present for duty may issue all necessary orders concerning any proceedings pending on panel and any judge present for duty, or a clerk of court or commissioner to whom the Court has delegated authority, may act on uncontested motions, provided such action does not finally dispose of a petition, appeal, or case before the Court.

(b) *En banc.* When sitting as a whole, a majority of the judges of the Court constitutes a quorum for the purpose of hearing and determining any matter before the Court. The determination of any matter before the Court shall be according to the opinion of a majority of the judge participating in the decision. In the absence of a quorum, any judge present for duty may issue all necessary orders concerning any proceedings pending in the Court preparatory to hearing or decision thereof.

§ 150.5 Place for filing papers.

When the filing of a notice of appearance, brief, or other paper in the office of a Judge Advocate General is required by this part, such papers shall be filed in the office of the Judge Advocate General of the appropriate armed force or in such other place as the Judge Advocate General or rule promulgated pursuant to § 150.26 may designate. If transmitted by mail or other means, they are not filed until received in such office.

§ 150.6 Signing of papers.

All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

§ 150.7 Computation of time.

In computing any period of time prescribed or allowed by this part, by order of the Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper in court, a day on which the office of the Clerk of the Court is closed due to weather or other conditions or by order of the Chief Judge, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

§ 150.8 Qualification of counsel.

(a) *All counsel.* Counsel in any case before the Court shall be a member in good standing of the bar of a Federal Court, the highest court of a State or another recognized bar.

(b) *Military counsel.* Assigned appellate defense and appellate government counsel shall, in addition, be qualified in accordance with Articles 27(b)(1) and 70(a), Uniform Code of Military Justice.

(c) *Admission.* Each Court may license counsel to appear before it. Otherwise, upon entering an appearance, counsel shall be deemed admitted pro hac vice, subject to filing a certificate setting forth required qualifications if directed by the Court.

(d) *Suspension.* No counsel may appear in any proceeding before the Court while suspended from practice by the Judge Advocate General of the service concerned.

§ 150.9 Conduct of counsel.

The conduct of counsel appearing before the Court shall be in accordance

with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge Advocate General of the service concerned. However, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove counsel from a particular case for misconduct in relation to that case. Conduct deemed by the Court to warrant consideration of suspension from practice or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

§ 150.10 Request for appellate defense counsel.

An accused may be represented before the Court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening authority's action under Rule for Courts-Martial 1107(h), forward to the convening authority or the Judge Advocate General:

(a) A request for representation by military appellate defense counsel, or

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name and address of civilian counsel), or

(c) Both a request for representation by military appellate defense counsel under paragraph (a) for this section and notice regarding civilian counsel under paragraph (b) of this section, or

(d) A waiver of representation by counsel.

§ 150.11 Assignment of counsel.

(a) When a record of trial is referred to the court—

(1) If the accused has requested representation by appellate defense counsel, pursuant to Article 70(c)(1), counsel detailed pursuant to Article 70(a) will be assigned to represented the accused; or

(2) If the accused gives notice that he or she has retained or has taken action to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel. Assigned defense counsel will continue to assist after appearance by civilian counsel unless excused by the accused; or

(3) If the accused has neither requested appellate counsel nor given notice of action to retain civilian counsel, but has not waived representation by counsel, appellate defense counsel will be assigned to represent the accused, subject to excusal by the accused or by direction of the Court.

(b) In any case—

(1) The Court may request counsel when counsel have not been assigned.

(2) Pursuant to Article 70(c)(2), and subject to paragraph (a)(2) of this section, appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

§ 150.12 Retention of civilian counsel.

When civilian counsel represents an accused before the Court, the Court will notify counsel when the record of trial is received. If both civilian and assigned appellate defense counsel represent the accused, the Court will regard civilian counsel as primary counsel unless notified otherwise. Ordinarily, civilian counsel will use the accused's copy of the record. Civilian counsel may reproduce, at no expense to the government, appellate defense counsel's copy of the record.

§ 150.13 Notice of appearance of counsel.

Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

§ 150.14 Waiver or withdrawal of appellate review.

Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by the Rule for Courts-Martial 1110(f)(1), will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

§ 150.15 Assignments of error and briefs.

(a) *General provisions.* Appellate counsel for the accused may file an assignment of error if any are to be alleged, setting forth separately each error asserted. The assignment of errors should be included in a brief for the accused in the format set forth in Appendix B to this part. An original of all assignments of error and briefs, and as many additional copies as shall be prescribed by the Court, shall be submitted. Briefs and assignments of errors shall be typed or printed, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the accused.

(b) *Time for filing and number of briefs.* Any brief for an accused shall be filed within 60 days after appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate government counsel to represent the United States, such counsel shall file an answer on behalf of the government within 30 days after any brief and assignment of errors has been filed on behalf of an accused. Appellate counsel for an accused may file a reply brief no later than 7 days after the filing of a response brief on behalf of the government. If no brief is filed on behalf of an accused, a brief on behalf of the government may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

(c) *Appendix.* The brief of either party may include an appendix. If an unpublished opinion is cited in the brief, a copy shall be attached in an appendix. The appendix may also include extracts of statutes, rules, or regulations. A motion must be filed under § 150.23, *infra,* to attach any other matter.

§ 150.16 Oral arguments.

Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made no later than 7 days after the filing of an answer to an appellant's brief. Such motion shall identify the issue(s) upon which counsel seek argument. The Court may, on its own motion, identify the issue(s) upon which it wishes argument.

§ 150.17 En banc proceedings.

(a)(1) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. Such consideration or reconsideration ordinarily will not be ordered except:

(i) When consideration by the full Court is necessary to secure or maintain uniformity of decision, or

(ii) When the proceedings involve a question of exceptional importance, or

(iii) When a sentence being reviewed pursuant to Article 66 extends to death.

(2) In cases being reviewed pursuant to Article 66, a party's suggestion that a matter be considered initially by the Court as a whole must be filed with the

Court within 7 days after the government files its answer to the assignment of errors, or the appellant files a reply under § 150.15(b). In other proceedings, the suggestion must be filed with the party's initial petition or other initial pleading, or within 7 days after the response thereto is filed. A suggestion for reconsideration by the Court as a whole must be made within the time prescribed by § 150.19 for filing a motion for reconsideration. No response to a suggestion for consideration or reconsideration by the Court as a whole may be filed unless the Court shall so order.

(b) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole on such a suggestion made by a party unless a judge requests a vote.

(c) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered by the Court sitting as a whole. However, en banc reconsideration of an en banc decision will not be held unless at least one member of the original majority concurs in a vote for reconsideration.

(d) This rule does not affect the power of the Court *sua sponte* to consider or reconsider any case sitting as a whole.

§ 150.18 Orders and decisions of the Court.

The Court shall give notice of its orders and decisions by immediately serving them, when rendered, on appellate defense counsel, including civilian counsel, if any, government counsel and the Judge Advocate General, or designee, as appropriate.

§ 150.19 Reconsideration.

(a) The Court may, in its discretion and on its own motion, enter an order announcing its intent to reconsider its decision or order in any case not later than 30 days after service of such decision or order on appellate defense counsel or on the appellant, if the appellant is not represented by counsel, provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) has not been received by that Court. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Appeals for the Armed Forces, or a record of trial for review under Article 67(b) or writ appeal has not been received by the United States Court of Appeals for the Armed Forces, the Court may, in its discretion, reconsider its decision or order in any case upon motion filed either:

(1) By appellate defense counsel within 30 days after receipt by counsel, or by the appellant if the appellant is not represented by counsel, of a decision or order, or

(2) By appellate government counsel within 30 days after the decision or order is received by counsel.

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 7 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this part shall not be extended under the authority of §§ 150.24 or 150.25 beyond the expiration of the time for filing a petition for review or writ appeal with the United States Court of Appeals for the Armed Forces, except that the time for filing briefs by either party may be extended for good cause.

§ 150.20 Petitions for extraordinary relief, answer, and reply.

(a) *Petition for extraordinary relief.* A petition for extraordinary relief in the number of copies required by the Court shall be accompanied by proof of service on each party respondent and will contain:

(1) A previous history of the case including whether prior actions have been filed or are pending for the same relief in this or any other court and the disposition or status of such actions;

(2) A concise and objective statement of all facts relevant to the issue presented and of any pertinent opinion, order or ruling;

(3) A copy of any pertinent parts of the record and all exhibits related to the petition if reasonably available and transmittable at or near the time the petition is filed;

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

(7) The jurisdictional basis for relief sought and the reasons why the relief sought cannot be obtained during the ordinary course of appellate review;

(8) If desired, a request for appointment of appellate counsel.

(b) *Format.* The title of the petition shall include the name, military grade and service number of each named party and, where appropriate, the official military or civilian title of any named party acting in an official capacity as an officer or agent of the United States. When an accused has not been named as a party, the accused shall be identified by name, military grade and service number by the petitioner and shall be designated as the real party in interest.

(c) *Electronic petitions.* The Court will docket petitions for extraordinary relief submitted by electronic means. A petition submitted by electronic means will conclude with the full name and address of petitioner's counsel, if any, and will state when the written petition and brief, when required, were forwarded to the Court and to all named respondents, and by what means they were forwarded.

(d) *Notice to the Judge Advocate General.* Immediately upon receipt of any petition, the clerk shall forward a copy of the petition to the appropriate Judge Advocate General or designee.

(e) *Briefs.* Each petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed in propria persona. The Court may issue a show cause order in which event the respondent shall file an answer within 10 days of the receipt of the show cause order. The petitioner may file a reply to the answer within 7 days of receipt of the answer.

(f) *Initial action by the Court.* The Court may dismiss or deny the petition, order the respondent to show cause and file an answer within the time specified, or take whatever other action it deems appropriate.

(g) *Oral argument and final action.* The Court may set the matter for oral argument. However, on the basis of the pleading alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate; to take evidence; and to make such recommendations as the Court deems appropriate.

§ 150.21 Appeals by the United States.

(a) *Restricted filing.* Only a representative of the government designated by the Judge Advocate General of the respective service may file an appeal by the United States under Article 62.

(b) *Counsel.* Counsel must be qualified and appointed, and give notice

of appearance in accordance with this part and those of the Judge Advocate General concerned.

(c) *Form of appeal.* The appeal must include those documents specified by Rule for Courts-Martial 908 and by applicable regulations of the Secretary concerned. A certificate of the Notice of Appeal described in Rule for Courts-Martial 908(b)(3) must be included. The certificate of service must reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service upon the military judge.

(d) *Time for filing.* All procedural Rules of the Court shall apply except as noted in this paragraph:

(1) The representative of the government designated by the Judge Advocate General shall decide whether to file the appeal with the Court. The trial counsel shall have 20 days from the date written notice to appeal is filed with the trial court to forward the appeal, including an original and two copies of the record of trial, to the representative of the government designated by the Judge Advocate General. The person designated by the Judge Advocate General shall promptly file the original record with the Clerk of the Court and forward one copy to opposing counsel. Appellate government counsel shall have 20 days (or more upon a showing of good cause made by motion for enlargement within the 20 days) from the date the record is filed with the Court to file the appeal with supporting brief with the Court. Should the government decide to withdraw the appeal after the record is received by the Court, appellate government counsel shall notify the Court in writing. Appellate brief(s) shall be prepared in the manner prescribed by § 150.15.

(2) Appellee shall prepare an answer in the manner prescribed by § 150.15 and shall file such answer within 20 days after any filing of the government brief.

(e) The government shall diligently prosecute all appeals by the United States and the Court will give such appeals priority over all other proceedings where practicable.

§ 150.22 Petitions for new trial.

(a) Whether submitted to the Judge Advocate General by the accused in propria persona or by counsel for the accused, a petition for new trial submitted while the accused's case is undergoing review by a Court of Criminal Appeals shall be filed with an original and two copies and shall comply with the requirements of Rule for Courts-Martial 1210(c).

(b) Upon receipt of a petition for new trial submitted by other than appellate defense counsel, the Court will notify all counsel of record of such fact.

(c) A brief in support of a petition for new trial, unless expressly incorporated in or filed with the petition, will be filed substantially in the format specified by § 150.15 no later than 30 days after the filing of the petition or receipt of the notice required by paragraph (b) of this section, whichever is later. An appellate's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed no later than 10 days after the filing of the appellee's answer.

§ 150.23 Motions.

(a) *Content.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor. Motions, pleading, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example ''MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)''; or ''ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD''.

(b) *Motions to attach documents.* If a party desires to attach a statement of a person to the record for consideration by the Court on any matter, such statement shall be made either as an affidavit or as an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. 1746. All documents containing language other than English shall have, attached, a certified English translation.

(c) *Opposition.* Any opposition to a motion shall be filed within 7 days after receipt by the opposing party of service of the motion.

(d) *Leave to file.* Any pleading not authorized or required by this part, shall be accompanied by a motion for leave to file such pleading.

(e) *Oral argument.* Oral argument shall not normally be permitted on motions.

§ 150.24 Continuances and interlocutory matters.

Except as otherwise provided in § 150.19(d), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by this part, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See § 150.4.

§ 150.25 Suspension of rules.

For good cause shown, the Court acting as a whole or in panel may suspend the requirements or provisions of any of this part in a particular case on petition of a party or on its own motion and may order proceedings in accordance with its direction.

§ 150.26 Internal rules.

The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

§ 150.27 Recording, photographing, broadcasting, or telecasting of hearings.

The recording, photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited unless specifically authorized by the Court.

§ 150.28 Amendments.

Proposed amendments to this part may be submitted to the Chief Judge of any Court named in § 150.1 or to a Judge Advocate General. Before acting on any proposed amendments not received from the Chief Judges, the Judge Advocates General shall refer them to the Chief Judges of the Courts for comment. The Chief Judges shall confer on any proposed changes, and shall report to the Judge Advocates General as to the suitability of proposed changes and their impact on the operation of the Courts and on appellate justice.

Appendix A to Part 150—Format for Direction for Review in a Court of Criminal Appeals

In the United States _____[1] Court of Criminal Appeals

United States v. _____
(Full typed name, rank, service, & service number of accused)
Direction for Review Case No. _____

Tried at (location), on (date(s)) before a (type in court-martial) appointed by (convening authority)

To the Honorable, the Judges of the United States _____ Court of Criminal Appeals

1. Pursuant to Article 69 of the Uniform Code of Military Justice, 10 U.S.C. § 869 (1994) and the Rules of Practice and Procedure for Courts of Criminal Appeals, Rule 2(b), the record of trial in the above-entitled case is forwarded for review.

2. The accused was found guilty by a (type of court-martial) of a violation of Article(s) _____ of the Uniform Code of Military Justice, and was sentenced to (include entire adjudged sentence) on (insert trial date). The convening authority (approved the sentence as adjudged) (approved the following findings and sentence: _____). The officer exercising general court-martial

[1] Use ''Army,'' ''Navy-Marine Corps,'' ''Air Force,'' or ''Coast Guard,'' as applicable.

jurisdiction (where applicable) took the following action: _____. The case was received for review pursuant to Article 69 on (date).

3. In review, pursuant to Uniform Code of Military Justice, Article 66, it is requested that action be taken with respect to the following issues:

[set out issues here]

_____

The Judge Advocate General

Received a copy of the foregoing Direction for Review this _____ (date).

_____

Appellate Government Counsel

_____

Address and telephone number

_____

Appellate Defense Counsel

_____

Address and telephone number

Appendix B to Part 150—Format for Assignment of Errors and Brief on Behalf of Accused (§ 150.15)

In the United States _____[2] Court of Criminal Appeals

United States v. _____ (Full typed name, rank, service, & service number of accused), Appellant

Assignment of Errors and Brief on Behalf of Accused Case No. _____

Tried at (location), on (date(s)) before a (type of court-martial) appointed by (convening authority)

To the Honorable, the Judges of the United States _____ Court of Criminal Appeals

Statement of the Case

[Set forth a concise summary of the chronology of the case, including the general nature of the charges, the pleas of the accused, the findings and sentence at trial, the action by the convening authority, and any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth those facts necessary to a disposition of the assigned errors, including specific page references and exhibit numbers. Answers may adopt appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Errors and Argument

[Set forth each error alleged in upper case letters, followed by separate arguments for each error. Arguments shall discuss briefly the question presented, citing and quoting such authorities as are deemed pertinent. Each argument shall include a statement of the applicable standard of review, and shall be followed by a specific prayer for the relief requested.]

[2] Use ''Army,'' ''Navy-Marine Corps,'' ''Air Force,'' or ''Coast Guard,'' as applicable.

Appendix

[The brief of either party may include an appendix containing copies of unpublished opinions cited in the brief, and extracts of statutes, rules or regulations pertinent to the assigned errors.]

_____

(Signature of counsel)

_____

Name (and rank) of counsel, address and telephone number

Certificate of Filing and Service

I certify that a copy of the foregoing was mailed or delivered to the Court and opposing counsel on (date).

_____

Name (rank) (and signature)

_____

Address and telephone number

_____ (Date)

Dated: January 9, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–890 Filed 1–14–97; 8:45 am]

BILLING CODE 5000–04–M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

[FPMR Temp. Reg. H–29]

RIN 3090–AF95

Criteria for Reporting Excess Personal Property

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation establishes revised criteria for reporting excess personal property to GSA, substantially reduces utilization screening time, raises the dollar threshold for direct transfers, and updates addresses associated with reporting excess personal property. The regulation is intended to relieve Federal agencies of certain reporting requirements and reduce the time required by agencies to hold property for utilization and donation screening.

DATES: Effective date: January 15, 1997.

Expiration date: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Personal Property Management Policy Division (202–501–3828).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

REGULATORY FLEXIBILITY ACT: This rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

In 41 CFR Chapter 101, an appendix, containing temporary regulation H–29, is added at the end of Subchapter H to read as follows:

Appendix to Subchapter H—Temporary Regulations

Federal Property Management Regulations Temporary Regulation H–29

TO: Heads of Federal agencies

SUBJECT: Criteria for reporting excess personal property

1. *Purpose.* This regulation establishes revised criteria for reporting excess personal property to GSA, reduces utilization screening time, raises the dollar threshold for direct transfers, and updates addresses associated with reporting excess personal property.

2. *Effective date.* This regulation is effective January 15, 1997.

3. *Expiration date.* This regulation expires January 15, 1998.

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.*

a. Certain excess property is reportable to GSA by executive agencies for the purpose of maximizing opportunities for utilization. Property which is reported to GSA is afforded regional and nationwide visibility by inclusion in GSA's automated property disposal system—the Federal Disposal System (FEDS). Once an item is in the FEDS nationwide inventory of excess and surplus property, agencies can determine the availability of property by phoning the supporting GSA regional office, obtaining a copy of the FEDS inventory listing, or by accessing an electronic bulletin board within FEDS containing the nationwide inventory—Screen by Computer and Request Excess by Electronic Notification (SCREEN)

b. GSA's major personal property management customers have requested relief from reporting requirements by reducing the number of items of excess property to be reported. GSA is granting these requests provided such reductions do not result in an appreciable decline in overall transfer volumes of excess personal property. GSA conducted a study to assess the potential impact of reduced reporting requirements. The analysis showed that over 70 percent of the dollar value of property transferred represented Federal supply classification (FSC) groups which would continue to be reported to GSA as excess under the new reporting requirements.

c. Changes to the reporting criteria will be reexamined after an implementation period of 1 year to determine their net effect on overall business volumes. A significant decline in the utilization rate (dollar value of property transfers divided by dollar value of property generations) would be sufficient justification for modifying or rescinding the regulation.

d. GSA provided approval to the Department of Defense on July 20, 1994, to implement throughout its nationwide network of Defense Reutilization and Marketing Offices (DRMO's) a streamlined disposal concept known as single cycle processing. Under this concept, utilization screening time of excess property reported to GSA is reduced from 60 to 21 calendar days. Federal respondents to a follow-up customer survey indicated that 21 calendar days is sufficient time for screening Department of Defense excess property. A study group consisting of GSA and Federal and State representatives recommended that reduced screening time also be applied to civilian agency excess property.

6. *Definitions*. For purposes of this regulation, the following definitions apply:

a. ''Reportable property'' means personal property that is required to be reported to GSA in accordance with FPMR 101–43.304 prior to disposal.

b. ''Nonreportable property'' means any personal property that does not meet the reporting criteria set forth in FPMR 101–43.304, and therefore is not required to be reported formally to GSA, but which is available locally for Federal transfer or donation.

7. *Explanation of changes.*

a. Section 101–42.205 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows:

§ 101–42.205 Exceptions to reporting.

(a) * * *

(b) When EPA, under its authorities, transfers accountability for hazardous materials to Federal, State, and local agencies, to research institutions, or to commercial businesses to conduct research or to perform the actual cleanup of a contaminated site, the item shall not be reported.

b. Section 101–42.402 is amended by revising paragraphs (a), (b), and (c) and adding paragraph (d) to read as follows:

§ 101–42.402 Reporting hazardous materials for sale.

* * * * *

(a) *Reportable property*. Personal property which is reportable property and is identified as hazardous must be reported to a GSA regional office for utilization screening in accordance with § 101–42.204. If, after reporting to GSA, the hazardous materials are not transferred or donated, in accordance with Subparts 101–42.2 through 101–42.3 and 101–42.11, the hazardous materials will be programmed for sale by GSA, unless advised otherwise by the holding agency in accordance with Part 101–45, without further documentation from the holding agency.

(b) *Nonreportable property*. Under § 101–42.202, holding agencies are required to identify and label hazardous materials. Listings of personal property which is nonreportable property and is identified as hazardous must be made available to GSA area utilization officers for local utilization and donation screening in accordance with § 101–42.204 and § 101–42.205. If property has not been reported and is to be sold by GSA, it must be reported to GSA for sale on Standard Form 126, Report of Personal Property for Sale, or by automated means which GSA is capable of accepting.

(c) *Certification and Description*. The SF 126 shall contain a certification, executed by a duly authorized agency official, in block 16c or as an addendum, that the item has been clearly labeled and packaged as required in § 101–42.202(e) and 101–42.204. The SF 126 shall also contain or be accompanied by a full description of the actual or potential hazard associated with handling, storage, or use of the item. Such description shall be furnished by providing:

(1) An MSDS or copy thereof; or

(2) A printed copy of the record, corresponding to the hazardous material being reported, from the automated HMIS; or

(3) A written narrative, included in either block 16c or as an addendum, which complies with the requirements of 29 CFR 1910.1200.

(d) Property not subject to GSA screening. Hazardous material which may not be reported to GSA in accordance with § 101–42.204 and § 101–42.205 shall not be reported to GSA for sale unless GSA agrees to conduct such sale.

c. Section 101–43.001–30 is revised to read as follows:

§ 101–43.001–30 Screening period.

Screening period means:

(a) For reportable personal property of a civilian agency, the screening period is normally a period of 21 calendar days from the day following receipt of the automated report in FEDS or receipt of the manually completed report in the appropriate GSA office to and including the day specified as the surplus release date. For reportable property that is reported by a military activity during a period of property accumulation prior to a period of formal utilization screening, the screening period normally extends from the date of reporting to a period of 21 calendar days from the day following the date of the end of the accumulation.

(b) For civilian nonreportable property, the screening period is normally a period of 21 calendar days from the day the property is made available by the holding agency for screening as excess. For military nonreportable property that undergoes a period of accumulation prior to a period of utilization screening, the screening period is normally the same as for reportable property.

d. Section 101–43.001–34 is added to read as follows:

§ 101–43.001–34 Unit cost.

Unit cost means the original acquisition cost of a single item of property.

e. Section 101–43.302 is amended by revising paragraph (c) to read as follows:

§ 101–43.302 Agency responsibility.

* * * * *

(c) GSA will assist agencies in meeting their requirements for nonreportable property. Federal agencies requiring such property should contact the appropriate GSA regional office indicated in § 101–43.4802. GSA area utilization officers, stationed at key excess generating points throughout the United States, screen and offer nonreportable property as it becomes available for transfer.

* * * * *

f. Section 101–43.304–1 is amended by revising paragraph (a) to read as follows:

§ 101–43.304–1 Reporting.

(a) Reportable property enumerated by the Federal supply classification (FSC) groups and classes, acquisition cost, and condition codes in § 101–43.4801 shall be reported promptly to GSA with descriptions in sufficient detail to permit transfer or sale without further reference to the holding agency. In the absence of these descriptions, adequate commercial descriptions shall be substituted. Exceptions to these reporting requirements are covered in § 101–43.305. Whenever possible, the national stock number (NSN) shall be provided as part of the description. It is essential that the excess personal property report reflect the true condition of the property as of the date it is reported excess through assignment of the appropriate disposal condition code designation as defined in § 101–43.4801(e). Each Department of Defense excess personal property report must also contain the appropriate supply condition code as defined in § 101–43.4801(f), including reports of contractor inventory so far as practicable. When available from property records, civilian agencies shall also include the appropriate supply condition code in excess personal property reports. To expedite processing, reports may be submitted up to 60 calendar days prior to the actual date of property availability, provided that the report clearly indicates this pending status and reflects the date on which the property will be determined excess.

* * * * *

g. Section 101–43.304–2 is amended by revising paragraph (b) to read as follows:

§ 101–43.304–2 Form and distribution of reports.

* * * * *

(b) The SF 120 and SF 120A shall be submitted in an original and three copies. Reporting by ADP media shall be as specified and approved by GSA. Reports shall be directed to the GSA regional office for the region in which the property is located (see § 101–43.4802). However, reports of fixed-wing and rotary-wing aircraft shall be submitted to the General Services Administration (9FB), San Francisco, CA 94102.

h. Section 101–43.304–4 is revised to read as follows:

§ 101–43.304–4 Property at installations due to be discontinued.

Executive agencies that have installations which are due to be discontinued, closed, or abandoned and at which there will be excess personal property shall, unless inadvisable in the interest of national security, give advance notice of such situations as early as possible by letter to the appropriate GSA regional office. In such cases, agencies shall identify the installations to be discontinued, provide the scheduled date for the removal of personnel from the location, and specify the

last date when the personal property will be needed. As soon as possible after filing the advance notice, the excess personal property shall be reported in accordance with § 101–43.304–1 to provide time for screening for Federal utilization and donation purposes, within forty-two calendar days when possible.

i. Section 101–43.305 is revised to read as follows:

§ 101–43.305 Nonreportable property and property not subject to GSA screening.

(a) Nonreportable property must be locally screened only, and it need not be reported to GSA for nationwide utilization screening. Such property is a valuable source of supply for Federal agencies; therefore, GSA regional offices and GSA area utilization officers are responsible for local screening of such property, for making it available to Federal agencies, and for its expeditious transfer. Holding agencies shall cooperate with GSA representatives in making information available and in providing access to nonreportable property. Federal agency employees shall be permitted access to holding installations for screening purposes upon presentation of a valid Federal agency employee's identification card.

(b) A listing of nonreportable property, providing the extended value in acquisition cost dollars of each line item and the total number of line items on the listing, must be made available to GSA area utilization officers for local utilization and donation screening. Agencies that have computer records of their excess/surplus personal property are encouraged to report nonreportable property electronically, in lieu of submitting hardcopy listings. Agencies that are not able to report nonreportable property electronically, and have nonreportable property which is to be sold by GSA if it survives utilization and donation screening, are encouraged to report that property on a Standard Form (SF) 120, in lieu of an excess listing, to eliminate the need to submit SF 126, Report of Personal Property for Sale, after the completion of donation screening.

(c) In accordance with paragraph (d) of this section, certain kinds of property are not covered by the GSA utilization screening process. Such property is neither reportable property nor nonreportable property. It is the responsibility of the owning agency to screen such property and make reasonable efforts to obtain utilization among other Federal agencies. Although not required to do so, GSA may assist in the screening and transfer of such property when requested to do so by the owning agency or when otherwise directed by GSA.

(d) Unless otherwise directed by GSA, the following general categories of excess personal property are excepted from the GSA utilization screening process and shall not be reported to GSA for nationwide circularization nor made available to GSA area utilization officers for local screening:

(1) Perishables, defined for the purposes of this section as any foodstuffs which are subject to spoilage or decay;

(2) Property dangerous to public health and safety;

(3) Scrap, except aircraft in scrap condition, provided the property strictly conforms to the definitions for scrap found at § 101–43.001–29;

(4) Property determined by competent authority to be classified or otherwise sensitive for reasons of national security;

(5) Controlled substances in which case solicitation shall be limited to those agencies authorized for transfer under § 101–42.1102–3 provisions;

(6) Reportable property which, prior to reporting as required in § 101–43.304, is transferred directly between Federal agencies as provided in § 101–43.309–5(a) or by prearrangement with GSA to fill a known need;

(7) Trading stamps and bonus goods (see § 101–25.103–4);

(8) Nonappropriated fund property;

(9) Nuclear Regulatory Commission-controlled materials (see § 101–42.1102–4 and 10 CFR Parts 30 through 35, 40, and 70.); and

(10) Hazardous waste and items determined by the holding agency to be extremely hazardous (see § 101–42.402).

§ 101–43.307–7 [Amended]

j. Section 101–43.307–7 is amended by removing paragraph (a) and redesignating paragraph (b) as new paragraph (a) and paragraph (c) as new paragraph (b).

k. Section 101–43.307–12 is amended by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 101–43.307–12 Shelf-life items.

* * * * *

(c) Reportable shelf-life items which have a remaining useful life of 6 weeks or more before reaching the expiration date shall be reported as excess in accordance with § 101–43.304. Agencies may, at their option, also report shelf-life items which are nonreportable property. The report shall identify the items in the description as shelf-life items by carrying the designation symbol ''SL'' and by showing the expiration date. If the item has an extendable-type expiration date, there shall also be furnished an indication as to whether the expiration date is the original or an extended date.

(d) Normally, items reported in accordance with paragraph (c) of this section, including medical shelf-life items held for national emergency purposes, will be given a surplus release date effective 21 calendar days from the date following the day the property was reported. This date may be shortened or extended according to utilization objectives and the remaining useful shelf life. However, GSA offices will screen shelf life items for both reportable property and nonreportable property to permit their use before the shelf life expires and the items are unfit for human use.

(e) Nonreportable shelf-life items which have a remaining useful life of 6 weeks or more before reaching the expiration date shall be made available for use by other Federal agencies as provided in § 101–43.305. Agency documents listing such items shall show the expiration date and, in the case of items with an extendable expiration date, shall indicate whether the expiration date is the original or an extended date. When such items are determined excess, a surplus release date shall be established by the holding agency providing a minimum of 21 calendar days for utilization screening, unless determined otherwise by GSA. With the approval of GSA, the surplus release date may be extended by the holding agency when the items are selected by an authorized screener for transfer or are set aside by a GSA representative for potential or actual transfer. For controlled substances (as defined in § 101–42.001), each executive agency shall comply with § 101–42.1102–3.

(f) Shelf-life items which have a remaining useful life of less than 6 weeks, regardless of classification as reportable property or nonreportable property, shall be made available for utilization by other Federal agencies in the manner provided in paragraph (e) of this section.

* * * * *

1. Section 101–43.307–13 is revised to read as follows:

§ 101–43.307–13 Medical shelf-life items held for national emergency purposes.

(a) Whenever the head of an executive agency determines that the remaining storage or shelf-life of medical materials or supplies held for national emergency purposes is of too short duration to justify their continued retention for such purposes and that their transfer or disposal would be in the best interest of the United States, those materials or supplies shall be considered to be nonreportable property unless otherwise directed by GSA. To the greatest extent practicable, the above determination shall be made at such time as to ensure that such medical materials or supplies can be transferred or otherwise disposed of in sufficient time to permit their use before their shelf-life expires and the items are unfit for human use.

(b) Excess medical shelf-life items regardless of the remaining useful life shall be made available for use by other Federal agencies as provided in § 101–43.305. Each agency may also report excess medical shelf-life items to enhance the possibility of utilization through increased circularization. The excess report shall identify items as medical shelf-life items held for national emergency purposes by carrying the designating symbol ''MSL'' in the description of the report and by showing the shelf-life expiration date. Information shall also be furnished regarding whether the expiration date is the original or the extended date. Further, whenever medical shelf-life items held for national emergency purposes are reported as excess, any specialized storage requirements pertaining to the items listed thereon shall be noted on the report.

(c) When such items are determined excess, a surplus release date shall be established by the holding agency in accordance with § 101–43.311–2. For controlled substances (as defined in § 101–42.001), each executive agency shall comply with § 101–42.1102–3.

(d) Transfers among Federal agencies of medical materials and supplies held for national emergency purposes and determined to be excess shall be accomplished in accordance with § 101–43.309, except that such transfers shall be made upon such terms

and prices as shall be agreed to by the Federal agencies concerned. Proceeds from such transfers may be credited to the current applicable appropriation or fund of the transferring agency and shall be available only for the purchase of medical materials or supplies for national emergency purposes.

m. Section 101–43.309–2 is amended by revising paragraphs (b) and (d) to read as follows:

§ 101–43.309–2 Information on availability.

* * * * *

(b) Review of an electronic bulletin board called FEDS/SCREEN (Federal Disposal System/Screen by Computer and Request Excess by Electronic Notification) which contains information on GSA's nationwide inventory of excess and surplus property;

* * * * *

(d) Submission of current and future requirements for excess personal property to the appropriate GSA regional office using GSA Form 1539, Request for Excess Personal Property, illustrated at § 101–43.4902–1539. Instructions for submission of requirements may be obtained from any GSA regional office. Wherever possible, the NSN should be included for each item requested. GSA will assist agencies in obtaining NSN's to the extent practicable. If substitute items are acceptable, these should also be identified by NSN. Requirements for NSN items may be submitted electronically. If not currently available as excess, property requirements identified by NSN's will be retained for approximately 180 calendar days. Property reported excess during this time, if matched with recorded requirements, will be offered for immediate transfer. Agencies should update their lists of items at the end of each 180-calendar-day period to retain visibility in the requirements bank.

n. Section 101–43.309–5 is amended by revising paragraph (a) to read as follows:

§ 101–43.309–5 Procedure for effecting transfers.

(a) All transfers of excess personal property between Federal agencies shall be by SF 122, Transfer Order Excess Personal Property (see § 101–43.4901–122), or any other transfer order form approved by GSA. Automated requests on approved forms and automated requests generated by FEDS/SCREEN may be used for excess personal property transfers. However, Federal agencies using automated requests shall ensure that document numbers are controlled and records maintained indicating the official authorized to approve property transfers. Except for automated transfer orders generated by FEDS/SCREEN, each transferee agency shall forward the original and three copies of the transfer order to the appropriate GSA regional office (see § 101–43.4802) for approval. A SF 120 is not required in addition to SF 122 for direct transfers. Prior approval by GSA is not required when the appropriate GSA regional office is furnished an information copy of each direct transfer order by the transferor agency within 10 workdays from receipt of the order, and the property involved in the given transaction is:

(1) Reportable property under § 101–43.304 but has not yet been reported to GSA, the total acquisition cost of the transfer order does not exceed $10,000, and the owning agency's regulations relative to internal distribution have been satisfied; or

(2) Nonreportable property under § 101–43.305 and has not been reserved at the holding location for special screening by the appropriate GSA regional office, and the total acquisition cost of the transfer order does not exceed $50,000.

* * * * *

o. Section 101–43.311–1 is revised to read as follows:

§ 101–43.311–1 Reportable property.

(a) Excess personal property, which is reported to GSA in accordance with § 101–43.304 and not transferred to other Federal agencies shall become surplus at the close of business on the surplus release date, which is indicated on the report of excess personal property to GSA. With the exception of aircraft and vessels, the surplus release date will normally be 21 calendar days from the day after GSA receives the report of the excess personal property. The surplus release date for aircraft, and for vessels 1,500 gross tons and under in FSC Group 19, will be 60 calendar days from the day after GSA receives the report of excess in the appropriate GSA regional office.

(b) GSA may expedite screening by shortening the period of utilization screening for items individually or by FSC class which have a history of little demand. GSA may extend the screening period to adequately screen large generations or specialized items. The appropriate GSA regional office will coordinate surplus release date changes with the reporting activity to minimize impact on the utilization and disposal process. Agencies may not shorten or lengthen screening periods on their own.

p. Section 101–43.311–2 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

§ 101–43.311–2 Nonreportable property.

(a) Nonreportable property shall become surplus when it has been made available by the holding agency for Federal use for a minimum of 21 calendar days from the date made available for screening to Federal agencies, unless determined otherwise by GSA, and has not been selected for transfer by another Federal agency. Holding agencies shall annotate property records with the date of the agency excess determination. Authorized Federal agency representatives may request and, with the approval of GSA, holding agencies will grant additional screening time not to exceed 30 calendar days, unless otherwise agreed upon by the holding agency and the GSA regional office concerned. GSA may shorten or lengthen the screening time.

* * * * *

q. Section 101–43.314 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 101–43.314 Use of excess personal property on grants.

* * * * *

(b) * * *

(2) * * *

(iv) Excess scientific equipment transferred pursuant to section 11(e) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will consider items of personal property as scientific equipment for transfer without reimbursement to the National Science Foundation (NSF) for use by a project grantee when the property requested is within FSC groups 12 (Fire Control Equipment), 14 (Guided Missiles), 43 (Pumps and Compressors), 48 (Valves), 58 (Communication, Detection, and Coherent Radiation Equipment), 59 (Electrical and Electronic Equipment Components), 65 (Medical, Dental, and Veterinary Equipment and Supplies), 66 (Instruments and Laboratory Equipment), 67 (Photographic Equipment), 68 (Chemicals and Chemical Products), or 70 (General Purpose Information Processing Equipment (Including Firmware), Software, Supplies, and Support Equipment). GSA will give consideration to transfer without reimbursement of items of excess property in other FSC groups when NSF certifies the item requested is a component of or related to a piece of scientific equipment or is an otherwise difficult-to-acquire item needed for scientific research. Items of property determined by GSA to be common use or general purpose property, regardless of classification, shall not be transferred to NSF for use by a project grantee without reimbursement.

* * * * *

r. Section 101–43.4801 is amended by revising paragraphs (a) through (d) to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal Supply Classification (FSC) groups and classes comprising reportable property. Property in these groups and classes must be reported to GSA when the following condition code and dollar threshold criteria are met:

(1) With the exception of aircraft, the condition code as defined in paragraph (e) of this section is salvage or better. Fixed-wing and rotary-wing aircraft, airframe structural components, and aircraft engines, as specified in paragraph (b) of this section, are reportable regardless of condition in accordance with § 101–43.304–2.

(2) The unit cost, measured in acquisition dollars, is $5,000 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) As indicated in the table in paragraph (d) of this section, line items in FSC classes 1510, 1520, 1560, 2810, 2840, or any class in FSC group 16 shall be reported. In agencies other than the Department of Defense, all line items in these classes shall be reported regardless of condition code when dollar criteria are met. For the Department of Defense, aircraft in FSC class 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC class 1520, and line items in other classes which are components of these aircraft shall be reported regardless of condition code when dollar criteria are met.

(2) Items in FSC classes 1510 and 1520 held by the Department of Defense or other agencies shall be reported to the General Services Administration (9FB), San Francisco, California 94102.

(c) All excess Government-owned information technology (IT) equipment and software, as defined in Subpart 101–43.6, shall be disposed of in accordance with the provisions of that Subpart.

(d) The following table shows FSC groups and classes which comprise reportable property: o

FSC group	FSC class	Noun name
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe, structural components.
16	All	Aircraft components and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels over 1500 gross tons).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline, reciprocating engines, except aircraft.
	2810	Gasoline, reciprocating engines, aircraft.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery.
35	All	Service and trade equipment.
36	All	Special industry machinery (all but 3690 Specialized ammunition and ordinance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.
	4920	Aircraft maintenance and repair shop specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance, and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire and power and distribution equipment.
66	All	Instruments and laboratory equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

* * * * *

s. Section 101–43.4802 is revised to read as follows:

§ 101–43.4802 Regional office addresses and assigned areas.

Region and office address	Regional areas
National Capital Region, 470 L'Enfant Plaza East, SW., Suite 8100, Washington, DC 20407.	District of Columbia, Maryland (Prince Georges and Montgomery Counties only). Virginia (Prince William, Loudoun, Fairfax and Arlington Counties, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park only).
1—General Services Administration, O'Neill Federal Office Building, Massachusetts, 10 Causeway Street, Boston, MA 02222.	Connecticut, Maine, New Hampshire, Rhode Island, Vermont.
2—General Services Administration, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Commonwealth of Puerto Rico, Virgin Islands.
3—General Services Administration, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107.	Delaware, Maryland, Pennsylvania, Virginia, West Virginia.
4—General Services Administration, 410 West Peachtree Street, Atlanta, GA 30365.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
5—General Services Administration, 230 South Dearborn Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
6—General Services Administration, 4400 College Blvd., Suite 175, Overland Park, KS 66211.	Iowa, Kansas, Missouri, Nebraska.
7—General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
8—General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
9—General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94102.	Arizona, California, Hawaii, Nevada, Pacific Ocean Areas.
10—General Services Administration, 400 15th Street, SW., Auburn, WA 98001.	Alaska, Idaho, Oregon, Washington.

t. Section 101–44.109 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–44.109 Donation screening period.

(a) Unless otherwise directed by GSA, a period of 21 calendar days following the surplus release date (see § 101–43.001–32) shall be provided to set aside surplus reportable and nonreportable property determined to be usable and necessary for donation purposes in accordance with the provisions of Subparts 101–44.2, 101–44.4, and 101–44.5. Reportable surplus property will be set aside for donation when a Standard Form 123, with an informational copy to the holding activity, is submitted to a GSA regional office for approval within the donation screening period. Nonreportable property will be set aside for donation upon notification to a holding activity within the donation screening period by a responsible Federal official, a State agency representative, or an authorized donee representative that the property is usable and necessary for donation purposes.

(b) During the prescribed 21-day donation screening period, Standard Forms 123 will be processed by GSA regional offices in the following sequence:

(1) Department of Defense personal property which is reportable surplus will be reserved for public airport donation during the first 5 calendar days of the donation screening period and for service educational activities (SEA's) during the next 5 calendar days. During the remaining portion of the donation screening period, the property will be available on an equal basis to all applicants.

(2) Executive agency personal property, other than personal property of the Department of Defense, which is reportable surplus will be reserved for public airport donation during the first 5 calendar days of the donation screening period. During the remaining portion of the donation screening period, the property will be available on an equal basis to all applicants. This property is not available for donation to SEA's.

(3) All executive agency personal property which is nonreportable surplus will be made available for donation on an equal basis to all applicants. SEAs are not eligible for donation of nonreportable surplus of executive agencies other than the Department of Defense.

* * * * *

u. Section 101–45.303 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–45.303 Reporting property for sale.

* * * * *

(a) Reportable surplus. Reportable surplus, if not donated, will be programmed for sale by the GSA regional office unless the holding agency indicates on their reports of excess personal property that they elect to sell their own property.

(b) Nonreportable surplus. Nonreportable surplus, if not donated, shall be reported to the appropriate GSA regional office on Standard Form 126, Report of Personal Property for Sale (illustrated at § 101–45.4901–126) if GSA is to sell the property. Standard Form 126A, Report of Personal Property for Sale (Continuation Sheet), shall be added if additional pages are required. Standard Forms 126 and 126A are stocked as five-part carbon interleaved forms and may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

8. *Effect on other directives.* This regulation modifies portions of regulations appearing at Parts 101–42 through 101–45 that pertains to the reporting and screening process for property determined to be excess to an agency's needs.

Dated: September 5, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 97–574 Filed 1–14–97; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket Nos. 92–235 and 92–257; FCC 96–492]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has adopted a *Memorandum Opinion and Order (MO&O)* which addresses issues and concerns raised in twenty-four petitions, five oppositions, and three replies, requesting that we reconsider or clarify various decisions and technical rules adopted in the *Report and Order (R&O)* in PR Docket No. 92–235. This *MO&O* also addresses a petition for reconsideration filed in PR Docket No. 92–257 regarding the shared use of industrial/land transportation and maritime public correspondence frequencies. Consistent with our objective of increasing the efficiency of the PLMR frequency bands this *MO&O* clarifies our decisions in the *R&O,* and where necessary, makes appropriate modifications to the rules. This *MO&O* maintains the channel plan adopted in the *R&O,* but also permits frequency coordinators to recommend frequencies for any technology with lesser bandwidth, provided that interference is not caused to other systems. Additionally, the Commission extends the first transition date for the type acceptance of narrowband equipment from August 1, 1996, to February 14, 1997, and retains the second transition date of January 1, 2005. Further, the Commission clarifies the rules regarding type acceptance to provide greater flexibility for manufacturers to support existing equipment and, where appropriate, to provide alternatives to our efficiency standards. Finally, the Commission clarifies a variety of technical rules including, but not limited to, those pertaining to new power/antenna height limits, the emission mask, and frequency stability requirements.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0680 or via E-Mail at mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* FCC 96–492, adopted December 23, 1996, and released December 30, 1996. The full text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Order

1. The *R&O* (60 FR 37152, July 19, 1995) provided the private land mobile radio (PLMR) community with a regulatory framework that promotes efficient use of spectrum, increases technical flexibility, enhances the deployment of new technologies, and promotes a competitive and robust marketplace for product development. In this action, the Commission clarifies its decisions in the *R&O* and where necessary, makes appropriate modifications to the rules.

2. In the *R&O,* the Commission adopted a channel plan based on 7.5 kHz channel spacing in the 150–174 MHz VHF band and 6.25 kHz channel spacing in the 421–430 MHz, 450–470 MHz, and 470–512 MHz UHF bands. Flexibility is provided to licensees by permitting them to aggregate up to four narrowband channels to employ spectrum efficient wideband technology. Additionally, licensees are provided with a simple migration path because they will be able to remain on their currently assigned center frequencies and can continue to use existing equipment while they upgrade to new equipment.

3. Several petitioners ask the Commission to reconsider the new channel plan and instead adopt a channel plan based on 5 kHz channel spacing claiming that the Commission's

decision to space channels at 7.5 kHz creates inefficient ''white spaces'' in the VHF band. Additionally, they assert that the ability to use wideband equivalent technologies by aggregating narrowband channels is not taken into account in our rationale for rejecting 5 kHz spacing. We disagree with these petitioners. In a 5 kHz channel plan, a user would need to identify three contiguous channels to obtain a 12.5 kHz channel, but only two are required in the adopted plan. Thus, the adopted plan eases the transition for current users who desire to implement a two-step transition to narrowband through 12.5 kHz equipment. Petitioners also assert that inefficient white spaces are created by our adopted channel plan, since 12.5 kHz VHF equipment would actually use 15 kHz of spectrum by aggregating two 7.5 kHz VHF channels. However, to use 12.5 kHz equipment in a plan based on 5 kHz channels would also require licensees to use 15 kHz of spectrum because they would have to aggregate three 5 kHz channels. In the UHF band, 12.5 kHz equipment also would use 15 kHz of spectrum in a 5 kHz channel plan, but only 12.5 kHz of spectrum in the adopted plan. Furthermore, a 5 kHz channel plan would require users who choose to implement 6.25 kHz equipment to acquire the same 15 kHz of spectrum needed for 12.5 kHz equipment. Thus, a 5 kHz channel plan would create as much or more white space than the adopted channel plan.

4. Consequently, we conclude that our adopted 7.5/6.25 kHz channel plan is more flexible than a 5 kHz plan because it will accommodate users of 25, 12.5, 6.25, and 5 kHz equipment while accomplishing our goal of increasing spectrum efficiency. Further, this channel plan creates a flexible migration path, which is considered a critical factor by current users. For these reasons, we decline to modify the channel plan as adopted in the *R&O*. However, we are mindful of the fact that some users may want to implement 5 kHz technology within their existing 25 kHz bandwidth. Such a channelization, however, would require the licensee to deviate from the adopted band plan. Therefore, we will permit frequency coordinators to recommend frequencies inconsistent with the adopted band plan, for any technology, including 5 kHz, provided that such a system will not cause harmful interference to any existing system.

5. In the *R&O,* we decided to manage the transition to narrowband channels through the type acceptance process. This decision requires that new equipment type accepted after August 1, 1996, and January 1, 2005, meet specified efficiency guidelines. We note, however, that this approach does not impose a strict transition timetable upon individual users.

6. Petitioners argue that the conversion timetable for the type acceptance of narrowband equipment is too short and fails to account for normal product development cycles. They recommend that the first transition date be extended to August 1, 1998, and that the second transition date be extended to January 1, 2014. Other petitioners oppose this request stating that such action is not necessary because the *R&O* does not mandate the production or use of any particular type of technology according to a fixed timetable.

7. As noted, the transition dates established in the *R&O* do not require manufacturers to take any specific action. Consequently, we believe it is unnecessary to make extensive changes to the adopted transition dates and, thus, deny the request to do so. Additionally, we note that a number of manufacturers have already type accepted equipment that is compliant with the new rules. However, in consideration of the time elapsed between the *R&O* and adoption of this *MO&O,* and because this *MO&O* modifies rules which affect the type acceptance of equipment, we are extending the first transition date from August 1, 1996, to February 14, 1997. Additionally, to remove the uncertainty in trying to anticipate the amount of time necessary to attain a type acceptance grant, we are amending 47 CFR 90.203 to clarify that the transition dates refer to type acceptance application filing deadlines, rather than type acceptance grants.

8. The Association of Public-Safety Communications Officials-International, Inc. asks that we reconsider our decision not to adopt specific transition deadlines for public safety users. We decline to adopt such dates. The imposition of a mandate on any user, particularly public safety entities, to replace existing equipment and systems, is contrary to one of our basic goals in this proceeding of providing maximum flexibility to individual users. Also, since public safety entities are funded by local tax dollars, and are often constrained by limited financial resources, subjecting these entities to such a mandate could be unduly burdensome. Further, in light of the work of the Public Safety Wireless Advisory Committee and the Commission's overall evaluation and assessment of public safety wireless communications in WT Docket No. 96–86 (61 FR 25185, May 20, 1996), it would be premature at this time to make decisions regarding transition dates for public safety users.

9. In the *R&O,* we adopted spectrum efficiency standards that require at least one voice channel per 12.5 kHz of channel bandwidth for equipment type accepted after August 1, 1996, and at least one voice channel per 6.25 kHz of channel bandwidth for equipment type accepted after January 1, 2005. Additionally, after August 1, 1996, equipment designed for data operation must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of bandwidth.

10. Several petitioners request that the type acceptance rules be amended to allow alternative showings of spectrum efficiency for low power frequency reuse systems. We agree with the petitioners that there is a place within the PLMR environment for spectrum efficient low-power, frequency reuse systems. However, we will not alter the efficiency standard. instead, we will exempt all transmitters that operate with less than 500 mW output power from the bit rate requirement for type acceptance. Additionally, we will provide manufacturers with additional flexibility to design spectrally efficient transmitters. The Commission's Equipment Authorization Division may, on a case by case basis, grant type acceptance to equipment with slower bit rates than specified in 47 CFR 90.203(j)(3) and 47 CFR 90.203(j)(5), provided that an acceptable technical analysis is submitted with the application which demonstrates that the slower data rate will provide more spectral efficiency than the standard data rate.

11. Some petitioners asked that we clarify the distinction between digital voice and data. In this connection, we refer to the definitions in 47 CFR part 2. Radios type accepted for telephony must meet the voice channel standard, and those type accepted for telegraphy or telemetry must meet the data rate standard. Further radios that are type accepted for both telephony and telegraphy or telemetry must meet both standards. Additionally, because 47 CFR 90.207(b) allows stations authorized for telephony to use emissions for telecommand, the telecommand function of such radios will not be subject to the data rate standard. Also, because transmissions made via modem through the external microphone port of an analog radio are limited to audio, the data rate standard will not be applied to such uses. Finally, we clarify that the spectrum efficiency requirements imposed by the *R&O* do not apply to paging systems.

12. In the *R&O*, we adopted new power and antenna height limitations based on ''safe harbor'' tables submitted by the Land Mobile Communications Council (LMCC). These new limits allow various combinations of effective radiated power (ERP) and antenna height above average terrain (HAAT) based upon the size of an applicant's desired service area and the applicant's operating frequency. In general, the rules allow for a maximum ERP of 500 watts and maximum service area radii of 40 km in the VHF band and 32 km in the UHF band. The rules state that larger areas, up to 80 km, will be authorized provided that the applicant demonstrates that the requested station parameters will not produce coverage in excess of that which is required. However, areas larger than 80 km will be authorized on a secondary basis. Finally, these new rules only apply to new stations, which were defined as stations not functionally integrated with an earlier-installed system.

13. Several petitioners argue that special separation criteria should be developed for systems that operate in the 150–174 MHz and 421–512 MHz bands under conditions of extreme terrain, that a streamlined process for deviating from the power/antenna height tables be considered for applicants that operate in areas of non-uniform terrain, that applicants be permitted to use any commonly accepted propagation model to demonstrate radio system coverage, and that a formal waiver not be required for such requests.

14. We agree that special consideration should be given to the power/antenna heights in areas of extreme terrain. We recognize that in these areas, average terrain calculations may not provide accurate depictions of the actual terrain over which a system will operate and therefore our tables may not provide an appropriate antenna height/power combination for a desired service area size. We are modifying 47 CFR 90.205(d)(2) and 47 CFR 90.205(g)(2) to reflect that applicants may deviate from the tables when operating in areas of non-uniform terrain. Additionally, the rules allow the use of generally accepted engineering practices and standards, including models that are widely accepted by the engineering community, as producing outputs representative of real world results. Applicants who demonstrate special circumstances (*e.g.* extreme terrain conditions or need for a larger service area) will not be required to submit a waiver request to the Commission. Rather, the required engineering analysis should be submitted to the frequency coordinator and as an attachment to the license application, FCC Form 600. Additionally, a waiver request will be unnecessary for applicants who request service areas greater than 40 km in the VHF band and 32 km in the UHF band. These applications, however, pursuant to footnote 4 in Tables 1 and 2 of 47 CFR 90.205, must be accompanied by a justification for the larger service area and include a technical analysis demonstrating that the signal strength at the edge of the service area is within the specified guidelines. Additionally, we will allow applicants to exceed the reference antenna height limits if they correspondingly lower their power.

15. Petitioners seek clarification of the rules that would classify all base stations with service areas greater than 80 km as secondary arguing that certain geographic areas, particularly in western regions, warrant special consideration because the terrain in those areas provide few suitable transmitter sites.

16. We note that licensees who need to communicate over large distances generally employ systems that make extensive use of mobile relay stations, which are afforded the protection of primary status under our rules. Because mobile relay stations would typically be within 80 km of another base station, primary status would be conferred on the entire area that a licensee needs to cover. We believe that coverage areas up to 80 km around a single base station will serve the vast majority of licensees and are modifying 47 CFR 90.205(d)(3) and 47 CFR 90.205(g)(3) to confer primary status for communications within 80 km from a base station. We also recognize that some licensees' operations may require primary status within a region larger than 80 km. Because we anticipate that a limited number of licensees will have such needs, we will entertain waiver requests for those instances where a licensee requests coverage by one base station for an area greater that 80 km.

17. Many petitioners seek clarification on what constitutes a new station. As a general matter, we elected to exempt existing stations from complying with the power/antenna height tables adopted in the *R&O* in order to afford licensees flexibility to modify, expand, or upgrade their facilities without adversely affecting their current operations. 47 CFR 90.135 provides examples of permissible modifications to authorized stations. Stations that modify their existing authorization in accordance with one of the listed modifications will not be subject to the new power/antenna height rules. We decline to grant a request to characterize the addition of base and mobile relay facilities that operate on different frequencies from an existing system as an existing system.

18. Because 47 CFR 90.135(a) allows licensees to modify their authorizations due to a change in emissions, the new power/antenna height limits will not apply to systems that are modified by converting to equipment designed for narrower channel bandwidths. Furthermore, if the only modification that a licensee makes to a system is a narrowing of its emission, a formal application for modification need not be filed with the Commission. However, the licensee will be required to notify the Commission of this change immediately, either by filing FCC Form 405–A or submitting a letter in accordance with 47 CFR 90.135(d).

19. Several organizations seek reconsideration of the power/antenna height tables as they relate to private carrier paging channels. We believe that our rules should reflect the differences between paging systems and the majority of two-way mobile systems in the PLMR bands. In this connection, we will allow new one-way paging operations to operate at the same power levels that applied prior to the adoption of the *R&O*, *i.e.*, for most stations, 350 watts output power with no limit on ERP, on the frequencies specifically reserved for one-way paging.

20. Regarding the decision regarding the ability of manufacturers to continue producing and supporting 25 kHz equipment through upgrades and permissive changes, some petitioners argue that it is unnecessary to prohibit manufacturers from making minor design changes to existing 25 kHz equipment because our rules already ensure a transition to more narrowband equipment. This request is opposed by Securicor Radiocoms Limited because it is inconsistent with the primary goal in this proceeding since it would excuse compliance with the multi-mode requirement. Our intent is to allow only those modifications which would provide a multi-mode capability or a narrowband mode to existing equipment. In these instances, manufacturers must obtain a new FCC Identifier for their equipment. Modifications which entail the redesign of existing equipment will not be allowed.

21. When compared to wideband channels, *i.e.*, 25 kHz channels, the rules adopted in the *R&O* allow emissions on narrowband channels to occupy a larger percentage of the channel. This combination of increased channel occupancy and narrower channel spacing increases the

importance of frequency stability to reduce adjacent channel interference. Therefore, the Commission adopted stringent frequency stability requirements as recommended by the Telecommunications Industry Association (TIA).

22. SEA, Inc. contends that the frequency stability limits for mobile radios designed to operate with channel bandwidths of 6.25 kHz are too restrictive and recommends alternative limits. These recommendations are supported by Motorola. We agree that, in the VHF band, a less stringent requirement can be tolerated because of the presence of a small guard band. Further, we believe that the frequency coordination process can compensate for less stringent requirements in the UHF band. Therefore, we are modifying 47 CFR 90.213 in accordance with the suggestions of SEA.

23. In order to accommodate our new channel plan, we adopted new guidelines for authorized bandwidth. For equipment designed to operate on 7.5 kHz or 6.25 kHz channels, the authorized bandwidth is 6 kHz and for equipment designed to operate on 12.5 kHz channels the authorized bandwidth is 11.25 kHz. SEA requests that the authorized bandwidth for 6.25 kHz channels in the UHF and VHF bands be reduced to 5 kHz in order to allow same area operation on the narrowband channels.

24. We decline to reduce the authorized bandwidth from 6 kHz to 5 kHz. The 6 kHz authorized bandwidth was chosen to provide manufacturers with flexibility to implement a wide range of modulation techniques. We note, however, that the emission mask only serves as an upper limit and thus, manufacturers can employ any emission they desire as long as they do not exceed the specified limits. Therefore, if a manufacturer determines that same-area operations cannot be achieved on adjacent narrowband channels, it can design its equipment with narrower emissions.

25. When determining the shape of a frequency mask, it is essential that instrumentation requirements and measurement procedures are defined. In general, transmitter emissions are measured using established industry standards. In this connection, EIA/TIA Standard 603 instructs radio manufacturers to use a resolution bandwidth of 300 Hz or less. Consistent with this standard, in the *R&O,* we determined that emissions of equipment designed to operate in the Refarming bands should be measured using a resolution bandwidth of 100 Hz with the measuring instrument in a peak hold mode.

26. Motorola contends that using a resolution bandwidth of 100 Hz, rather than the 300 Hz recommended by TIA, adds 5 dB of energy to the adjacent channel and will result in reduced spectrum efficiency. SEA agrees with Motorola, but recommends that the resolution bandwidth be left at 100 Hz, and that the attenuation of the emission masks be adjusted 5 dB.

27. We decline to adjust the measurement technique adopted in the *R&O*. The current industry trend for measuring digital emissions just outside the channel, *i.e.,* the adjacent channel, is to use measuring instrumentation having a resolution capability of 1% of the bandwidth of the carrier emission. This is evidenced by measurement procedures and interpretations that have been developed in our rules for the licensed Personal Communications Services (PCS) and unlicensed PCS devices. A resolution bandwidth of 1% of the carrier emission bandwidth provides a reasonable compromise where the emission's interference potential can be measured and the instrumentation will not detrimentally affect the measurement. Using a 100 Hz resolution bandwidth for equipment in the Refarming bands approximates the 1% standard that has been accepted by the affected industries in other rule makings. Finally, we believe the claim of a 5 dB increase in energy to the adjacent channel to be overstated because it assumes a uniform level of energy across the measurement window without taking into account the roll-off of energy at the band edges that results from the emission mask. Therefore, we conclude that any effects on the adjacent channel will be less than 5 dB.

28. In order to promote flexibility for manufacturers to introduce new and innovative modulation techniques in the PLMR bands below 512 MHz, we revised 47 CFR 90.211 to eliminate those requirements that were primarily applicable to radios that use frequency modulation (FM). TIA supports our objective, but disagrees with our decision to remove specified deviation limits for FM and recommends that the modulation limits be reinserted into the rules with their respective filter characteristics. We disagree. Our rationale for removing the filter specifications from 47 CFR 90.211 and the FM deviation limits from 47 CFR 90.209 was to provide manufacturers flexibility in designing and implementing radio specifications. In this connection, we believe that setting specifications for FM would be inconsistent with such rationale.

29. With the adoption of a new channel plan, many frequency allocations and assignments were altered, particularly those of the former low power offset channels. One result of the new channel plan is that channels formally available as low power offset channels under Section 47 CFR 90.267 are now available as regularly assignable channels for high power operations. Additionally, the new channel plan resulted in a reallocation of some of these channels from one radio service to another by allocating channels that were between allocations for two different radio services to the radio service or services where the lower of the channels was allocated. Many Petitioners request that we reexamine permissible uses for several former offset channels. Upon reexamination, we are making several modifications to the frequency tables in 47 CFR part 90.

30. The *R&O* provided several operational alternatives for licensees authorized on the former low power offset channels. One option is to remain on their current channels and achieve primary status by providing sufficient justification to raise power. A second option is to migrate to designated low power channels and achieve primary status on those channels. A third option is to remain on their current channel at low power and continue to have secondary status.

31. The Alarm Industry Communications Committee (AICC) contends that licensees should be able to attain primary status without raising power. Additionally, they ask whether stations wishing to increase power need to file a letter notification or an application to provide coordinates. Finally, AICC suggests that the Commission continue to allow the current practice for alarm transmitters of providing coordinates for the center of an operating area and the radius around these coordinates in which transmitters will operate rather than requiring each fixed transmitter to be individually licensed.

32. As an initial matter, recognizing that any decision regarding changes in power requirements on former low power offset channels will be affected by our resolution of the exclusivity issues raised in the *Further Notice of Proposed Rule Making* (60 FR 37148, July 18, 1995) in this proceeding, we defer decisions on this matter to a future *Order.* Regarding the requirement to furnish coordinates, we note that situations exist where it is neither feasible nor desirable for a licensee to furnish coordinates of all transmitters in their system. Therefore, we will allow licensees to supply only coordinates of

the center of an operating area and a radius when all stations are fixed, low power, *i.e.,* not to exceed 2 watts, stations.

33. When we eliminated the low power offset channels in the *R&O,* we established new low power offset channels 3.125 kHz removed from regularly assignable channels and authorized them on a secondary, non-interference basis. The creation of these channels was opposed by the Personal Communications Industry Association which contends that low power users will be accommodated through coordinator designated exclusive low power channels and the color dot channels and that these new low power offset channels will recreate difficulties which existed with the former low power offset channels Finally, they state that these new low power offset channels may have the unintended effect of preventing the use of primary channels by wideband, spectrally efficient systems. We agree that these low power offset channels could potentially have a detrimental effect on the operations on primary channels and will therefore remove the new low power offset channels from 47 CFR 90.267(b). However, in light of technological advances and usage patterns in these bands, we reserve the right to revisit this issue in the future.

34. When we established the Emergency Medical Radio Service (EMRS), we assigned the 453 MHz and 458 MHz frequencies used for medical paging systems in the Special Emergency Radio Service (SERS) to the EMRS. SERS users were permitted to continue operating on these channels as primary users for a period of five years. In the *R&O,* the SERS frequencies reassigned to the EMRS were rechannelized at the new narrowband spacings. Several petitioners request removal of the new channels that arose from splitting the 453 MHz and 458 MHz channels from the SERS. We agree and will remove the 453 MHz narrowband channels from the SERS frequency table in 47 CFR 90.53(a).

35. In the EMRS, MED channels are used for emergency medical communications. Prior to adoption of the *R&O,* there were 10 MED channels, designated as MED–1 through MED–10. The new channel plan created 3 new MED channels higher in frequency than each existing MED channel. These new channels, designated as MED-A through MED-X, were assigned as follows: MED-A, MED-B, and MED-C were assigned between MED–1 and MED–2, MED-D, MED-E, and MED-F were assigned between MED–2 and MED–3. The new MED channels higher in frequency than MED–9 and MED–10 were not labeled. Several Petitioners propose changing the MED channel labeling scheme to one that is entirely numeric.

36. We agree that a different labeling approach is needed for the new MED channels because any confusion regarding their designation could potentially interfere with the communication of messages necessary to ensure public safety. Therefore, we will use a trailing 1, 2, or 3 to designate the position of the new MED channels in relation to the existing MED channels. For example, the channel 6.25 kHz above MED–3 will be designated as MED–31, the channel 12.5 kHz above MED–3 as MED–32, and the channel 18.25 kHz above MED–3 as MED–33. We will adopt this labeling approach for designating the channel positions accorded to each of the 10 MED channels.

37. Currently, 47 CFR 90.217 exempts transmitters used in the Business Radio Service that have an output power not exceeding 120 milliwatts from the technical requirements imposed by our rules, provided that they meet minimum emission limitations. Many petitioners request that this exemption be expanded to include all PLMR services. We agree and are expanding the current exemption to include all private land mobile radio services.

38. In order to assure that transient frequencies do not cause excessive interference to land mobile licensees and television receivers in adjacent bands, the Commission adopted standards for transient frequency behavior. These standards are based on EIA/TIA standard 603, which sets allowable transient response for radios that operate in three frequency bands: 30–300 MHz, 300–500 MHz, and 500–1000 MHz.

39. Several petitioners request that we clarify the new rules by declaring that they are only applicable to equipment type accepted after a specific date. Motorola recommends that the three frequency band columns listed in 47 CFR 90.214 be replaced by two frequency band columns, one for 150–174 MHz and one for 421–512 MHz. We decline to modify the implementation date of § 90.214 of our rules. Since the new rules took effect on August 18, 1995, the Commission's Equipment Authorization Division has been granting type acceptance based on transmitters meeting all of the new technical requirements. Therefore, because there have been no objections to the transient frequency requirements of 47 CFR 90.214, we see no reason to grant type acceptance to transmitters that do not meet the new requirements. Additionally, granting type acceptance to radios that do not meet the new requirements would be administratively burdensome because it would create two categories of transmitters which would be difficult to track and identify in the future. We are, however adopting Motorola's recommendation to apply the standards for radios that operate in the 421–500 MHz band to radios that operate in the 500–512 MHz band.

40. In the *R&O,* we eliminated 47 CFR 90.271 which provided for 5 kHz narrowband channels that were offset either 2.5 kHz or 7.5 kHz from regularly assignable channels in the 150–170 MHz band. Additionally, the *R&O* permits licensees on these channels to remain on their currently authorized frequency until August 1, 2001 if interference is not experienced. Securicor asserts that users of these 5 kHz channels, who operate the most spectrally-efficient equipment in the PLMR bands, are being treated unfairly because they must modify their systems to comply with the new channel plan even if they do not experience or cause interference.

41. We share Securicor's concern about unnecessarily causing disruption to existing operations. Therefore, to accommodate the needs of our licensees and to prevent the premature obsolescence of narrowband systems that are already operating in the 150–174 MHz band, we will extend by two years, until August 1, 2003, the date by which these licensees must migrate to one of the new VHF channels. Additionally, licensees may remain on their currently assigned channels after August 1, 2003, on a secondary, non-interference basis.

42. We recently adopted rules in PR Docket No. 92–257 (60 FR 35507, July 10, 1995) to allow industrial and land transportation entities to use nine VHF maritime public correspondence channel pairs for standard two-way base/mobile operations. 47 CFR 90.283 imposes power/antenna height restrictions on these frequencies and requires minimum separation distances from protected entities.

43. LMCC requests that the 25 kHz wide channels listed in 47 CFR 90.283 of our rules be integrated into the new 6.25 kHz narrowband channel plan. We note that new 25 kHz Part 90 radios will no longer be type accepted in the 150–174 MHz band after the effective date of the rule amendments of this *MO&O*; thus, we find it unreasonable to require their use. Additionally, we believe that the current restrictions are sufficient to ensure that PLMR licensees operating on narrowband channels will not cause harmful interference to the protected

entities. Therefore, we modify 47 CFR 90.283 to provide narrowband channel spacings for PLMR users on the shared maritime public correspondence frequencies.

44. The Industrial Telecommunications Association requests that we adopt changes in the power/antenna height tables of 47 CFR 90.283(c) and 47 CFR 90.283(d) to accommodate users that need to exceed the imposed limits due to circumstances such as terrain effects or coverage requirements. We are not modifying the rules, rather, we will require a request for waiver of the power/antenna height limits of 47 CFR 90.283.

45. With the adoption of this *Memorandum Opinion and Order,* we finalize the new channel plan and incorporate certain modifications to our regulatory and technical framework for the PLMR services in 47 CFR part 90. These new rules will provide greater technical flexibility for PLMR licensees and equipment manufacturers, promote the highly effective and efficient use of the PLMR spectrum, and create an environment which will provide users the opportunity to introduce advanced technologies into the private land mobile radio services.

46. The rules are set forth at the end of this document.

47. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

48. This *Memorandum Opinion and Order* and the rule amendments are issued under the authority of 47 U.S.C. 154(i), 303(r), and 405.

Final Regulatory Flexibility Analysis

49. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (56 FR 31097, July 9, 1991) in PR Docket 92–235. The Commission sought written public comments on the proposals in the Refarming Notice, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Memorandum Opinion and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[1]

A. Need For and Objective of the Proposed Rule

50. Our objective is to increase spectrum efficiency and facilitate the introduction of advanced technologies into the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz PLMR bands. The *Report and Order* in this proceeding modified the Commission's rules to resolve many of the technical issues which inhibited the use of spectrally efficient technologies in these frequency bands. This *MO&O* address petitions for reconsideration and clarification received in response to the Report and Order.

51. We find that the potential benefits to the PLMR community exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by modifying our rules to increase the spectral efficiency of the PLMR bands.

B. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

52. No comments were submitted in direct response to the IRFA. We have, however, reviewed general comments that may impact small businesses.

C. Description and Estimate of the Number of Small Entities Subject to Which the Rules Apply

53. The rules adopted in this *Memorandum Opinion and Order* will apply to small business that choose to use, manufacture, or design radios that operate in the PLMR bands below 512 MHz. The are no Commission imposed requirements, however, for any entity to use or produce these products.

Estimates for PLMR Manufacturers

54. The Commission has not developed a definition of small entities specifically applicable to PLMR manufacturers. Therefore, for the purposes of this analysis, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio and television broadcasting and communications equipment manufacturers. The SBA defines a small entity in this category as one in which less than 750 persons are employed.[2]

55. Because the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that manufacture PLMR equipment and is unable at this time to determine the number of manufacturers which are small businesses. However, the 1992 Census of Manufacturers, conducted by the Bureau of Census, which is the most comprehensive and recent information available, shows that approximately 925 out of the 948 entities manufacturing radio and television transmitting equipment in 1992 employed less than 750 persons.[3] We are unable to discern from the Census data precisely how many of these manufacturers produce private land mobile radios. Further, any entity may choose to manufacture such radio equipment. Therefore, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, we estimate that there are at least 925 manufacturers and potential manufacturers of PLMR equipment which are small businesses, as that term is defined by the SBA.

Estimates for PLMR Licensees

56. Private land mobile radio system serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

57. Because the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that are private land mobile radio licensees. Therefore, the Commission is unable at this time to determine the number of small businesses which could be impacted by the rules. However, the Commission's fiscal year 1994 annual report indicates that at the end of fiscal year 1994 there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR

[1] Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[2] See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

[3] See 1992 Census of Manufacturers, Industry Series, Communication Equipment, Including Radio and Television, Industries 3651, 3652, 3661, 3663, and 3669, Issued March 1995, Table 4. This table shows a total of 23 manufacturers with an average of 1,000 employees or more and 908 with an average of 499 employees or less. It lists a total of 17 manufacturers with an average of 500–999 employees. Because we could not determine the number of manufacturers in 500–999 category with an average of 750 employees or less, we assume all 17 are small businesses for the purpose of this evaluation.

bands below 512 MHz.[4] Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules

58. There are no general reporting or recordkeeping requirements. However, for certain requests we have substituted a new, less burdensome reporting requirement in place of a requirement for applicants to file applications for waiver or modification.

(1) In order to obtain a type acceptance grant, PLMR radios that transmit data must meet a specified spectrum efficiency standard—measured in bits per second per Hertz. For radios that transmit bit rates slower than the specified standard, our rules permit manufacturers an alternative to requesting a waiver of the technical rules. Type acceptance grants may be obtained, provided that the applicant submits a technical analysis which demonstrates that the slower data rate will provide more spectral efficiency than the standard data rate.

(2) Our rules provide allowable combinations of antenna height and effective radiated power (ERP) based on the size of the area an applicant intends to serve and a certain signal strength at the edge of this service area. Rather than filing a waiver request, we are allowing applicants to exceed the reference antenna height, provided they correspondingly lower their ERP and demonstrate that the signal strength of their system at the edges of their service area meets the general limits.

(3) Licensees, when making changes to their radio systems, are normally required to file an application for modification. However, in instances where the only modification to a radio system is a narrowing of its operating bandwidth, we will not require an application for modification. Instead, we are only requiring that licensees notify the Commission of the change.

E. Steps Taken by Agency To Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

59. The Commission, in this *MO&O*, has considered petitions to reconsider the rules adopted in the *Report and Order* in this proceeding. In doing so, the Commission has adopted several alternatives which minimize burdens placed on small entities. First, the Commission reaffirms its decision to implement the transition to narrowband equipment through the type acceptance process. Users are not required to replace their existing systems, rather they are provided flexibility to choose a transition schedule that best fulfills their needs while balancing technical capabilities and financial considerations. Second, private paging systems, many of which are operated by small entities, will not be subject to many of the new rules. This approach, by not imposing new requirements on private paging licensees, will lower the cost of expanding such systems. Third, we provide applicants the ability to deviate from the new power/antenna height restrictions, which only apply to new stations, without applying for a waiver. This approach eliminates the need for small entities to remit waiver fees of $125 per rule section per station. Additionally, it eliminates the need for small entities to expend clerical support to prepare these waiver requests. Fourth, we allow manufacturers to make permissive changes to previously type accepted equipment. This will allow small entities to continue supporting their existing equipment and customer base in advance of changing their production facilities to manufacture radios compliant with the new spectrum efficiency rules. Fifth, we ease the frequency stability requirements for narrowband radios and extend the exemption from technical standards for low power transmitters to all radio services. These changes will lower development and production costs for small entities. Sixth, we will not require licensees operating on 5 kHz channels under former § 90.271 of our rules to comply with the new channel plan by August 1, 2001. Instead, these licensees can continue operating on their current frequency as long as they do not cause interference to other users. This approach will lower costs to small entities by not requiring those who operate such systems to modify them sooner than necessary or at all.

F. Commission's Outreach Efforts To Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. 609

60. The Commission has, in this proceeding, taken several steps to learn and respond to the views of small entities. In response to the Refarming Notice, we held two public forums. On November 14, 1991, the Private Radio Bureau, in cooperation with the Annenberg Washington Program, Communications Policy Studies of Northwestern University, sponsored a conference on Refarming and on May 16, 1993, the Private Radio Bureau held a Refarming technology Roundtable. Additionally, throughout the course of this proceeding the representatives of the Private Wireless Division (PWD) of the Wireless Telecommunications Bureau have had numerous ex parte discussions with small entities or their representatives. For example, the PWD has met with many of the frequency coordinators for the nineteen PLMR services.[5]

G. Report to Congress

61. The Commission shall send a copy of this final Regulatory Flexibility analysis, along with the Memorandum Opinion and Order, in a report to Congress pursuant to the SBREFA.[6] A copy of this FRFA will also be published in the Federal Register.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission
William F. Caton,
Acting Secretary.

Rule Changes

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

2. Section 90.17 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(31) to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	* * * *	*
Megahertz:		
*	* * * *	*
150 to 170	Base or Mobile	29, 31

* * * * *

(c) * * *

(31) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz

[4] See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

[5] Many of the frequency coordinators are trade associations and represent their members, many of which are small entities, views on telecommunications matters.

[6] See 5. U.S.C. 801(a)(1)(A).

removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

3. Section 90.19 is amended by revising the entries for 150 to 170 MHz, and 460.0125 MHz in the frequency table in paragraph (d) and adding paragraphs (e)(35) and (e)(36) to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(d) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	33, 35
*	*	*
460.0125	.....do	26, 36

* * * * *

(e) * * *

(35) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

(36) Use of this frequency is on a secondary basis and subject to the provisions of § 90.267(a)(3), (a)(4), (a)(5), and (a)(7)

* * * * *

4. Section 90.21 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(23) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	21, 23

* * * * *

(c) * * *

(23) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

5. Section 90.23 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(24) to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	21, 24

* * * * *

(c) * * *

(24) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

6. Section 90.25 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(28) to read as follows:

§ 90.25 Forestry-Conservation Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	25, 28

* * * * *

(c) * * *

(28) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

7. Section 90.27 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b), by revising the tables in paragraphs (c)(11) and (c)(13)(i), and by adding paragraph (c)(29) to read as follows:

§90.27 Emergency Medical Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	28, 29

* * * * *

(c) * * *

(11) * * *

Frequencies base and mobile (MHz)	Mobile only (MHz)	Channel name
462.950	467.950	MED–9
462.95625	467.95625	MED–91
462.9625	467.9625	MED–92
462.96875	467.96875	MED–93
462.975	467.975	MED–10
462.98125	467.98125	MED–101
462.9875	467.9875	MED–102
462.99375	467.99375	MED–103

* * * * *

(13) * * *

(i) * * *

Frequencies base and mobile (MHz)	Mobile only (MHz)	Channel name
463.000	468.000	MED–1
463.00625	468.00625	MED–11
463.0125	468.0125	MED–12
463.01875	468.01875	MED–13
463.025	468.025	MED–2
463.03125	468.03125	MED–21
463.0375	468.0375	MED–22
463.04375	468.04375	MED–23
463.050	468.050	MED–3
463.05625	468.05625	MED–31
463.0625	468.0625	MED–32
463.06875	468.06875	MED–33
46.075	46.075	MED–4
463.08125	468.08125	MED–41
463.0875	468.0875	MED–42
463.09375	468.09375	MED–43
463.100	468.100	MED–5
463.10625	468.10625	MED–51
463.1125	468.1125	MED–52
463.11875	468.11875	MED–53
463.125	468.125	MED–6
463.13125	468.13125	MED–61
463.1375	468.1375	MED–62
463.14375	468.14375	MED–63
463.150	468.150	MED–7
463.15625	468.15625	MED–71
463.1625	468.1625	MED–72
463.16875	468.16875	MED–73
463.175	468.175	MED–8
463.18125	468.18125	MED–81
463.1875	468.1875	MED–82
463.19375	468.19375	MED–83

* * * * *

(29) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

8. Section 90.53 is amended by revising the entries for 150 to 170 MHz and 458.0375 MHz, removing the entries for 453.03125 MHz, 453.03750 MHz, 453.04375 MHz, 453.08125 MHz, 453.08750 MHz, 453.09375 MHz, 453.13125 MHz, 453.13750 MHz, 453.14375 MHz, 453.18125 MHz, 453.18750 MHz, 453.19375 MHz, 462.0125 MHz, 462.0375 MHz, 462.0625 MHz, 462.0875 MHz, 462.1125 MHz, 462.1375 MHz, 462.1625 MHz, 462.1775 MHz, 467.0125 MHz, 467.0375 MHz, 467.0625 MHz, 467.0875 MHz, 467.1125 MHz, 467.1375 MHz, 467.1625 MHz, 467.1875 MHz, and adding entries for 458.0125 MHz, 463.0125 MHz, 463.0375 MHz, 463.0625 MHz, 463.0875 MHz, 463.1125 MHz, 463.1375 MHz, 463.1625 MHz, 463.1875 MHz, 468.0125 MHz, 468.0375 MHz, 468.0625 MHz, 468.0875 MHz, 468.1125 MHz, 468.1375 MHz, 468.1625 MHz, and 468.1875 MHz in the frequency table in paragraph (a), and adding paragraph (b)(39) to read as follows:

§90.53 Frequencies available.

(a) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	36, 39
*	*	*
458.0125	Mobile	38
458.0375	.....do	38
*	*	*
463.0125	.....do	38
463.0375	.....do	38
463.0625	.....do	38
463.0875	.....do	38
463.1125	.....do	38
463.1375	.....do	38
463.1625	.....do	38
463.1875	.....do	38
*	*	*
468.0125	.....do	38
468.0375	.....do	38
468.0625	.....do	38
468.0875	.....do	38
468.1125	.....do	38
468.1375	.....do	38
468.1625	.....do	38
468.1875	.....do	38

* * * * *

(39) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

9. Section 90.63 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(31) to read as follows:

§90.63 Power Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	29, 31

* * * * *

(d) * * *

(31) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

10. Section 90.65 is amended by revising the entry for 150 to 170 MHz, removing the second entry for 456.525 MHz, and adding entries for 456.7375 MHz and 462.5125 MHz in the frequency table in paragraph (b) and adding paragraph (c)(48) to read as follows:

§90.65 Petroleum Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	45, 48
*	*	*
456.7375	.....do	46
*	*	*
462.5125	Mobile	46

* * * * *

(c) * * *

(48) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

11. Section 90.67 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(43) to read as follows:

§90.67 Forest Products Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	39, 43

(c) * * *

(43) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

12. Section 90.69 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(16) to read as follows:

§90.69 Film and Video Production Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	15, 16

* * * * *

(c) * * *

(16) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

13. Section 90.73 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c)

and adding paragraph (d)(42) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	39, 42

* * * * *

(d) * * *

(42) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

14. Section 90.75 is amended by revising the entries for 150 to 170 MHz, 150.830 MHz, 150.920 MHz, 151.070 MHz, 151.190 MHz, 151.310 MHz, 152.480 MHz, 157.740 MHz, 460.66250 MHz, 460.68750 MHz, 460.71250 MHz, 460.73750 MHz, 460.76250 MHz, 460.78750 MHz, 460.81250 MHz, 460.83750 MHz, 460.86250 MHz, 460.88750 MHz, 462.750 MHz, 462.775 MHz, 462.800 MHz, 462.825 MHz, 462.850 MHz, 462.875 MHz, 462.900 MHz, 462.925 MHz, 462.93750 MHz, 462.94375 MHz, 463.200 MHz, 464.4875 MHz, 464.5125 MHz, 464.5375 MHz, 464.5625 MHz, 464.98750 MHz, 465.01250 MHz, 465.650 MHz, 465.66250 MHz, 465.68750 MHz, 465.71250 MHz, 465.73750 MHz, 465.76250 MHz, 465.78750 MHz, 465.81250 MHz, 465.83750 MHz, 465.86250 MHz, 465.88750 MHz, 469.4875 MHz, 469.5125 MHz, 469.5375 MHz, and 469.5625 MHz, adding entries for 154.585 MHz and 467.9375 MHz in the table in paragraph (b) and adding paragraphs (c)(53), (c)(54), and (c)(55) to read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
Megahertz:		
*	*	*
150 to 170	Base or Mobile	48, 54
*	*	*
150.830	Base	8, 10, 12, 49, 55
*	*	*
150.920	Base	8, 10, 12, 49, 55
*	*	*
151.070	Base	8, 10, 12, 49, 55
*	*	*
151.190	Base	8, 10, 12, 49, 55
*	*	*
151.310	Base	8, 10, 12, 49, 55
*	*	*
152.480	Base	10, 11, 12, 49, 55
*	*	*
154.585	....do	4, 13, 22, 38, 24
*	*	*
157.740	Base	10, 11, 12, 49, 55
*	*	*
460.6625	....do	2, 15, 24, 25, 26, 53
*	*	*
460.6875	....do	2, 15, 24, 25, 26, 53
*	*	*
460.7125	....do	2, 15, 24, 25, 26, 53
*	*	*
460.7375	....do	2, 15, 24, 25, 26, 53
*	*	*
460.7625	....do	2, 15, 24, 25, 26, 53
*	*	*
460.7875	....do	2, 15, 24, 25, 26, 53
*	*	*
460.8125	....do	2, 15, 24, 25, 26, 53
*	*	*
460.8375	....do	2, 15, 24, 25, 26, 53
*	*	*
460.8625	....do	2, 15, 24, 25, 26, 53
*	*	*
460.8875	....do	2, 15, 24, 25, 26, 53
*	*	*
462.750	Base	10, 49, 55
*	*	*
462.775	Base	10, 49, 55
*	*	*
462.800	Base	10, 49, 55
*	*	*
462.825	Base	10, 49, 55
*	*	*
462.850	Base	10, 49, 55
*	*	*
462.875	Base	10, 49, 55
*	*	*
462.900	Base	10, 49, 55
*	*	*
462.925	Base	10, 49, 55
462.9375	Mobile	52
462.94375	Base or mobile	46
463.200	....do	1, 2, 26
*	*	*
464.4875	....do	1, 2, 24, 26, 29
*	*	*
464.5125	....do	1, 2, 24, 26, 29
*	*	*
464.5375	....do	1, 2, 24, 26, 29
*	*	*
464.5625	....do	1, 2, 24, 26, 29
*	*	*
464.9875	Mobile	52
*	*	*
465.0125	Mobile	52
*	*	*
465.650	....do	2, 4, 25, 26, 31

Frequency or band	Class of station(s)	Limitations
*	* * *	*
465.6625	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.6875	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7125	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7375	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7625	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.7875	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8125	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8375	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8625	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
465.8875	.....do	2, 4, 24, 25, 26, 31, 53
*	* * *	*
466.0125	.....do	1, 2, 24, 28, 39, 53
*	* * *	*
467.9375	.....do	24, 52
*	* * *	*
469.4875	.....do	1, 2, 24, 26
*	* * *	*
469.5125	.....do	1, 2, 24, 26
*	* * *	*
469.5375	.....do	1, 2, 24, 26
*	* * *	*
469.5625	.....do	1, 2, 24, 26

* * * * *

(c) * * *

(53) This frequency may be used on a secondary, non-interference basis by a hospital or health care institution holding a license to operate a radio station under this part to operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission.

(54) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

(55) One-way paging transmitters on this frequency may operate with an output power of 350 watts.

* * * * *

15. Section 90.79 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(32) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	30, 32

* * * * *

(d) * * *

(32) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

16. Section 90.81 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(19) to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	17, 19

* * * * *

(d) * * *

(19) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

17. Section 90.89 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(27) to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	24, 27

* * * * *

(c) * * *

(27) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

18. Section 90.91 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(25) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	* * *	*
Megahertz:		
*	* * *	*
150 to 170	Base or Mobile	23, 25

* * * * *

(c) * * *

(25) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

19. Section 90.93 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (b) and adding paragraph (c)(20) to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	18, 20

* * * * *

(c) * * *

(20) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

20. Section 90.95 is amended by revising the entry for 150 to 170 MHz in the frequency table in paragraph (c) and adding paragraph (d)(24) to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
Megahertz:		
*	*	*
150 to 170	Base or Mobile	21, 24

* * * * *

(d) * * *

(24) Licensees as of August 18, 1995 who operate systems that are 2.5 kHz removed from regularly assignable frequencies may continue to operate on a secondary, non-interference basis after August 1, 2003.

* * * * *

21. Section 90.135 is amended by revising paragraph (a)(2), redesignating paragraph (b)(5) as paragraph (b)(6), adding a new paragraph (b)(5), revising the first and last sentences in paragraph (d) and revising the first sentence in paragraph (e) to read as follows:

§ 90.135 Modification of license.

(a) * * *

(2) Change in the type of emission, except under the conditions specified in paragraph (b)(5) of this section.

* * * * *

(b) * * *

(5) Change in the type of emission when:

(i) Operation is in the 150–174 MHz or 421–512 MHz bands; and

(ii) The modification will be for a narrower emission than specified in the current authorization.

* * * * *

(d) In case of a change listed in paragraphs (b)(1), (b)(2), or (b)(5) of this section, the licensee must notify the Commission immediately. * * * Licensees whose licenses are due for renewal and who have received the renewal Form 574–R in the mail from the Commission must use the appropriate boxes on that form to notify the Commission of a change listed in paragraphs (b)(1), (b)(2), or (b)(5) of this section.

(e) In the case of a change listed in paragraphs (b)(3), (b)(4), and (b)(6) of this section, the licensee must notify the Commission within 30 days of the change. * * *

* * * * *

22. Section 90.173 is amended by revising paragraph (a) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

(a) The frequencies which ordinarily may be assigned to stations in the services governed by this part are listed in subparts B, C, D, E, and F of this part. Frequencies other than those listed in subparts B, C, D, and E may be assigned in the 150–174 MHz, 421–430 MHz, 450–470 MHz, and 470–512 MHz bands, provided such applications are accompanied by a showing of frequency coordination in accordance with the requirements of Section 90.175. Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

* * * * *

23. Section 90.203 is amended by revising paragraph (j) to read as follows:

§90.203 Type acceptance required.

* * * * *

(j) Except where otherwise specifically provided for, transmitters operating on frequencies in the 150–174 MHz and 421–512 MHz bands must comply with the following.

(1) Applications for type acceptance received prior to February 14, 1997, will be granted for equipment with channel bandwidths up to 25 kHz.

(2) Applications for type acceptance received on or after February 14, 1997 will only be granted for equipment with the following channel bandwidths:

(i) 12.5 kHz or less for single bandwidth mode equipment or multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz;

(ii) 25 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 25 kHz if it is capable of operating on channels of 12.5 kHz or less; and

(iii) 25 kHz if the equipment meets the efficiency standard of paragraph (j)(3) of this section.

(3) Applications for Part 90 type acceptance of transmitters designed to operate on frequencies in the 150–174 MHz and /or 421–512 MHz bands, received on or after February 14, 1997, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of 6.25 kHz or more, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(4) Applications for type acceptance received on or after January 1, 2005, except for hand-held transmitters with an output power of two watts or less, type acceptance will only be granted for equipment with the following channel bandwidths:

(i) 6.25 kHz or less for single bandwidth mode equipment;

(ii) 12.5 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz if it is capable of operating on channels of 6.25 kHz or less;

(iii) 25 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 25 kHz if it is capable of operating on channels of 6.25 kHz or less; and

(iv) Up to 25 kHz if the equipment meets the efficiency standard of paragraph (j)(5) of this section.

(5) Applications for Part 90 type acceptance of transmitters designed to operate on frequencies in the 150–174

MHz and/or 421–512 MHz bands, received on or after January 1, 2005, must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 6.25 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel bandwidth of 6.25 kHz or more, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

(6) Modification and permissive changes to type acceptance grants.

(i) The Commission's Equipment Authorization Division will not allow adding a multi-mode or narrowband operation capability to single bandwidth mode transmitters, except under the following conditions:

(A) Transmitters that have the inherent capability for multi-mode or narrowband operation allowed in paragraphs (j)(2) and (j)(4) of this section, may have their grant of Type Acceptance modified (reissued) upon demonstrating that the original unit complies with the technical requirements for operation; and

(B) New FCC Identifiers will be required to identify equipment that needs to be modified to comply with the requirements of paragraphs (j)(2) and (j)(4) of this section.

(ii) All other applications for modification or permissive changes will be subject to the Rules of part 2 of this chapter.

(7) Transmitters designed for one-way paging operations will be type accepted with a 25 kHz channel bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

(8) The Commission's Equipment Authorization Division may, on a case by case basis, grant type acceptance to equipment with slower data rates than specified in paragraphs (j)(3) and (j)(5) of this section, provided that a technical analysis is submitted with the application which describes why the slower data rate will provide more spectral efficiency than the standard data rate.

(9) Transmitters used for stolen vehicle recovery on 173.075 MHz must comply with the requirements of Section 90.19(f)(7).

24. Section 90.205 is amended by revising paragraph (d)(2), the last sentence of paragraph (d)(3), paragraph (g)(2), the last sentence of paragraph (g)(3), and adding a new paragraph (n) to read as follows:

§90.205 Power and antenna height limits.

* * * * *

(d) * * *

(2) Applications for stations where special circumstances exist that make it necessary to deviate from the ERP and antenna heights in Table 1 will be submitted to the frequency coordinator accompanied by a technical analysis, based upon generally accepted engineering practices and standards, that demonstrates that the requested station parameters will not produce a signal strength in excess of 37 dBu at any point along the edge of the requested service area. The coordinator may then recommend any ERP appropriate to meet this condition.

(3) * * * For base stations with service areas greater than 80 km, all operations 80 km or less from the base station will be on a primary basis and all operations outside of 80 km from the base station will be on a secondary basis and will be entitled to no protection from primary operations.

* * * * *

(g) * * *

(2) Applications for stations where special circumstances exist that make it necessary to deviate from the ERP and antenna heights in Table 2 will be submitted to the frequency coordinator accompanied by a technical analysis, based upon generally accepted engineering practices and standards, that demonstrates that the requested station parameters will not produce a signal strength in excess of 39 dBu at any point along the edge of the requested service area. The coordinator may then recommend any ERP appropriate to meet this condition.

(3) * * * For base stations with service areas greater than 80 km, all operations 80 km or less from the base station will be on a primary basis and all operations outside of 80 km from the base station will be on a secondary basis and will be entitled to no protection from primary operations.

* * * * *

(n) The output power shall not exceed by more than 20 percent either the output power shown in the Radio Equipment List [available in accordance with §90.203(a)(1)] for transmitters included in this list or when not so listed, the manufacturer's rated output power for the particular transmitter specifically listed on the authorization.

25. Section 90.207 is amended by revising the introductory text of paragraph (a) and adding the symbol W to paragraphs (a)(1) and (a)(3) to read as follows:

§90.207 Types of emissions.

* * * * *

(a) *Most common emission symbols.* For a complete listing of emission symbols allowable under this part, see §2.201 of this chapter.

(1) * * *

W—Cases not covered above, in which an emission consists of the main carrier modulated, either simultaneously or in a pre-established sequence, in a combination of two or more of the following modes: amplitude, angle, pulse.

* * * * *

(3) * * *

W—Combination of the above.

* * * * *

26. Section 90.211 is amended by revising paragraph (a) to read as follows:

§90.211 Modulation requirements.

* * * * *

(a) Transmitters utilizing analog emissions that are equipped with an audio low-pass filter must meet the emission limitations specified in §90.210. Testing must be in accordance with the rules specified in part 2 of this chapter.

* * * * *

27. Section 90.213 is amended by revising the entries for 150–174 MHz, 421–512 MHz, 806–821 MHz, 821–824 MHz, and 896–901 MHz, revising footnotes 6, 7, and 8, and adding footnote 14 to the table in paragraph (a) to read as follows:

§90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
* * * * * * *			
150–174	[5] [11] 5	[6] 5	[4] [6] 50
* * * * * * *			
421–512	[7] [11] [14] 2.5	[8] 5	[8] 5
806–821	[14] 1.5	2.5	2.5
821–824	[14] 1.0	1.5	1.5
* * * * * * *			
896–901	[14] 0.1	1.5	1.5
* * * * * * *			

* * * * * * *

[4] Stations operating in the 154.45 to 154.49 MHz or the 173.2 to 173.4 MHz bands must have a frequency stability of 5 ppm.

[5] In the 150–174 MHz band, fixed and base stations with a 12.5 kHz channel bandwidth must have a frequency stability of 2.5 ppm. Fixed and base stations with a 6.25 kHz channel bandwidth must have a frequency stability of 1.0 ppm.

[6] In the 150–174 MHz band, mobile stations designed to operate with a 12.5 kHz channel bandwidth or designed to operate on a frequency specifically designated for itinerant use or designed for low-power operation of two watts or less, must have a frequency stability of 5.0 ppm. Mobile stations designed to operate with a 6.25 kHz channel bandwidth must have a frequency stability of 2.0 ppm.

[7] In the 421–512 MHz band, fixed and base stations with a 12.5 kHz channel bandwidth must have a frequency stability of 1.5 ppm. Fixed and base stations with a 6.25 kHz channel bandwidth must have a frequency stability of 0.5 ppm.

[8] In the 421–512 MHz band, mobile stations designed to operate with a 12.5 kHz channel bandwidth must have a frequency stability of 2.5 ppm. Mobile stations designed to operate with a 6.25 kHz channel bandwidth must have a frequency stability of 1.0 ppm.

* * * * * * *

[11] Paging transmitters operating on paging-only frequencies must operate with frequency stability of 5 ppm in the 150–174 MHz band and 2.5 ppm in the 421–512 MHz band.

* * * * * * *

[14] Control stations may operate with the frequency tolerance specified for associated mobile frequencies.

* * * * *

28. Section 90.214 is revised to read as follows:

§ 90.214 Transient frequency behavior.

Transmitters designed to operate in the 150–174 MHz and 421–512 MHz frequency bands must maintain transient frequencies within the maximum frequency difference limits during the time intervals indicated:

Time intervals [1, 2]	Maximum frequency difference [3]	All equipment	
		150 to 174 MHz	421 to 512 MHz
Transient Frequency Behavior for Equipment Designed to Operate on 25 kHz Channels			
t_1 [4]	± 25.0 kHz	5.0 ms	10.0 ms
t_2	± 12.5 kHz	20.0 ms	25.0 ms
t_3 [4]	± 25.0 kHz	5.0 ms	10.0 ms
Transient Frequency Behavior for Equipment Designed to Operate on 12.5 kHz Channels			
t_1 [4]	± 12.5 kHz	5.0 ms	10.0 ms
t_2	± 6.25 kHz	20.0 ms	25.0 ms
t_3 [4]	± 12.5 kHz	5.0 ms	10.0 ms
Transient Frequency Behavior for Equipment Designed to Operate on 6.25 kHz Channels			
t_1 [4]	± 6.25 kHz	5.0 ms	10.0 ms
t_2	± 3.125 kHz	20.0 ms	25.0 ms
t_3 [4]	± 6.25 kHz	5.0 ms	10.0 ms

[1] t_{on} is the instant when a 1 kHz test signal is completely suppressed, including any capture time due to phasing.
t_1 is the time period immediately following t_{on}.
t_2 is the time period immediately following t_1.
t_3 is the time period from the instant when the transmitter is turned off until t_{off}.
t_{off} is the instant when the 1 kHz test signal starts to rise.

[2] During the time from the end of t_2 to the beginning of t_3, the frequency difference must not exceed the limits specified in § 90.213.

[3] Difference between the actual transmitter frequency and the assigned transmitter frequency.

[4] If the transmitter carrier output power rating is 6 watts or less, the frequency difference during this time period may exceed the maximum frequency difference for this time period.

29. Section 90.217 is amended by revising the introductory text and the first sentence in paragraph (a) to read as follows:

§ 90.217 Exemption from technical standards.

Except as noted herein, transmitters used at stations licensed in the Business Radio Service and at stations licensed in the 150–174 MHz and 421–512 MHz bands in any Radio Service listed in Subparts B, C, D, and E of this Part which have an output power not exceeding 120 milliwatts are exempt from the technical requirements set out in this subpart, but must instead comply with the following:

(a) For equipment designed to operate with a 25 kHz channel bandwidth, * * *

* * * * *

§ 90.267 [Amended]

30. Section 90.267 is amended by removing and reserving paragraph (b).

31. Section 90.283 is amended by revising the table in paragraph (a), revising paragraph (c) and adding paragraph (g) to read as follows:

§ 90.283 Inter-service sharing of maritime frequencies in the 156–162 MHz band.

(a) * * *

FREQUENCY (MHz)

Mobile station transmit	Mobile station transmit
157.200	161.800
157.20625 [1]	[1] 161.80625
157.2125 [2]	[2] 161.8125
157.21875 [1]	[1] 161.81875
157.225	161.825
157.23125 [1]	[1] 161.83125
157.2375 [2]	[2] 161.8375
157.24375 [1]	[1] 161.84375
157.250	161.850
157.25625 [1]	[1] 161.85625
157.2625 [2]	[2] 161.8625
157.26875 [1]	[1] 161.86875
157.275	161.875
157.28125 [1]	[1] 161.88125
157.2875 [2]	[2] 161.8875
157.29375 [1]	[1] 161.89375
157.300	161.900
157.30625 [1]	[1] 161.90625
157.3125 [2]	[2] 161.9125
157.31875 [1]	[1] 161.91875
157.325	161.925
157.33125 [1]	[1] 161.93125
157.3375 [2]	[2] 161.9375
157.34375 [1]	[1] 161.94375
157.350	161.950
157.35625 [1]	[1] 161.95625
157.3625 [2]	[2] 161.9625
157.36875 [1]	[1] 161.96875
157.375	161.975
157.38125 [1]	[1] 161.98125
157.3875 [2]	[2] 161.9875
157.39375 [1]	[1] 161.99375

FREQUENCY (MHz)—Continued

Mobile station transmit	Mobile station transmit
157.400	162.000

[1] This frequency will be assigned with an authorized bandwidth not to exceed 6 kHz.

[2] This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz.

* * * * *

(c) Station power, as measured at the output terminals of the transmitter, must not exceed 50 watts for base stations and 20 watts for mobile stations, except in accordance with the provisions of paragraph (g) of this section. Antenna height (HAAT) must not exceed 122 meters (400 feet) for base stations and 4.5 meters (15 feet) for mobile stations, except in accordance with paragraph (g) of this section. Such base and mobile stations must not be operated on board aircraft in flight.

* * * * *

(g) Applicants seeking to be licensed for stations exceeding the power/antenna height limits of the table in paragraph (d) of this section are required to secure a waiver and must submit with the application, an interference analysis, based upon any of the generally-accepted terrain-based propagation models, that shows that co-channel protected entities, described in paragraph (d) of this section, would receive the same or greater interference protection than provided in the table.

32. Section 90.311 is amended by revising the introductory text of paragraph (b) to read as follows.

§90.311 Frequencies.

* * * * *

(b) Miami, FL, Dallas, TX, and Houston, TX urbanized areas. Only the first and last assignable frequencies are shown. Assignable frequencies will occur in increments of 6.25 kHz. Frequencies listed in paragraph (a)(3) of this section will only be assigned with a maximum authorized bandwidth of 6 kHz.

* * * * *

[FR Doc. 97–831 Filed 1–14–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1185

[STB Ex Parte No. 543]

Revision of Regulations for Interlocking Rail Officers

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) abolished the Interstate Commerce Commission (ICC) and transferred certain rail regulatory functions to the Surface Transportation Board (Board). The ICCTA revised the statute concerning restrictions on officers and directors. Under new 49 U.S.C. 11328, individuals seeking to hold the position of officer or director only of Class III railroads are no longer required to seek Board authorization. This publication contains our final rules implementing the statute.

EFFECTIVE DATE: The rules are effective on February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking served May 10, 1996, and published in the Federal Register on May 13, 1996 (61 FR 22014), we proposed to revise 49 CFR part 1185 to reflect this statutory change (Pub. L. 104–88, 109 Stat. 803 (1995)) and to propose other changes to our rules. Comments were filed by Joseph C. Szabo, for and on behalf of the United Transportation Union, Illinois Legislative Board (UTU), and by the Association of American Railroads (AAR).

The Board is adopting final rules in this decision. This decision is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289–4357.

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. In response to the statutory change, this rule will reduce regulation and it imposes no new reporting requirements on small entities. Requirements for the form of the application have been slightly modified to conform to the Board's rules of practice.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1185

Administrative practice and procedure, Railroads.

Decided: December 31, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X, part 1185 of the Code of Federal Regulations is revised to read as follows:

PART 1185—INTERLOCKING OFFICERS

Sec.

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 721, 10502, and 11328.

§1185.1 Definitions and scope of regulations.

(a) This part addresses the requirement of 49 U.S.C. 11328 authorization of the Surface Transportation Board (STB) needed for a person to hold the position of officer or director of more than one rail carrier, except where only Class III carriers are involved. STB authorization is not needed for individuals seeking to hold the positions of officers or directors only of Class III railroads. 49 U.S.C. 11328(b).

(b) When a person is an officer of a Class I railroad and seeks to become an officer of another Class I railroad, an application under 49 U.S.C. 11328(a) (or petition for individual exemption under 49 U.S.C. 10502) must be filed. All other ''interlocking directorates'' have been exempted as a class from the prior approval requirements of 49 U.S.C. 11328(a), pursuant to 49 U.S.C. 10502 and former 49 U.S.C. 10505. For such interlocking directorates exempted as a class, no filing with the STB is necessary to invoke the exemption.

(c) An *interlocking directorate* exists whenever an individual holds the position of officer or director of one rail carrier and assumes the position of officer or director of another rail carrier. This provision applies to any person who performs duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent or chief purchasing agent.

(d) For purposes of this part, a *rail carrier* means a person providing common carrier railroad transportation for compensation (except a street, suburban, or interurban electric railway not operating as part of the general system of rail transportation), and a corporation organized to provide such transportation.

§1185.2 Contents of application.

(a) Each application shall state the following:

(1) The full name, occupation, business address, place of residence, and post office address of the applicant.

(2) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of, and accurate description of, such securities of each carrier for which the applicant seeks authority to act. (Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by the applicant, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.)

(3) Each and every position with any carrier:

(i) Which is held by the applicant at the time of the application; and

(ii) Which the applicant seeks authority to hold, together with the date and manner of his or her election or appointment thereto and, if the applicant has entered upon the performance of his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize that person to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(4) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in rail transportation. (If any such carrier neither operates nor owns any railroad providing transportation that is subject to 49 U.S.C. 10501, the application shall include a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date or, if already filed with the former Interstate Commerce Commission (ICC) or with the STB, a reference thereto, with any intervening amendments.)

(5) A full statement of pertinent facts relative to any carrier involved which does not make annual reports to the STB.

(6) Full information as to the relationship—operating, financial, competitive, or otherwise—existing between the carriers covered by the requested authorization.

(7) Every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(8) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(9) Whether or not any other application for authority has been made in behalf of the applicant and, if so, the date and docket number thereof, by whom made, and the action thereon, if any.

(b) When application has been made on behalf of any person, a subsequent application by that person need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

§ 1185.3 Procedures.

The original application or petition shall be signed by the individual applicant or petitioner and shall be verified under oath. Petitions and applications should comply with the STB's general rules of practice set forth at 49 CFR part 1104. Applications or petitions may be made by persons on their own behalf.

§ 1185.4 General authority.

Any person who holds or seeks specific authority to hold positions with a carrier may also request general authority to act as an interlocking officer for all affiliated or subsidiary companies or properties used or operated by that carrier, either separately or jointly, with other carriers. A carrier may apply for general authority on behalf of an individual who has already received authority to act as an interlocking officer. However, a carrier may not apply for general authority for an individual who holds a position with another railroad which is not an affiliate or subsidiary of the carrier or whose properties are not used or operated by the carrier, either separately or jointly with other carriers.

§ 1185.5 Common control.

It shall not be necessary for any person to secure authorization to hold the position of officer or director of two or more carriers if such carriers are operated under common control or management either:

(a) Pursuant to approval and authority of the ICC granted under former 49 U.S.C. 11343–44 or by the STB granted under 49 U.S.C. 11323–24; or

(b) Pursuant to an exemption authorized by the ICC under former 49 U.S.C. 10505 or by the STB under 49 U.S.C. 10502; or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

§ 1185.6 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is relieved from the provisions of this part to the extent that he or she may also hold a directorship and any other position to which that person may be elected or appointed with a terminal railroad the properties of which are operated or used by the carrier jointly with other carriers.

[FR Doc. 97–953 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 010997A]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Registration Area E

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

ACTION: Inseason adjustment to prevent overfishing; request for comments.

SUMMARY: NMFS has determined that the currently specified total allowable catch (TAC) amount for scallops in Registration Area E is incorrect. Therefore, NMFS is reducing the TAC and apportioning it between parts of Registration Area E that are east and west of 146° W. long. NMFS also is apportioning the current *C. bairdi* crab bycatch limit (CBL) specified for Registration Area E between the area east and west of 146° W. long. These actions are necessary to avoid localized overfishing of the scallop resource and achieve the optimum yield from the scallop fishery. They are intended to promote the goals and objectives of the Fishery Management Plan for the Scallop Fishery off Alaska (FMP).

DATES: 1200 hrs, Alaska local time (A.l.t.), January 10, 1997, until 2400 hrs, A.l.t., June 30, 1997. Comments must be received at the following address no later than 1630 hrs, A.l.t., January 27, 1997.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska in the exclusive economic zone is managed by NMFS according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 679. General regulations that pertain to the U.S. fisheries appear at 50 CFR part 600.

The 1996–1997 TAC for scallops and the *C. bairdi* CBL in Registration Area E are established by the 1996–1997 Harvest Specifications (61 FR 38099, July 23, 1996) as 50,000 lbs (22,686 kg) of shucked scallop meat and 630 *C. bairdi* crab.

The Alaska Department of Fish and Game (ADF&G) conducted a survey that assessed the scallop abundance and age structure of the scallop population within Registration Area E after the 1996–1997 Harvest Specifications were published. This information indicated that recruitment to the area was very low and that a harvest of the 50,000 lbs (22,686 kg) of shucked scallop meat would risk localized overfishing of the scallop stock in Registration Area E.

The Administrator, Alaska Region, NMFS (formerly Regional Director), has determined, in accordance with §§ 679.25(a)(2)(i)(A) and 679.63(a), that recent resource survey data collected by the ADF&G warrants an adjustment of the scallop TAC and *C. bairdi* CBL specified for Registration Area E to prevent overfishing of scallops.

NMFS, therefore, is reducing the TAC specified for Registration Area E from 50,000 lbs (22,686 kg) to 22,300 lbs (10,115 kg) of shucked scallop meat. Furthermore, consistent with resource distribution determined by the ADF&G survey, NMFS is subdividing Registration Area E into parts east and west of 146° W. long. and is apportioning the reduced TAC for Registration Area E as follows: In the part of Registration Area E east of 146° W. long., 17,300 lbs (7,847 kg) of shucked scallop meat is authorized for harvest; in the area of Registration Area E west of 146° W. long., 5,000 lbs (2,268 kg) of shucked scallop meat is authorized for harvest. Consistent with this action, the CBL of *C. bairdi* crab is apportioned as follows: 500 *C. bairdi* crab in the area of Registration Area E east of 146° W. long.; 130 *C. bairdi* crab in the area of Registration Area E west of 146° W. long. The apportionment of TAC and CBL between waters east and west of 146° W. long. is necessary to prevent localized overfishing in either of these subareas within Registration Area E.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing scallops in Registration Area E. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 27, 1997.

Classification

This action is taken under § 679.63 and is exempt from review under E.O. 12866.

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

Dated: January 9, 1997.

Gary Matlock,

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

[FR Doc. 97–941 Filed 1–10–97; 12:29 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 950727194–6365–04; I.D. 111296B]

RIN 0648–AG54

Fisheries of the Exclusive Economic Zone Off Alaska; Technical Amendment; Correction and Clarification

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is correcting several sections of regulations that contain

minor errors. These errors resulted from NMFS' consolidation of six parts in title 50 of the CFR, related to the Alaska regulations, into one CFR part in response to the President's Regulatory Reform Initiative, and from an earlier consolidation and reorganization of management measures for use in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). NMFS is also revising terms that have changed resulting from recent changes in legislation and a reorganization within NMFS.

EFFECTIVE DATE: February 14, 1997.

ADDRESSES: Comments on the collection-of-information requirements may be sent to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) (0648–0213), Washington, D.C. 20503, and to Patsy A. Bearden, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages groundfish fisheries in the exclusive economic zone (EEZ) off Alaska under authority of the following fishery management plans (FMPs): The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

On February 13, 1996, NMFS published a final rule in the Federal Register (61 FR 5608) implementing new and consolidated recordkeeping and reporting regulations for the GOA and BSAI groundfish fisheries that: Removed and consolidated several sections of regulations in 50 CFR parts 672 and 675; simplified and streamlined the remaining regulations, including the recordkeeping and reporting requirements; consolidated area descriptions and coordinates into maps and tables; consolidated codes, values, and descriptions into tables; corrected errors; and clarified vague text. Some errors were inadvertently added to the regulatory text of the final rule, including the addition of the word ''estimated'' in recordkeeping and reporting requirements of discards and donations, and the omission of a sentence in the definition of ''fishing trip'' with respect to the groundfish directed fishing standards.

As part of the President's Regulatory Reform Initiative, NMFS issued a final rule (61 FR 31228, June 19, 1996) removing parts 671, 672, 673, 675, 676, and 677 of title 50 CFR, and consolidating the regulations contained therein into one new part (50 CFR part 679). No substantive changes were made to the regulations by the consolidation of the six parts. However, due to the complexity of the reorganization, some errors were introduced into the regulatory text.

This action makes no substantive changes and corrects: (1) Check-in/check-out requirements for land-based buying stations, Western Alaska Community Development Quota fisheries, and catcher/processors; (2) reporting requirements by stipulating that landings, products, and discards on weekly production reports and daily production reports be recorded in metric tons only; (3) closure requirements for groundfish as prohibited species by adding text related to total allowable catch levels for gear types, because the regulations contain closure requirements for groundfish as prohibited species; the text was inadvertently omitted during prior regulatory consolidations; (4) requirements for recording discards by removing the word ''estimated,'' which was inadvertently added during consolidation of regulations; (5) catcher vessel logbook exemption language by requiring all catcher vessels to submit a U.S. vessel activity report; (6) Table 2 by adding black rockfish to the category, ''pelagic shelf rockfish'' and the definition of ''fishing trip'' with respect to directed fishing standards; (7) prohibitions related to the careful release of halibut caught with hook-and-line gear as applicable to both the GOA and the BSAI rather than just limited to the GOA; and (8) the definition for the Bering Sea and Aleutian Islands Area as it relates to the king and Tanner crab fishery. This action also adds several cross references and clarifies the CDQ sablefish fishing season and the definition of ''Buying station.''

On April 13, 1995, NMFS announced that the NMFS Reorganization Plan had been approved by NOAA leadership and that, within each of the five regions of the country, the Regional Director would assume the role of Regional Administrator and have direct responsibility for all science and management programs, personnel, and financial resources. Therefore, this final rule replaces references to the Regional Director contained in part 679 with Regional Administrator.

On October 11, 1996, the President signed into law the Sustainable Fisheries Act. This law amended the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act was retitled the ''Magnuson-Stevens Fishery Conservation and Management Act.'' Therefore, all references in part 679 to the Magnuson Act have been revised to refer to the retitled Magnuson-Stevens Act.

Classification

Because this technical amendment makes only minor, non-substantive corrections to an existing rule, prior notice and opportunity for public comment would serve no purpose. Accordingly, the Assistant Administrator for Fisheries, under 5 U.S.C. 553(b)(B), for good cause finds that prior notice and opportunity for public comment are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

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 OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collections have been approved by OMB under control number 0648–0213.

The estimated response times for these requirements are: 0.25 hours for a Daily Fishing Logbook, 0.42 hours for a Daily Cumulative Logbook, 0.45 hours for a Daily Cumulative Production Logbook, 0.17 hours for a Daily Production Report, and 0.13 hours for check-in and check-out reports. The estimated response times include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection-of-information.

Send comments regarding this burden estimate or any other aspect of this collection-of-information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

This rule makes minor technical changes to a rule that has been

determined to be not significant under E.O. 12866. No changes in the regulatory impact previously reviewed and analyzed will result from implementation of this technical amendment.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: January 9, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679–-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.1, paragraphs (c) and (g) are revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(c) *Moratorium on entry (applicable through December 31, 1998).* Regulations in this part govern a moratorium on the entry of new vessels in the commercial fisheries for groundfish in the GOA and BSAI and in the commercial fisheries for king and Tanner crabs in the Bering Sea and Aleutian Islands Area (see subparts A and D of this part).

* * * * *

(g) *Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area EEZ that are determined to be inconsistent with the FMP (see subparts A, B, and E of this part).

* * * * *

3. In § 679.2, the definition of ''Bering Sea and Aleutian Islands Area'' is added and the definitions of ''Bering Sea and Aleutian Islands Management Area (BSAI)'', ''Buying station'', paragraph (1) of the definition of ''Fishing trip'', ''Moratorium crab species'', and ''Superexclusive registration area'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial King and Tanner crab fisheries, means those waters of the EEZ off the west coast of Alaska lying south of Point Hope (68°21′ N. lat), and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164°44′36″ W. long).

Bering Sea and Aleutian Islands Management Area (BSAI), for purposes of regulations governing the groundfish fisheries, means the Bering Sea and Aleutian Islands subareas (see Figure 1 of this part).

* * * * *

Buying station means a person or tender vessel that receives unprocessed groundfish from a vessel for delivery to a shoreside processor or mothership and that does not process those fish.

* * * * *

Fishing trip means:

(1) With respect to groundfish directed fishing standards, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed after the effective date of the notification prohibiting directed fishing in a management area under § 679.20(d), § 679.21(d) or § 679.21(e) until:

(i) The offload or transfer of all fish or fish product from that vessel;

(ii) The vessel enters or leaves an area to which a directed fishing prohibition applies;

(iii) The end of a weekly reporting period, whichever comes first.

* * * * *

Moratorium crab species (applicable through December 31, 1998) means species of king or Tanner crabs harvested in the Bering Sea and Aleutian Islands Area, the commercial fishing for which is governed by this part.

* * * * *

Superexclusive registration area means any State of Alaska designated registration area within the Bering Sea and Aleutian Islands Area where, if a vessel is registered to fish for crab, that vessel is prohibited from fishing for crab in any other registration area during that registration year.

* * * * *

4. In § 679.3, paragraph (d) is revised to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(d) *King and Tanner crab.* Additional regulations governing conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands Area are contained in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

* * * * *

5. In § 679.4, paragraphs (c)(3)(iii) and (c)(4)(iii)(A) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(c) * * *

(3) * * *

(iii) Catcher vessels or catcher/processor vessels less than or equal to 32 ft (9.8 m) LOA that catch and retain moratorium crab species in the Bering Sea and Aleutian Islands Area or that conduct directed fishing for moratorium groundfish species in the BSAI.

* * * * *

(4) * * *

(iii) * * *

(A) Fishing gear requirements for the Bering Sea and Aleutian Islands Area crab fisheries are set forth in the Alaska Administrative Code at title 5, chapters 34 and 35.

* * * * *

6. In § 679.5, paragraphs (a)(1)(iii), (a)(7)(v)(E), (a)(10)(i)(A) and (B), (h)(2)(ii)(A), (h)(2)(ii)(D), (h)(3)(i)(E), (i)(3)(ii) through (v), (j)(2), and (j)(4)(ii) through (iv) are revised, and paragraphs (h)(2)(i)(C) and (h)(2)(ii)(F) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) * * *

(1) * * *

(iii) A catcher vessel less than 60 ft (18.3 m) LOA, is not required to comply with recordkeeping and reporting requirements contained in § 679.5(a) through (j).

* * * * *

(7) * * *

(v) * * *

(E) Whether harvest is under a CDQ program; if yes, the CDQ number. If fishing under more than one CDQ number, use a separate page for each.

* * * * *

(10) * * *

(i) * * *

(A) The operator or manager must record the daily total, balance brought forward, and cumulative total round fish weight in the DFL, DCL, or DCPL each day on the day discards and donations occur for each discard or donation of groundfish species, groundfish species groups, and Pacific herring in pounds, or to at least the nearest 0.01 mt.

(B) The operator or manager must record the daily total balance brought forward, and cumulative total numbers in the DFL, DCL, or DCPL each day on the day discards or donations occur for

each discard and donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(C) *Directed fishing under a CDQ allocation*. The operator must submit by fax a check-in report to the Regional Director prior to directed fishing for each CDQ allocation.

(ii) * * *

(A) *Catcher/processor*. If a catcher/processor departs a reporting area or moves between Alaska State and Federal waters in a reporting area, and gear retrieval is complete from that area, the operator must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area or leaving either the Alaska State or Federal part of a reporting area but prior to checking-in another reporting area or either the Alaska State or Federal part of a reporting area.

* * * * *

(D) *Buying station delivering to a shoreside processor*.

(*1*) If a land-based buying station delivering to a shoreside processor, the manager must submit by fax a check-out report to the Regional Director within 24 hours after delivery of groundfish ceases for the fishing year or for a period greater than one weekly reporting period.

(*2*) If a buying station vessel delivering to a shoreside processor, the operator must submit by fax a check-out report to the Regional Director within 24 hours after departing a reporting area.

* * * * *

(F) *Directed fishing under a CDQ allocation*. The operator must submit by fax a check-out report to the Regional Director within 24 hours after directed fishing for each species under each CDQ allocation has ceased.

(3) * * *

(i) * * *

(E) Whether harvest is under a CDQ program; if yes, the CDQ number. If fishing under more than one CDQ number, use a separate report for each.

* * * * *

(i) * * *

(3) * * *

(ii) *Landings information*. The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section, except that each groundfish landing must be reported only in metric tons to at least the nearest 0.01 mt.

(iii) *Discarded/donated species information (Part ID)*. The operator of a catcher/processor or mothership, or the manager of a shoreside processor must report discarded/donated species information as described in paragraph (a)(10) of this section, except that each groundfish or herring discard/donation must be reported only in metric tons to at least the nearest 0.01 mt.

(iv) *Product information*. The operator of a catcher/processor or mothership, or the manager of a shoreside processor must report product information as described in paragraph (a)(9) of this section, except that each groundfish product must be reported only in metric tons to at least the nearest 0.01 mt.

(v) *Catcher vessel delivery information*. If ADF&G fish tickets are issued, the operator of the mothership or manager of the shoreside processor must list the fish ticket numbers issued to catcher vessels for the weekly reporting period, including the fish ticket numbers issued by an associated buying station.

(j) * * *

(2) *Applicability*. (i) If a catcher/processor or mothership is checked in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator must submit a DPR.

(ii) If a shoreside processor is receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the manager must submit a DPR.

(iii) The operator of a catcher/processor or mothership or the manager of a shoreside processor must use a separate DPR for each gear type, processor type, and CDQ number.

* * * * *

(4) * * *

(ii) *Landings information*. The manager of a shoreside processor must report landings information as described in paragraph (a)(8) of this section, except that each groundfish landing must be reported only in metric tons to at least the nearest 0.01 mt.

(iii) *Product information*. The operator of a mothership or catcher/processor must report product information as described in paragraph (a)(9) of this section, except that each groundfish product must be reported only in metric tons to at least the nearest 0.01 mt.

(iv) *Discarded/donated species information*. The operator of a mothership or catcher/processor or the manager of a shoreside processor must report discarded/donated species information as described in paragraph (a)(10) of this section, except that each groundfish or herring discard/donation must be reported only in metric tons to at least the nearest 0.01 mt.

* * * * *

7. In § 679.7, paragraph (b)(1) is removed. Paragraph (b)(2) is redesignated as paragraph (a)(13) and the paragraph designation for (b)(3) is removed.

8. In § 679.20, paragraph (d)(2) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(2) *Groundfish as prohibited species closure*. When the Regional Director determines that the TAC of any target species or the ''other species'' category specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the Federal Register requiring that target species or the ''other species'' be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * * * *

9. In § 679.22, paragraph (g) is added to read as follows:

§ 679.22 Closures

* * * * *

(g) *Scallop closures and closed areas*. See § 679.62(c) and § 679.62(d).

10. In § 679.23, paragraphs (e)(2)(ii)(B) and (e)(3)(ii) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(B) Directed fishing for pollock by the offshore component, or vessels delivering pollock to the offshore component is prohibited through 1200 hours, A.l.t., February 5, for those vessels that are used to fish prior to 1200 hours, A.l.t., January 26, for groundfish in the BSAI, groundfish in the GOA, as defined at § 679.2, or king or Tanner crab in the Bering Sea and Aleutian Islands Area, as defined at § 679.2.

* * * * *

(3) * * *

(ii) *CDQ sablefish*. Fishing for CDQ sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that it may occur only during the

IFQ fishing season specified in paragraph (g)(1) of this section.

* * * * *

11. In Table 2 under Group Codes, the entry for Code 169 is amended by adding the term ''black'', in alphabetical order, to the terms in parentheses.

Nomenclature Changes

12. In part 679, remove the term ''Regional Director'' wherever it occurs and add in its place the term ''Regional Administrator''.

13. In part 679, remove the term ''Regional Director's'' wherever it occurs and add in its place the term ''Regional Administrator's''.

14. In part 679, remove the term ''Director, Alaska Region, NMFS,'' wherever it occurs and add in its place the term ''Administrator, Alaska Region, NMFS,''.

15. In part 679, remove the term ''Magnuson Act'' wherever it occurs and add in its place the term ''Magnuson-Stevens Act''.

[FR Doc. 97–1005 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 10
Wednesday, January 15, 1997

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is proposing to amend the regulation governing confidential financial disclosure for executive branch employees, to: update the standardized confidential disclosure report form designation by adding reference to the new OGE Form 450, which is replacing the old SF 450; and authorize all executive branch agencies to use a standardized certificate of no new interests (OGE Optional Form 450–A) as an alternative procedure in lieu of OGE Form 450, for regular employee annual confidential disclosure filers who can make the required certifications.

DATES: Comments are invited and must be received on or before March 17, 1997.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: G. Sid Smith. Copies of the draft proposed OGE Optional Form 450–A are available by contacting Mr. Smith or Mr. Gressman at OGE, telephone: 202–208–8000.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD:202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Proposed Certificate of No New Interests Regulation).

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 1992, the Office of Government Ethics (OGE) published a new financial disclosure regulation for the executive branch, as codified at 5 CFR part 2634, which implemented provisions of the Ethics Reform Act of 1989 and Executive Order 12674 (as modified by E.O. 12731), to reauthorize both a public and a confidential financial disclosure system for certain executive branch employees. See 57 FR 11800–11830, as corrected at 57 FR 21854–21855 and 62605. Among other subsequent revisions, OGE amended § 2634.601 of that regulation on July 21, 1993, to supply the then-current designation, Standard Form (SF) 450, for the form used by confidential disclosure filers throughout the executive branch. See 58 FR 38911–38913. On November 30, 1993, OGE also amended § 2634.907 of that regulation, to exempt from the confidential reporting requirement certain deposit accounts, money market funds and accounts, and U.S. Government obligations and securities. See 58 FR 63023–63024.

Those exemptions, along with several clarifying and simplifying features, were incorporated into a new OGE Form 450, after appropriate Federal Register paperwork notices on September 1 and December 6, 1995, and clearance through the Office of Management and Budget. See 60 FR 45722–45723 and 62469–62471. A camera-ready copy of the new OGE Form 450 was distributed by OGE on February 27, 1996, to all designated agency ethics officials, for local copying and immediate use as a replacement for the SF 450.

The proposed regulatory amendment that is being published herein would update 5 CFR 2634.601, to reflect the new form's designation as OGE Form 450. Supplies of the old SF 450 that are held by agencies or obtained from the Federal Supply Service may continue to be used first, if agencies prefer, until the old SF 450's clearance under the Paperwork Reduction Act expires on August 31, 1997. The form designation in the regulation is proposed to be amended, to reflect the phaseout of the SF 450 and its ongoing replacement with OGE Form 450, which has already become the primary format in general use.

The second purpose of this proposed regulatory amendment would be to authorize all executive branch agencies to use a standardized certificate of no new interests as an alternative procedure in lieu of OGE Form 450, for regular employee annual confidential disclosure filers who can make the required certifications. The current regulation provides at 5 CFR 2634.905 that agencies may exclude certain employees from confidential financial disclosure reporting, even though their positions have been designated for filing. To exclude such employees, an agency must determine that, because of the nature of their duties, either (a) the possibility of a conflict is remote, or (b) their duties involve a low level of responsibility, or (c) the use of an alternative procedure, approved in writing by OGE, is adequate to prevent conflicts. The proposed regulatory amendment being published herein concerns alternative procedures, and would authorize all executive branch agencies to use a new optional alternative certificate for certain regular employees.

Under authority of 5 CFR 2634.905(c), approximately 20 individual departments and agencies have already received written approval from OGE for alternative procedures which were found to be adequate in preventing conflicts, either as supplements to or in lieu of the SF/OGE Form 450. Some of these alternatives require affirmative disclosure of certain financial interests, and some have taken the form of a certificate of no conflict between the employee s official duties and outside financial interests (the latter being used primarily for special Government employees who serve for a short period of time). All of these previously approved agency-specific alternatives would remain valid and unaffected by the proposed additional alternative certificate that this regulatory amendment would authorize as an option for all executive branch agencies.

In response to a Cabinet-level department s request in 1995, OGE approved on an experimental basis the use of a certificate of no new interests in lieu of filing an annual SF/OGE Form 450, by that department s regular employees who would otherwise have to file confidential financial disclosure reports. That proposal offered a unique opportunity to test a new alternative not

previously authorized for any agency—a statement certifying that filers (and their spouse and dependent children) have acquired no new interests since filing their most recent SF/OGE Form 450, and that neither the filer nor spouse has changed jobs or job responsibilities since filing that report.

The department which tested this alternative reported to OGE in April 1996 that the experiment was an overwhelming success during the 1995 filing cycle, from the standpoint of easing the administrative burden on filers and agency ethics officials, while continuing to guard against conflicts of interest. Over half (718) of that department s 1277 regular employees who would otherwise have had to file an annual SF/OGE Form 450 utilized the alternative certificate. The department recommended that this alternative certificate be continued, and that it be expanded for use by other departments and agencies.

Prior to proposing expanded use of this alternative certificate, OGE wanted to obtain suggestions from the various executive branch agencies. Consequently, OGE conducted a survey of agency ethics officials in June 1996, to which 79 agencies responded, and a focus group of approximately 100 ethics officials in attendance at the September 1996 OGE Ethics Conference in Philadelphia, Pennsylvania, to discuss the issue. The survey revealed that all respondents were in favor of expanding the option of using this certificate to their agencies. A significant number of participants at the focus group also expressed their support for its use.

Based on input from both the survey and the focus group, OGE has now determined that it would be appropriate to propose to authorize throughout the executive branch the optional use of an OGE-developed certificate of no new interests in lieu of an OGE Form 450, for regular employee annual confidential financial disclosure filers who can make the required certifications. (If a filer could not make the proposed required certifications because there had been changes, then a new OGE Form 450 would have to be filed.) The proposed regulatory amendment being published herein would accomplish that authorization, and would prescribe a uniform format and methodology.

Note that this proposed certificate of no new interests would be a confidential document, and would have to be accorded the same privacy protections as the OGE Form 450. Thus, no member of the public could have access to a completed certificate of no new interests, except as authorized by law. See 5 CFR 2634.604(b) and 2634.901(d). The draft OGE Optional Form 450–A includes a Privacy Act statement to that effect.

While this proposed regulatory amendment concerns regular employees only, a similar standardized certificate for special Government employees (SGE) who serve on advisory committees for more than one year remains under consideration. Agencies and members of the public are encouraged to provide comments to OGE during this rulemaking if they believe that use of such a certificate for SGEs would also be appropriate.

II. Analysis of Amendments to the Regulation

The following sections of 5 CFR part 2634 are proposed to be amended to accomplish the two changes outlined above. The first change proposed, adding the new form designation, would be purely administrative. The second proposed change would exercise existing OGE authority in § 2634.905(c) of the regulation to approve alternative procedures in writing, and would do so by means of a general regulatory amendment (new proposed paragraph (d) of § 2634.905), rather than on an agency-by-agency basis. Furthermore, use of this alternative certificate would be entirely optional with each agency, and even if the agency did decide it would be beneficial to adopt, each affected employee would retain the option of either using the certificate (if applicable) or filing a new OGE Form 450. Thus, this proposed regulatory amendment would not mandate any new requirements for agencies or their employees. It would simply respond to a need for additional flexibility that OGE and a number of agencies and employees have identified.

Section 2634.601

In addition to the proposed addition of a reference to the new OGE Form 450 designation, the amendments to this section of the regulation would add reference to a new OGE Optional Form 450–A (Confidential Certificate of No New Interests), as proposed, which would be authorized by new § 2634.905(d). The proposed amendments would also describe how both forms may be obtained and stocked. Specifically, OGE has previously provided a camera-ready version of the OGE Form 450 to each designated agency ethics official (DAEO), who then has supplies reproduced locally. Likewise, OGE intends to distribute a camera-ready version of the proposed OGE Optional Form 450–A, once a final version of it is adopted at the time this rulemaking is finalized, for local reproduction of supplies by DAEOs. The OGE Form 450 is also available from OGE in electronic format, from which paper copies may be printed. The electronic format may be obtained from OGE on computer disk, or through OGE s electronic bulletin board TEBBS (''The Ethics Bulletin Board System'') at 202–208–8030, or via OGE's World Wide Web Site at http://www.access.gpo.gov/usoge. The Office of Government Ethics will make the proposed OGE Optional Form 450–A, once finally adopted as referenced in the regulation, so available in electronic format. For now, the proposed form is available for review by contacting OGE directly.

Section 2634.905(d)

The format and methodology for the proposed certificate of no new interests which would be authorized for certain confidential filers by the amendments as proposed to this section of the regulation have been formulated to accommodate the general consensus of opinions expressed in OGE s recent survey and focus group, as follows:

(a) The proposed format would retain its essential character as a certificate of no new interests, as proposed and tested at a Cabinet-level department last year and favored by 84% of the respondents to OGE s survey, rather than a certificate of no change (no new interests and no divestitures), or a statement affirmatively detailing new interests and divestitures. A certificate of no new interests would permit the greatest number of filers to use this alternative to OGE Form 450, while avoiding ambiguity and confusion in a filer's disclosure history.

(b) Only regular employee annual filers (not new entrants or special Government employees) would be eligible to use the proposed certificate of no new interests, as its use would presuppose that an initial OGE Form 450 had been filed for the position, that could serve as a point of reference. Its due date would be the same as specified in the regulation for the annual OGE Form 450 that would otherwise be due.

(c) Filers could use the proposed certificate for a maximum of three consecutive years before being required to file a new OGE Form 450 every fourth year. Over half (58%) of the respondents to OGE s survey recommended this time frame. Alternatively, the proposed amendments would authorize agencies to choose, under this section of the regulation, to allow use of the certificate for only one year (or two years), and to require a new OGE Form 450 every second (or third) year.

(d) In each year divisible by four, beginning in 2000 (or divisible by two or three, beginning in 1998, if agencies were to choose one of the more frequent options), all regular employee annual confidential disclosure filers would have to file a new OGE Form 450, regardless of how recently they might have filed that form (either as a new entrant or as an annual filer in years when they could not qualify to use, or chose not to use, the optional certificate). Although this proposed requirement might be time-consuming for filers and ethics officials periodically, it is necessary in order to eliminate the significant administrative difficulties inherent in a proposed system that would otherwise permit tracking on an individual basis the number of years each filer had used the alternative certificate. Furthermore, it was preferred by 63% of the respondents to OGE s survey.

(e) As indicated on OGE Optional Form 450–A, eligible filers would have the option of using either OGE Optional Form 450–A (if applicable) or OGE Form 450, whichever they prefer. Agencies would, therefore, normally provide them with a blank OGE Form 450 and its accompanying three pages of instructions at the same time that the future blank OGE Optional Form 450–A were distributed. This proposed suggestion is the result of OGE's test of the certificate last year, as well as its survey and focus group. First, the instructions to OGE Form 450 would be necessary as guidance to certificate users on what is meant by reportable interests. Second, it is anticipated that, even once the new proposed certificate system is finally adopted, approximately half of annual confidential disclosure filers will still file the OGE Form 450 rather than the optional certificate, either because they will have new reportable interests or they will otherwise choose to file a new OGE Form 450. That was the case at the department where OGE tested this procedure last year. If agencies preferred not to attach a blank OGE Form 450 and its accompanying instructions, then they could develop separate written guidance to advise certificate users of what is meant by reportable interests, or they might refer users to the guidance contained in any agency-approved electronic software for the OGE Form 450 and its accompanying instructions, if readily available.

(f) Since the proposed certificate would be a partial update of a previous OGE Form 450 that had already been reviewed and kept on file by the agency, certificate users would generally not be required by the amendments to the regulation as proposed to attach their previous OGE Form 450. However, they would have to certify as part of the alternative format that they had reexamined their most recent previous filing. In this regard, filers ought to be encouraged to retain copies of the most recent OGE Form 450 which they have filed, so that an agency's ethics office would not become overburdened with providing them copies. Not requiring certificate users to attach their previous OGE Form 450 would promote the purposes for using a certificate as proposed: to reduce paperwork and to simplify procedures for both filers and ethics officials. However, under these proposed amendments, an agency could require its employees to attach a copy of their previous OGE Form 450, if it determined that the previous form should be reexamined by supervisors or that its attachment were otherwise necessary.

While not all agencies will agree with these specific requirements as proposed, they are necessary in OGE's view in order to preserve general uniformity and to maintain adequate checks on potential employee conflicts of interest in the least confusing or burdensome manner. The proposed requirements outlined above offer considerable flexibility, within the prescribed framework, such that a variety of agencies should find this alternative procedure workable once finally adopted. Of course, agencies would not be required to use a certificate of no new interests at all; this proposed regulatory amendment would merely establish a pre-approved option for their consideration. However, if agencies chose to use the option as proposed, they would have to follow the prescribed methodology and format. Under these proposed amendments, if an agency wished to deviate from the prescribed methodology and format, it would have to seek separate OGE approval in writing. In this regard, OGE has already determined, through consultation with the Office of Management and Budget, that the particular certificate format proposed to be authorized herein is in conformity with the Paperwork Reduction Act, and would require no further clearance. This is because its use would be strictly optional for employees, it would be used exclusively by current Government employees, and it would not require affirmative disclosure of substantive information.

As noted above, the proposed general executive-branchwide regulatory authorization for a certificate of no new interests would not eliminate any other alternative procedures that have been approved by OGE in writing, on an agency-specific basis.

Before using the alternative certificate to be authorized by this proposed amendment, agencies would have to make the determination required by new § 2634.905(d) of the regulation, as proposed, that the certificate would be adequate to prevent conflicts of interest. Once that determination had been made, an agency could use the proposed alternative certificate for all or specified groups of its eligible filers, provided they were given the option of either filing the certificate (if applicable) or a new OGE Form 450, whichever the employee preferred.

In deciding whether to adopt this proposed optional alternative certificate at a particular agency, once the new procedure is finally adopted by OGE for the executive-branchwide use at each agency's option, the agency should give consideration to its unique circumstances. For some, a certificate of no new interests might not be suitable because the potential for conflict might change from year to year, even though an employee's actual job description or official responsibilities remained unchanged and the employee did not acquire any new financial interests. Agencies with relatively few confidential filers or a high percentage of filers with new interests each year might decide that authorizing a certificate in lieu of an annual OGE Form 450 might not significantly reduce their administrative burden. Agencies with large numbers of filers might be concerned that any administrative time saved could be outweighed by the potential for confusing filers, or that use of the certificate might burden filers with the need to maintain copies of previously filed OGE Form 450s for examination prior to certifying that they had not acquired any new interests, or that the agency itself might be inundated with requests for copies of previously filed reports. Some agencies might decide that the certificate proposed would not meet their needs because it would not account for divestitures. Other agencies might be concerned that filers would lose the proper focus on conflict prevention, if filing requirements were relaxed.

While these concerns should not present insurmountable problems for most agencies, they were raised by some respondents during OGE s recent survey and focus group. Therefore, comments are welcome thereon and such concerns should be carefully considered by agencies prior to deciding whether to adopt the proposed alternative certificate, when and if it is finally adopted by OGE for executive-

branchwide use. Some agencies might find it appropriate to test the alternative for one year, to gauge its effectiveness before deciding to adopt it on a long-term basis. This could easily be accomplished, under the regulatory amendments as proposed, by initially selecting the proposed option described above of permitting use of the certificate for one year only, with a new OGE Form 450 being required in the second year.

III. Matters of Regulatory Procedure

Executive Order 12866

In promulgating these proposed rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a substantial number of small entities, because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because these proposed amendments do not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: January 2, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart F—Procedure

2. Section 2634.601 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 2634.601 Report forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration (GSA), a standard form, the SF 278 (Public Financial Disclosure Report), for reporting the information described in subpart B of this part on executive branch public disclosure. The Office of Government Ethics also provides two uniform formats relating to confidential financial disclosure: OGE Form 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure; and OGE Optional Form 450–A (Confidential Certificate of No New Interests) for voluntary use by certain employees in lieu of filing an annual OGE Form 450, if authorized by their agency, in accordance with § 2634.905(d) of subpart I. Supplies of the two confidential forms are to be reproduced locally by each agency, from a camera-ready copy or an electronic format made available by the Office of Government Ethics. (Until August 31, 1997, the old SF 450 remains usable, rather than the new OGE Form 450, and is available from GSA's Federal Supply Service.)

* * * * *

(d) The information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3209–0001 for the SF 278, and control number 3209–0006 for OGE Form 450/SF 450. OGE Optional Form 450–A has been determined not to require an OMB paperwork control number, as its use is strictly optional for employees, it is used exclusively by current Government employees, and it does not require affirmative disclosure of substantive information.

Subpart I—Confidential Financial Disclosure Reports

3. Section 2634.905 is amended by revising the introductory text and by adding a paragraph (d) before the examples, to read as follows:

§ 2634.905 Exclusions from filing requirements.

Any individual or class of individuals described in § 2634.904 of this subpart, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

* * * * *

(d) The use of OGE Optional Form 450–A (Confidential Certificate of No New Interests) is adequate to prevent possible conflicts of interest. This form may be used by eligible filers, as described in this paragraph, who can certify, after reexamining their most recent previous OGE Form 450, that they (and their spouse and dependent children) have acquired no new interests, and that neither the filer nor spouse has changed jobs or job responsibilities since filing that previous report. OGE Optional Form 450–A will be used under the following conditions:

(1) OGE Optional Form 450–A will only be made available for use by current employees who are not special Government employees.

(2) OGE Optional Form 450–A will only be used by incumbent filers, as described in § 2634.903(a) of this subpart, in lieu of filing an annual OGE Form 450, who have a previous OGE Form 450 on file with their agency for the position they currently hold. Its due date is as specified in § 2634.903(a), unless extended under § 2634.903(d).

(3) As indicated on the OGE Optional Form 450–A, eligible filers may use OGE Optional Form 450–A, if applicable, or they may file a new OGE Form 450, at their option. Therefore, a blank OGE Form 450 and its accompanying written instructions should ordinarily be distributed to them, along with the blank OGE Optional Form 450–A. The instructions to OGE Form 450 will also provide guidance on what is meant by ''reportable'' interests on OGE Optional Form 450–A. In lieu of attaching a blank OGE Form 450 and its instructions, agencies may choose to develop separate written guidance on what is meant by ''reportable'' interests, or they may refer certificate users to the guidance contained in any agency-approved electronic software for the OGE Form 450 and its accompanying instructions, if readily available. Filers would then also need to be advised of where to obtain a blank OGE Form 450, if needed.

(4) OGE Optional Form 450–A may be used by eligible filers for a maximum of

three consecutive years before they are required to complete a new OGE Form 450, every fourth year. Agencies may, however, elect to permit use of the OGE Optional Form 450–A for only one year (or two years), and to require a new OGE Form 450 every second (or third) year.

(5) In each year divisible by four, beginning in 2000 (or divisible by two or three, beginning in 1998, for agencies that choose one of the more frequent options described in the second sentence of paragraph (d)(4) of this section), all incumbent filers, as described in § 2634.903(a) of this subpart, must file a new OGE Form 450 rather than OGE Optional Form 450–A, regardless of how recently they may have filed an OGE Form 450 (either as a new entrant or as an annual filer who was not eligible to use, or chose not to use, the optional certificate).

(6) When using OGE Optional Form 450–A, filers are not required to attach their previous OGE Form 450, unless their agency determines that it is necessary.

* * * * *

[FR Doc. 97–961 Filed 1–14–97; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB26

General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (FCIA) (7 U.S.C. 1501 *et seq.*). The intended effect of this revision is to comply with the statutory mandate that requires the collection of Social Security Number (SSN) and Employer Identification Number (EIN) information of participating agents, loss adjusters, and policyholders and to establish the procedures to be used by the Federal Crop Insurance Corporation (FCIC) and insurance providers in the collection, use, and storage of documents containing SSN or EIN information.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 17, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 17, 1997.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to the Director, Product Development Division, Risk Management Agency (RMA), United States Department of Agriculture (USDA), 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC., 8:15 a.m.—4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: For further information, contact Bill Smith, Supervisory Insurance Management Specialist, Research and Development, Product Development Division, RMA, at the Kansas City, MO address listed above, telephone (816) 926–7743.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This action has been reviewed under USDA procedures established by Executive Order 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

This rule has been determined to be not significant for the purposes of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations have been submitted to OMB for their approval under section 3507(j) of the Paperwork Reduction Act of 1995. This proposed rule will amend the information collection requirements under OMB number 0563–0047, through November 30, 1999. The FCIC will be amending the information collection to adjust the estimated reporting hours and seek a valid approval for 3 years under section 3507(d) of the Act.

Revised reporting estimates and requirements for usage of OMB control number 0563–0047 will be submitted to OMB for approval under the provisions of 44 U.S.C. chapter 35. Public comments are due by March 17, 1997.

The title of this information collection is ''Social Security Number (SSN) and Employer Identification Number (EIN) Reporting Form.'' Collection of the SSN and the EIN is required by section 506 of the FCIA (7 U.S.C. 1506). The FCIA requires the collection of SSN and EIN information of policyholders, participating agents, and loss adjusters and sets forth the procedures to be used by FCIC and insurance providers in the collection, use, and storage of documents containing SSN and EIN information. The primary use of the SSN and EIN under this proposed rule will be to correctly identify the participant, and any other person with an interest in the policyholder's operation of at least 10%, as a policyholder within the systems maintained by FCIC.

The information requested is necessary to for the insurance providers and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Failure to furnish this number will result in rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due.

Estimate of Burden: Public reporting burden for this collection of information is estimated to be 15 minutes per response.

Respondents: Policyholders and those with a substantial beneficial interest in the policyholder or any person having any interest in the policyholder and receiving separate benefits under another USDA program as a direct result of such interest.

Estimated Number of Respondents: 2,032,800.

Estimated Number of Responses per Respondent: 1 per year.

Estimated Total Burden Hours: 508,200.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer of Agriculture, Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB), Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The action does not increase the paperwork burden on the insured producer or the reinsured company. The program is strictly voluntary. This regulation requires only that the participant provide the SSN or EIN. This regulation does not require or impose any requirement on the delivery agent or company that is not already required by the Privacy Act of 1974 (5 U.S.C. 552a). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12778

The Office of General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Federal crop insurance program is delivered to producers through local FSA offices and reinsured companies (insurance providers). Section 506 of the FCIA requires producers, agents, and loss adjusters to provide SSNs or EINs as a condition of eligibility to participate in the Federal crop insurance program and for identifying producers, agents, and loss adjusters who are high risk for actuarial purposes. However, current regulations only require SSNs or EINs of applicants, policyholders, and persons with a substantial beneficial interest (SBI) in the policyholder. All relevant sections have been revised to include agents and loss adjusters.

Further, this amendment revises for clarification the definitions of ''applicant,'' ''authorized person,'' ''disposition of records,'' ''FCIC,'' ''past officers and employees,'' ''policyholder,'' ''retrieval of records,'' ''safeguards,'' ''storage,'' ''substantial beneficial interest,'' and ''system of records,'' and adds definitions for ''Act,'' ''FSA,'' ''insurance provider,'' and ''person.'' The definitions of ''access,'' ''agency sales and service contractor,'' ''ASCS,'' ''collection,'' ''FCI Act,'' ''government contract employees,'' ''private insurance company,'' and ''restricted access'' have been deleted.

This statute also requires that any person with an SBI in a policyholder, or who has any interest in the policyholder and will receive separate benefits under another USDA program, to provide their SSN or EIN and clarifies that any person using an EIN for an individual policy must also provide that person's SSN as an SBI on that policy.

The amendment revises § 400.403, Required System of Records, to remove the 30 day implementation requirement, and revises section 400.406 to remove redundancies.

List of Subjects in 7 CFR Part 400

Crop insurance; General Administrative Regulations.

Proposed Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR part 400, subpart Q as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart Q—Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

1. The authority citation for 7 CFR part 400, subpart Q, is revised to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. Sections 400.401 (a), (b)(1), (2), (3) and (4) are revised to read as follows:

§400.401 Basis, purpose, and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Act to prescribe procedures for the collection, use, and confidentiality of Social Security Numbers (SSN) and Employer Identification Numbers (EIN) and related records.

(b) * * *

(1) All holders of crop insurance policies issued by FCIC under the Act and sold and serviced by local FSA offices.

(2) All holders of crop insurance policies sold by insurance providers and

all insurance providers, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors.

(3) Any agent, general agent, or company, or any past or present officer, employee, contractor or subcontractor of such agent, general agent, or company under contract to FCIC or an insurance provider for loss adjustment or any other purpose related to the crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, elected officials, contractors, and subcontractors of FCIC and FSA.

3. Section 400.402, is amended to remove all paragraph designations; remove the definitions of ''access,'' ''agency sales and service contractor,'' ''ASCS,'' ''collection,'' ''FCI Act,'' ''government contract employees,'' ''private insurance company,'' and ''restricted access;'' revise the definitions of ''applicant,'' ''authorized person,'' ''disposition of records,'' ''FCIC,'' ''past officers and employees,'' ''policyholder,'' ''retrieval of records,'' ''safeguards,'' ''storage,'' ''substantial beneficial interest,'' and ''system of records;'' and add the definitions of ''Act,'' ''FSA,'' ''insurance provider,'' and ''person'' to read as follows:

§400.402 Definitions.

Act—The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*).

Applicant—A person who has submitted an application for crop insurance coverage under the Act.

Authorized person—Any current or past officer, employee, elected official, general agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to administer the Act.

Disposition of records—The act of removing and disposing of records containing a participant's SSN or EIN by FCIC, or the insurance provider.

FCIC—The Federal Crop Insurance Corporation of the United States Department of Agriculture or any successor agency.

FSA—The Farm Service Agency of the United States Department of Agriculture or any successor agency.

Insurance provider—A private insurance company approved by FCIC, or a local FSA office providing crop insurance coverage to producers participating in any program administered under the Act.

Past officers and employees—Any officer or employee of FCIC or the insurance provider who leaves the employ of FCIC or the insurance provider subsequent to the effective date of this rule.

Person—An individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a state, political subdivision, or an agency of a state.

Policyholder—An applicant whose application for insurance under the crop insurance program has been accepted by FCIC or the insurance provider.

Retrieval of records—Retrieval of a person's records by that person's SSN or EIN, or name.

Safeguards—Methods of security to be employed by FCIC or the insurance provider to protect a participant's SSN or EIN from unlawful disclosure and access.

* * * * *

Storage—The secured storing of records kept by FCIC or the insurance provider on computer disks or drives, computer printouts, magnetic tape, index cards, microfiche, microfilm, etc.

Substantial beneficial interest—Any person having an interest of at least 10 percent in the applicant or policyholder.

System of records—Records established and maintained by FCIC or the insurance provider containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to multiple peril crop insurance policies as required by FCIC, from which information is retrieved by a personal identifier including, but not limited to the SSN, EIN, or name.

4. Section 400.403 is revised to read as follows:

§400.403 Required system of records.

Insurance providers are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data before they accept or receive any applications for insurance. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by FCIC or the insurance provider.

5. Section 400.404 is revised to read as follows:

§400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to FCIC or the insurance provider to be eligible for insurance. The SSN or EIN will be used by FCIC and the insurance provider in:

(1) Determining the correct parties to the agreement or contract;

(2) Collecting premiums or other amounts due FCIC or the insurance provider;

(3) Determining the amount of indemnities;

(4) Establishing actuarial data on an individual policyholder basis; and

(5) Determining eligibility for crop insurance program participation or other United States Department of Agriculture benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application and other forms where such SSN or EIN is required, FCIC or the reinsured company shall reject the application.

(c) The policyholder or applicant is required to provide to FCIC or the insurance provider, the name and SSN or EIN of any individual or other entity:

(1) holding or acquiring a substantial beneficial interest in such policyholder or applicant; or

(2) having any interest in the policyholder or applicant and receiving separate benefits under another United States Department of Agriculture program as a direct result of such interest.

(d) If a policyholder or applicant is using an EIN for a policy in an individual person's name, the SSN of the policyholder or applicant must also be provided.

§400.405 through 400.412 [Redesignated as §§400.406 through 400.413]

6. Sections 400.405 through 400.412 are redesignated as sections §§ 400.406 through 400.413, respectively. The redesignations are as follows:

Old section	New section
400.405	400.406
400.406	400.407
400.407	400.408
400.408	400.409
400.409	400.410
400.410	400.411
400.411	400.412
400.412	400.413

7. Section 400.405 is added to read as follows:

§400.405 Agent and loss adjuster responsibilities

(a) The agent or loss adjuster shall provide his or her correct SSN to FCIC or the insurance provider, whichever is applicable, to be eligible to participate in the crop insurance program. The SSN will be used by FCIC and the insurance provider in establishing a database for the purposes of:

(1) Identifying agents and loss adjusters on an individual basis;

(2) Evaluating agents and loss adjusters to determine level of performance;

(3) Determining eligibility for program participation; and

(4) Collection of any amount which may be owed by the agent and loss adjuster to the United States.

(b) If the loss adjuster contracting with FCIC to participate in the crop insurance program does not provide the correct SSN on forms or contracts where such SSN is required, the loss adjuster's contract will be cancelled effective on the date of refusal and the loss adjuster will be subject to suspension and debarment in accordance with the suspension and debarment regulations of the United States Department of Agriculture.

(c) If the agent or loss adjuster contracting with an insurance provider, who is also a private insurance company, to participate in the crop insurance program does not provide the correct SSN on forms or contracts where such SSN is required, the premium subsidy payable under the Standard Reinsurance Agreement, or any other reinsurance agreement, will not be paid on those policies lacking the correct SSN.

8. Redesignated § 400.406 is revised to read as follows:

§ 400.406 Insurance provider responsibilities.

The insurance provider is required to collect and record the SSN or EIN on each application or on any other form required by FCIC.

9. Redesignated § 400.407 is revised to read as follows:

400.407 Restricted access.

The Manager, other officer, or employee of FCIC or an authorized person may have access to the SSNs and EINs obtained pursuant to this subpart, only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Act.

10. Redesignated § 400.408 is revised to read as follows:

§ 400.408 Safeguards and storage.

Records must be maintained in secured storage with proper safeguards sufficient to enforce the restricted access provisions of this subpart.

11. Redesignated § 400.411 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 400.411 Obtaining personal records.

Policyholders, agents, and loss adjusters in the crop insurance program will be able to review and correct their records as provided by the Privacy Act. Records may be requested by:

(a) Mailing a signed written request to the headquarters office of FCIC; the FCIC Regional Service Office, or the insurance provider; or

* * * * *

12. Redesignated 400.412 is revised to read as follows:

§ 400.412 Record retention.

(a) FCIC or the insurance provider will retain all records of policyholders for a period of not less than 3 years from the date of final action on a policy for the crop year, unless further maintenance of specific records is requested by FCIC. Final actions on insurance policies include conclusion of insurance events, such as the latest of termination of the policy, completion of loss adjustment, or satisfaction of claim.

(b) The statute of limitations for FCIC contract claims may permit litigation to be instituted after the period of record retention. Destruction of records prior to the expiration of the statute of limitations will not provide a defense to any action by FCIC against any private insurance company.

13. Redesignated § 400.413 is revised to read as follow:

§ 400.413 OMB control numbers.

The collecting of information requirements in this subpart has been approved by the Office of Management and Budget and assigned OMB control number 0563–0047.

Signed in Washington, DC., January 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1016 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–FA–P

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7 CFR Parts 414 and 457

Forage Seeding Crop Insurance Regulations and Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of forage seeding. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, to include the current forage seeding crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current forage seeding crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business February 14, 1997 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The amendments set forth in this information collections that require clearance by OMB is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Forage Seeding Crop Insurance Provisions.'' The information to be collected includes: A crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of forage seeding that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection

of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.151, Forage Seeding Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring forage seeding found at 7 CFR part 414 (Forage Seeding Crop Insurance Regulations), for the 1998 and succeeding crop years. FCIC also proposes to amend 7 CFR part 414 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 414.

This rule makes minor editorial and format changes to improve the Forage Seeding Crop Insurance Regulations compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring forage seeding as follows:

1. The current premium adjustment table contained in the Forage Seeding Crop Insurance Policy has been omitted from the proposed Forage Seeding Crop Provisions. Information regarding good experience discounts is now contained in the Special Provisions. The adverse experience premium adjustment has been removed. These changes provide consistency with all other crops containing premium experience discounts.

2. Section 1—Add definitions for the terms ''days,'' ''FSA,'' ''fall planted,'' ''final planting date,'' ''forage,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late harvest,'' ''normal stand,'' ''nurse crop,'' ''planted acreage,'' ''practical to replant,'' ''spring planted,'' and ''written agreement'' for clarification purposes. Revise the definition for the term ''harvest'' to specify that acreage that is grazed will not be considered harvested because it is impossible to determine the production for grazed acreage so insurance coverage is not provided for acreage that is grown for the purpose of grazing. The term ''reseed'' has been changed to ''replant'' and made consistent with other annual crop provisions. Current regulations allow an insured to reseed at not less than 50 percent (50%) of the original seeding rate. The revised definition specifies

that replacing new seed into an existing damaged stand, which results in a reduced seeding rate from the original seeding rate, will not be considered replanting. This change provides consistency with the replanting provisions of other annual crop provisions.

3. Section 2—Provides guidelines for optional unit division of forage seeding basic units that are consistent with other annual crop provisions.

4. Section 3(a)—Clarify that an insured may select only one coverage level and the corresponding amount of insurance designated in the actuarial table for the applicable type and practice for all the forage seeding planted in the county that is insured under the policy. The amounts of insurance the insured chooses for each type and practice must have the same percentage relationship to the maximum amount of insurance offered by FCIC for each type and practice.

5. Section 4—The contract change date has been changed to November 30 for all counties that currently have April 15 cancellation and termination dates. This change is made to maintain an adequate time period between this date and the revised cancellation dates to permit the insured to make informed insurance decisions.

6. Section 5—The cancellation and termination dates have been changed to March 15 in states and counties that currently have April 15 dates. These changes are made to standardize the cancellation and termination dates with the sales closing dates. The sales closing dates were amended to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring seeded crop sales closing dates be 30 days earlier than previously. Also added Nevada to the forage seeding crop provisions for both spring and fall planted forage.

7. Section 6(c)—Clarify that any forage seeding crop that is grown with the intent to be grazed, or grazed at any time during the insurance period, will not be insured.

8. Section 6(d)—Add provisions to allow coverage for forage seeding that is interplanted with another crop if allowed by the Special Provisions or by written agreement. The provisions provide coverage for more acreage and may reduce the need for protection under the non-insured disaster assistance program.

9. Section 7—Clarify that any acreage damaged prior to the final planting date, to the extent that such acreage has less than a normal stand, must be replanted unless the insurer agrees that it is not practical to replant.

10. Section 8—State that harvest is one event that ends the insurance period, unless the Special Provisions contain a late harvest date, or if harvest occurs after the late harvest date, shown in the Special Provisions. Also the date grazing commences and abandonment of the insured crop were added as events that end the insurance period.

11. Section 9(h)—Add failure of the irrigation water supply as an insurable cause of loss, if such failure was caused by an insured peril that occurs during the insurance period. This change standardizes these crop provisions with other crop provisions.

12. Section 12—Modify claim for indemnity calculations to recognize separate amounts of insurance for each type and practice within the same unit.

13. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

List of Subjects in 7 CFR Parts 414 and 457

Crop insurance, Forage seeding regulations, Forage seeding.

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 414 and 457, effective for the 1998 and succeeding crop years, as follows:

PART 414—FORAGE SEEDING CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1981 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 414 is revised to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. The subpart heading preceeding § 414.1 is revised to read as follows:

Subpart—Regulations for the 1981 through 1997 Crop Year

3. Section 414.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 414.7 The application and policy.

* * * * *

(d) The application for the 1984 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Forage Seeding Insurance Policy for the 1984 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1501(l) and 1506(p).

5. 7 CFR part 457 is amended by adding a new § 457.151 to read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Forage Seeding Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Crop year—The period within which the planting is or normally would become established and shall be designated by the calendar year in which the planting is made for spring planted acreage and the next succeeding calendar year for fall planted acreage.

Days—Calendar days.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or any successor agency.

Fall planted—A forage crop seeded after June 30.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full amount of insurance.

Forage—Seeded perennial alfalfa, perennial red clover, perennial grasses, or a mixture thereof, as shown in the actuarial table.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce a normal stand, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Severance of the forage plant from the land with the intention of using it as livestock feed. Grazing will not be considered harvested.

Interplanted—Acreage on which two or more crops are planted in a manner that does

not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated acreage planted to the insured crop.

Late harvest—Harvest that occurs after the date listed in the Special Provisions.

Normal stand—A population of live plants per square foot that meets the minimum required number of plants as shown in the Special Provisions.

Nurse crop (companion crop)—A crop seeded into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date, unless replanting is generally occurring in the area.

Replanting—Performing the cultural practices necessary to replace the forage seed and then replacing the forage seed in the insured acreage with the expectation of producing a normal stand. Replacing new seed into an existing damaged stand, which results in a reduced seeding rate from the original seeding rate, will not be considered replanting.

Spring planted—A forage crop seeded before July 1.

Written agreement—A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a (basic unit), will be divided for spring and fall planted acreage.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(2) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigated system can deliver the quantity of water needed to produce a normal stand.

3. Amounts of Insurance

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may only select one coverage level and the corresponding amount of insurance designated in the actuarial table for the applicable type and practice for all the forage seeding in the county that is insured under this policy. The amount of insurance you choose for each type and practice must have the same percentage relationship to the maximum amount of insurance offered by us for each type and practice. For example, if you choose 100 percent (100%) of the maximum amount of insurance for a specific type and practice, you must also choose 100 percent (100%) of the maximum amount of insurance for all other types and practices.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to forage seeding.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and April 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
New Hampshire, New York, Pennsylvania, Vermont, Nevada.	July 31
All other states	March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the forage seeding in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted, or replanted the calendar year following planting to establish a stand of forage intended for harvest as livestock feed;

(c) That is not grown with the intent to be grazed, or not grazed at any time during the insurance period; and

(d) That is not interplanted with another crop, except nurse crops, unless allowed by the Special Provisions or by written agreement.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than a normal stand, must be replanted unless we agree that it is not practical to replant.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8) regarding when insurance ends, forage seeding insurance will end at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit, unless a late harvest date is listed in the Special Provisions, or late harvest on the unit if a late harvest date is listed in the Special Provisions;

(c) Final adjustment of a loss on a unit;
(d) Abandonment of the insured crop;
(e) The date grazing commences on the insured crop; or
(f) May 21 of the calendar year following seeding for spring-planted forage; or October 15 of the calendar year following seeding for fall-planted forage.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes that result in loss of, or failure to establish, a stand of forage that occur during the insurance period:
(a) Adverse weather conditions;
(b) Fire;
(c) Insects, but not damage due to insufficient or improper application of pest control measures;
(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption; or
(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

10. Replanting Payment

In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8):
(a) A replanting payment is allowed only in counties for which the Special Provisions designate both fall and spring final planting dates if:
(1) The insured fall-planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent (75%) of a normal stand remains;
(2) It is practical to replant;
(3) We give written consent to replant; and
(4) Such acreage is replanted the following spring by the spring final planting date.
(b) The amount of the replanting payment will be equal to 50 percent (50%) of the amount of indemnity determined in accordance with section 12(a).
(c) No replanting payment will be made on acreage for which one replanting payment has already been allowed for the crop year.
(d) If the information reported by you on the acreage report results in a lower premium than the actual premium determined to be due based on the acreage, share, practice, or type determined actually to have existed, the replanting payment will be reduced proportionately.

11. Duties In The Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after tilling of the balance of the unit is completed.
(b) In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must give us written notice if, during the period before destroying the crop on any fall planted acreage that is damaged, you decide to replant the acreage by the spring final planting date.

12. Settlement of Claim

(a) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:
(1) Multiplying the insured acreage of each type and practice by the amount of insurance for the applicable type and practice;
(2) Totaling the results of section 12(a)(1);
(3) Multiplying the total of the acres with an established stand plus 10 percent (10%) of the planted acres for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;
(4) Totaling the results of section 12(a)(3);
(5) Subtracting the result of section 12(a)(4) from the result of section 12(a)(2); and
(6) Multiplying the result of section 12(a)(5) by your share.
(b) The acres with an established stand will include:
(1) Acreage that has at least 75 percent (75%) of a normal stand;
(2) Acreage abandoned or put to another use without our prior written consent;
(3) Acreage damaged solely by an uninsured cause; or
(4) Acreage that is harvested and not reseeded.
(c) The amount of indemnity on any spring-planted acreage determined in accordance with section 12(a) will be reduced 50 percent (50%) if the stand is less than 75 percent (75%) but more than 55 percent (55%) of a normal stand.

13. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:
(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);
(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;
(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, practice, premium rate, and amount of insurance;
(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and
(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on January 10, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1014 Filed 1–14–97; 8:45 am]
BILLING CODE 3410–FA–P

7 CFR Parts 441 and 457

Common Crop Insurance Regulations; Table Grape Crop Insurance Provisions, and Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of table grapes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Table Grape crop insurance regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Table Grape crop insurance regulations to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 17, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 is through March 17, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John Meyer, Insurance Management Specialist, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Section 8 of the 1998 Table Grape Crop Provisions adds interplanting as an insurable farming practice provided it does not adversely affect the crop. This practice was not insurable under the previous Table Grape crop insurance regulations. Consequently, interplanting information will need to be collected using the FCI–12–P Pre-Acceptance Perennial Crop Inspection Report form for approximately 0.5 percent of the 341 insureds who interplant their table grape crop. Standard interplanting language has been added to most perennial crops. This is a benefit to agriculture because insurance is now available for more perennial crop producers and, as a result, less acreage will need to be placed into the noninsured crop disaster assistance program (NAP).

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Table Grape Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of table grapes that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,669,970 hours.

FCIC requests comments for the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, all producers are required to complete an application and acreage report. If the crop is damaged or destroyed, all insureds are required to give notice of loss and provide the necessary information to complete a claim for indemnity.

All insureds must also certify to the number of acres and production on an annual basis or receive a transitional yield. The producer must maintain the records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.149, Table Grape Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring table grapes found at 7 CFR part 441 and restrict the application of that part to the 1997 and prior crop years. By separate rule, FCIC will later remove that part.

This rule makes minor editorial and format changes to improve the Table Grape crop insurance regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring table grapes as follows:

1. Section 1—Add definitions for the terms ''days,'' ''direct marketing,'' ''FSA,'' ''good farming practices,'' ''graft,'' ''interplanted,'' ''irrigated practice,'' ''lug,'' ''non-contiguous land,'' ''production guarantee, per acre,'' ''set out,'' and ''written agreement,'' for clarification, and change the lug (box weight) from 22 pounds to 20 pounds in the Coachella Valley, California district, and from 23 pounds to 21 pounds in all other California districts. Provisions are also added indicating a box weight of 22 pounds for Arizona. These changes were made by the California Table Grape Commission.

2. Section 2—Change provisions to allow basic units by table grape variety to be consistent with other policies which allow insurance for crop varieties.

3. Section 3(b)—Specify that the insured must report damage, removal of bearing vines, and change in practices that may reduce yields. For the first year of insurance for acreage interplanted with another perennial crop and anytime the planting pattern of such acreage is changed, the insured must also report the age and variety, if applicable, of any interplanted crop, its planting pattern, and any other information needed to establish the approved yield. If the insured fails to notify the insurer of factors that may reduce yields from previous levels, the insurer will reduce the production guarantee at any time the insurer becomes aware of damage, removal of vines, or change in practices. This allows the insurance provider to limit liability if necessary, before insurance attaches.

4. Section 7(a)—Clarify that the insured crop will be any insured variety of grapes in the county. Previous provisions required that all insurable table grape acreage in the county be insured. This change is commensurate with previous changes made in the regulations for insuring grapes.

5. Section 7(b)—Specify that at least 150 lugs per acre must have been produced in at least one of the most recent three years of a producer's actual production history base period. Previous provisions required a minimum of 150 lugs per acre, but did not specify an applicable time period.

6. Section 8—Allow insurance for table grapes interplanted with another perennial crop in order to make insurance available for more acreage and reduce reliance on the noninsured crop disaster assistance program (NAP) for protection against crop losses. Standard interplanting language has been added to most perennial crops. Interplanting is an insurable practice as long as it does not adversely affect the insured crop.

7. Section 9—Clarifies that for the year of application, if an application is received after January 22 but prior to February 1, insurance will attach on the 10th day after the properly completed application is received in the insurance provider's local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. Provisions were also added to clarify insurability when an insurable share is acquired or relinquished on or before the acreage reporting date.

8. Section 10(b)—Clarify that disease and insect infestation are excluded causes of loss unless adverse weather prevents the proper application of control measures, causes control measures to be ineffective when properly applied, or causes disease or insect infestation for which no effective control mechanism is available. Add a provision that states that damage caused by phylloxera is not covered regardless of cause.

9. Section 11(b)—Require the producer to give notice at least 15 days prior to harvest so a preharvest inspection can be made if the insured intends to engage in direct marketing to consumers in order to permit an accurate appraisal of production to count since it is difficult to verify direct marketed production. Also removed provisions regarding harvest prior to full maturity. Table grapes are not harvested before the production reaches maturity.

10. Section 11(c)—Add provisions that the insured must give notice prior to harvest so that any damaged production may be inspected. Failure to do so may result in all such production being considered undamaged and included as production to count.

11. Section 13—Add provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover application for and duration of written agreements.

List of Subjects in 7 CFR Parts 441 and 457

Crop insurance, Table grape.

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 441 and 457, effective for the 1998 and succeeding crop years, as follows:

PART 441—TABLE GRAPE CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 441 is amended to read as follows:

Authority: 7 U.S.C. 1506(l),1506(p).

2. The subpart heading preceeding § 441.1 is revised to read as follows:

Subpart-Regulations for the 1987 through 1997 Crop Years.

3. Section 441.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 441.7 The application and policy.

* * * * *

(d) The application for the 1987 through 1997 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Table Grape Insurance Policy for the 1987 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. A new § 457.149 is added to read as follows:

§ 457.149 Table Grape Crop Insurance Provisions.

The Table Grape Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

For FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

For reinsured policies: (Insurance provider's name or other appropriate heading).

For both FCIC and reinsured policies:

Table Grape Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Cluster thinning and removal—Removing parts of an immature cluster or the entire cluster of grapes.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Graft—To unite a shoot or bud (scion) with a rootstock or an existing vine in accordance with recommended practices to form a living union.

Harvest—Severing the clusters of mature grapes from the vine.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Lug—Twenty pounds of table grapes in the Coachella Valley, California district; 21 pounds in all other California districts; and 22 pounds in Arizona.

Non-contiguous—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre)—The number of lugs of grapes determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Set out—Physically planting the desired variety of grape plant in the ground in a desired planting pattern.

Table grapes—Grapes that are grown for commercial sale for human consumption as fresh fruit on acreage where the cultural practices to produce fresh marketable grapes were carried out.

Written agreement—A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each table grape variety you insure.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units that you elect must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election and coverage level for each table grape variety in the county insured under this policy.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by variety if applicable:

(1) Any damage, removal of bearing vines, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing vines on insurable and uninsurable acreage;

(3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting the perennial crop, removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are January 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the acreage of table grapes in the county by variety.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be any insurable variety of grapes in the county that you elect and for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are grown for harvest as table grapes;

(3) That are adapted to the area; and

(4) That are grown in a vineyard that, if inspected, is considered acceptable by us.

(b) In addition to table grapes not insurable under section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any grapes grown on vines:

(1) That, after being set out or grafted, have not reached the number of growing seasons designated by the Special Provisions; or

(2) That have not produced an average of at least 150 lugs of table grapes per acre in at least one of the most recent three crop years in your actual production history base period. However, we may inspect and agree in writing to insure acreage that has not produced this amount.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions

(§ 457.8) that prohibit insurance attaching to a crop planted with another crop, table grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the vineyard.

(2) The calendar date for the end of the insurance period for each crop year is the date during the calendar year in which the grapes are normally harvested, as follows:

	Variety	Date
Arizona:		
All counties	Perlette	June 15.
	Flame Seedless	July 15.
	All others	July 31.
California:		
Fresno, Kern, Kings, Madera, and Tulare counties	Perlette	August 15.
	Cardinal	August 15.
	Exotic	August 31.
	Flame Seedless	September 15.
	Superior Seedless	August 31.
	Red Malaga	September 15.
	Queen	September 15.
	Thompson Seedless	September 15.
	Black Rose	September 30.
	Italia	September 30.
	White Malaga	October 15.
	Ribier	October 15.
	Ruby Seedless	October 15.
	All others	October 31.
Merced, Stanislaus, and San Joaquin counties	Flame Seedless	September 15.
	Thompson Seedless	September 30.
	Ribier	October 15.
	Flame Tokay	October 15.
	All others	October 31.
Imperial, Riverside, and San Bernardino counties	Beauty Seedless	July 15.
	Perlette	July 15.
	All others	July 31.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of table grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due or indemnity paid for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the vineyard;

(3) Wildlife;

(4) Earthquake;

(5) Volanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Phylloxera, regardless of cause; or

(3) Inability to market the table grapes for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties In The Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8) so that we may inspect any damaged production. If you fail to notify us, we may

consider all such production to be undamaged and include it as production to count.

12. Settlement Of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying the result in section 12(b)(1) by the respective price election for the variety;

(3) Totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of the variety (see section 12(c)) by the respective price election;

(5) Totaling the results in section 12(b)(4);

(6) Subtracting the result of section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in lugs) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements in section 11(b);

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that meets, or would meet if properly handled, the California Department of Food and Agriculture minimum standards for table grapes; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from insurable acreage regardless of condition or disposition.

(d) The quantity of production to count for table grape production damaged by insurable causes within the insurance period and that is marketed for any use other than table grapes will be determined by multiplying the greater of (1) the value of the table grapes per ton or (2) $50, by the number of tons and dividing that result by the highest price election available for the insured unit. This result will be the number of lugs to count.

13. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on January 10, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–1015 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

[DEA–143C]

RIN 1117–AA36

Establishment of Freight Forwarding Facilities for DEA Distributor Registrants; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to Notice of Proposed Rulemaking.

SUMMARY: This document contains a correction to the proposed rule (DEA–143P) which was published Wednesday, December 18, 1996 (61 FR 66637). The proposed rule related to new regulations to allow the establishment of freight forwarding facilities by DEA distributor registrants.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are subject to this correction, make amendments to Parts 1301 and 1304 of Title 21 of the Code of Federal Regulations to allow the establishment of freight forwarding facilities by DEA distributor registrants.

Need for Correction

As published, the proposed rule contained an omission in the **DATES** section which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on December 18, 1996 of the proposed rule (DEA–143P), which was the subject of FR Doc. 96–32077, is corrected as follows:

On Page 66637, in the first column, in the **DATES** section, the entry ''February 18, 1996'' is corrected to read ''Written comments or objections must be received on or before February 28, 1997''.

* * * * *

Dated: January 9, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–989 Filed 1–14–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209121–89]

RIN 1545–AN21

Certain Asset Transfers to a Tax-Exempt Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations. The proposed regulations effectuate provisions of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations generally affect a taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a

tax-exempt entity, and generally require the taxable corporation to recognize gain or loss in such a transaction.

DATES: Written comments must be received by April 15, 1997. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for May 6, 1997, at 10:00 a.m. must be submitted by April 15, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209121–89), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209121–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Stephen R. Cleary (202) 622–7530; concerning submissions and the hearing, Evangelista Lee, (202) 622–7180, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the repeal of the *General Utilities* doctrine in the Tax Reform Act of 1986. Under the *General Utilities* doctrine, which took its name from *General Utilities & Operating Co.* v. *Helvering*, 296 U.S. 200 (1935), corporations were not required to recognize gain or loss when they distributed appreciated or depreciated property to their shareholders. The *General Utilities* doctrine applied to distributions of property in complete liquidation, certain sales of property that were in connection with a complete liquidation, and nonliquidating distributions of property. It was codified in former sections 311, 336, and 337 of the Internal Revenue Code of 1954.

The *General Utilities* doctrine was an exception to the general rule that income earned by a corporation is taxed twice, once to the corporation when the income is earned and a second time to the corporation's shareholders when the earnings are distributed. The *General Utilities* doctrine generally permitted the permanent elimination of corporate-level tax on the disposition of appreciated assets because the transferee received a fair market value basis in the assets and the corporation generally did not recognize any gain. Thus, the appreciated assets left corporate solution without any corporate-level tax having been paid.

Beginning in 1969, the scope of the *General Utilities* doctrine was restricted by a series of amendments (initially relating to nonliquidating distributions governed by section 311), until ultimately the *General Utilities* doctrine was repealed, with limited exceptions, in the Tax Reform Act of 1986. Sections 336 and 337 were amended to generally require corporations to recognize gain or loss when appreciated or depreciated property is distributed in complete liquidation or sold in connection with a complete liquidation.

Section 337(a) provides one of the limited exceptions from the repeal of the *General Utilities* doctrine by allowing a subsidiary to liquidate into its 80-percent distributee (a corporation meeting the stock ownership requirements of section 332(b) in the liquidating corporation) without recognizing gain or loss. The 80-percent distributee takes a carryover basis in the distributed property. However, under section 337(b)(2), this nonrecognition exception generally does not apply if the 80-percent distributee is a tax-exempt entity.

The Tax Reform Act of 1986 added section 337(d), directing the Secretary to prescribe regulations as may be necessary to carry out the purposes of the repeal of the *General Utilities* doctrine. The legislative history of the Tax Reform Act of 1986 indicates that the *General Utilities* doctrine was repealed because it tended to undermine the corporate income tax by allowing appreciated property to leave corporate solution without imposition of a corporate level tax. H.R. Rep. No. 99–426, 99th Cong., 1st Sess. 282 (1985). The Technical and Miscellaneous Revenue Act of 1988 amended section 337(d) to specify that the section authorizes regulations to ''ensure that these purposes shall not be circumvented * * * through the use of a * * * tax-exempt entity.'' The legislative history concerning the 1988 amendment to section 337(d) explains:

> The bill also clarifies in connection with the built-in gain provisions of the Act that the Treasury Department shall prescribe such regulations as may be necessary or appropriate to carry out those provisions * * *. For example, this includes rules to require the recognition of gain if appreciated property of a C corporation is transferred to a * * * tax-exempt entity [footnote 32] in a carryover basis transaction that would otherwise eliminate corporate level tax on the built-in appreciation.
>
> [footnote 32] The Act generally requires recognition of gain if a C corporation transfers appreciated assets to a tax exempt entity in a section 332 liquidation. See Code section 337(b)(2).

S. Rep. No. 145, 100th Cong., 2d Sess. 66 (1988).

Explanation of Provision

An acquisition by a tax-exempt entity of all or substantially all of the assets of a taxable corporation or a change in status of a taxable corporation to a tax-exempt entity, like a liquidation into an 80-percent tax-exempt distributee that is taxable under section 337(b)(2), could eliminate the corporate level tax on the appreciation in the taxable corporation's assets. Accordingly, the proposed regulations apply rules similar to section 337(b)(2) to these transactions. The proposed regulations generally do not affect the tax treatment of the taxable corporation's shareholders or the availability of any charitable contribution deduction.

The proposed regulations provide that a taxable corporation that transfers all or substantially all of its assets to one or more tax-exempt entities is required to recognize gain or loss as if the assets transferred were sold at their fair market values. Like section 337(b)(2), the proposed regulations provide that no gain or loss will be recognized on any of the assets transferred that are used by the tax-exempt entity in an activity the income from which is subject to the unrelated business tax under section 511(a). However, gain on such assets will later be recognized as unrelated business taxable income if the tax-exempt entity disposes of the assets or ceases to use the assets in an unrelated trade or business activity.

The proposed regulations generally treat a taxable corporation that changes its status to a tax-exempt entity as having transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective, irrespective of whether an actual transfer of the assets has occurred. For this purpose, if a state, a political subdivision thereof, or an entity any portion of whose income is excluded from gross income under section 115, acquires the stock of a taxable corporation and thereafter any of the taxable corporation's income is excluded from gross income under section 115, the taxable corporation will be treated as if it transferred all of its assets to a tax-exempt entity

immediately before the stock acquisition.

Certain exceptions are provided to the change in status rule for organizations that are tax-exempt or are seeking tax-exempt status under section 501(a). These exceptions provide relief for corporations needing a brief start-up period to establish their tax-exempt status and for those that temporarily lose their tax-exempt status. Under the proposed regulations, the change in status rule does not apply to a corporation that is tax-exempt within three taxable years of the taxable year of its formation, or to a corporation that regains its tax-exempt status within three years after either a final adverse adjudication on its tax-exempt status or filing a tax return as a taxable corporation. The change in status rule also does not apply to an organization that before publication of these proposed regulations was exempt or unsuccessfully applied for exemption, if the organization is tax-exempt within three years after the date of publication of final regulations. An organization that files for recognition of its exempt status during one of the three-year periods will be deemed to have or regain tax-exempt status if the application ultimately results in recognition as of a date during the three-year period. An anti-abuse rule makes all these exceptions unavailable to a taxable corporation that acquires all or substantially all of the assets of another taxable corporation and then changes its status with a principal purpose of avoiding the gain or loss recognition rule made applicable by these regulations.

The proposed regulations disallow the recognition of loss if assets are acquired by the taxable corporation in a section 351 transaction or a contribution to capital, or if assets are distributed by the taxable corporation to a shareholder, with a principal purpose to recognize loss by the taxable corporation on the transfer of its assets to a tax-exempt entity (loss limitation rule). For example, the loss limitation rule may apply if (a) a loss asset is contributed to a taxable corporation and then is transferred with substantially all of the taxable corporation's assets to a tax-exempt entity; (b) loss assets not constituting substantially all of a taxable corporation's assets are contributed to a new subsidiary and then the new subsidiary transfers the loss assets which are its only assets to a tax-exempt entity, or (c) assets are distributed by a taxable corporation to its parent and then the taxable corporation transfers loss assets now constituting substantially all of its assets to a tax-exempt entity. For purposes of the loss limitation rule, the principles of section 336(d)(2) apply.

Under the proposed regulations, a ''taxable corporation'' is any corporation that is not a tax-exempt entity as defined in the proposed regulations. Thus, taxable corporations include all S corporations whether or not subject to tax on built-in gain under section 1374. After the repeal of the *General Utilities* doctrine, an S corporation like a C corporation is required to recognize gain or loss when it liquidates. This gain or loss passes through to the S corporation's shareholders under section 1366. The proposed regulations parallel this treatment.

Under the proposed regulations, a ''tax-exempt entity'' includes organizations exempt from tax under section 501, section 527, section 528, or section 529; Federal, state, and local governments; Indian tribal governments and federally chartered Indian tribal corporations; foreign governments and international organizations; and entities any portion of whose income is excluded from gross income under section 115. The term does not, however, include a cooperative described in section 521, paralleling the exception to section 337(b)(2).

A transaction conveying all or substantially all of the assets of a taxable corporation to an Indian tribal government or a corporation organized under section 17 of the Indian Reorganization Act (IRA) or section 3 of the Oklahoma Welfare Act (OWA) will be covered by these regulations. Rev. Rul. 94–16, 1994–1 C.B. 19, held that an unincorporated Indian tribe or a corporation organized under section 17 of the IRA is not subject to federal income tax, but a corporation wholly owned by an Indian tribe and organized under state law is subject to federal income tax. Rev. Rul. 94–65, 1994–2 C.B. 14, held that a corporation organized under section 3 of the OWA also was not subject to federal income tax. In that ruling, the Service announced that an Indian tribe seeking to dissolve a corporation organized under state law and organized into a federally chartered corporation (corporation organized under either section 17 of the IRA or section 3 of the OWA) will be granted relief under section 7805(b) of the Code upon application for such relief provided it demonstrates to the Service that it has acted reasonably and in good faith to achieve the dissolution and organization. The relief described in that ruling applied to taxes on income earned after September 30, 1994, by a corporation organized by an Indian tribe under state law from income earned within the boundaries of the reservation (including gain or loss properly allocable to such activities from the sale or exchange of assets). The Service intends to provide similar relief from tax resulting from any gain or loss recognized under the rules provided in these regulations. The relief will be available to state law corporations wholly owned by Indian tribes that have acted reasonably and in good faith to dissolve and reorganize as federally chartered corporations.

Proposed Effective Date

These regulations are proposed to be applicable for transfers of assets as described in the regulations occurring after [date that is 30 days after publication in the Federal Register of these regulations as final regulations], unless the transfer is pursuant to a written agreement which is (subject to customary conditions) binding on or before [date that is 30 days after publication in the Federal Register of these regulations as final regulations].

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, May 6, 1997, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 15, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 15, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Stephen R. Cleary of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR Part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.337(d)–4 also issued under 26 U.S.C. 337 * * *.

Par. 2. Section 1.337(d)–4 is added to read as follows:

§1.337(d)–4 Taxable to tax-exempt.

(a) *Gain or loss recognition*—(1) *General rule.* If a taxable corporation transfers all or substantially all of its assets to one or more tax-exempt entities, the taxable corporation must recognize gain or loss immediately before the transfer as if the assets transferred were sold at their fair market values. But see section 267 and paragraph (d) of this section concerning limitations on the recognition of loss.

(2) *Change in corporation's tax status treated as asset transfer.* Except as provided in paragraph (a)(3) of this section, a taxable corporation's change in status to a tax-exempt entity will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the change in status becomes effective in a transaction to which paragraph (a)(1) of this section applies. For purposes of this paragraph (a), if a state, a political subdivision thereof, or an entity any portion of whose income is excluded from gross income under section 115, acquires the stock of a taxable corporation and thereafter any of the taxable corporation's income is excluded from gross income under section 115, the taxable corporation will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the stock acquisition.

(3) *Exceptions for certain changes in status*—(i) *To whom available.* Paragraph (a)(2) of this section does not apply to the following corporations—

(A) A corporation previously exempt under section 501(a) which regains its tax-exempt status under section 501(a) within three years from the later of a final adverse adjudication on the corporation's tax exempt status, or the filing by the corporation, or by the Secretary or his delegate under section 6020(b), of a federal income tax return of the type filed by a taxable corporation;

(B) A newly-formed corporation that is tax-exempt under section 501(a) within three taxable years from the end of the taxable year in which it was formed;

(C) A corporation previously exempt under section 501(a) or that applied for but did not receive recognition of exemption under section 501(a), before January 15, 1997, if such corporation is tax-exempt under section 501(a) within three years from [date of publication of these regulations in the Federal Register as final regulations].

(ii) *Application for recognition.* An organization is deemed to have or regain tax-exempt status within one of the three-year periods described in paragraph (a)(3)(i) of this section if it files an application for recognition of exemption with the Commissioner within the three-year period and the application either results in a determination by the Commissioner or a final adjudication that the organization is tax-exempt under section 501(a) during any part of the three-year period. The preceding sentence does not require the filing of an application for recognition of exemption by any organization not otherwise required, such as by § 1.501(a)–1, § 1.505(c)–1T, and § 1.508–1(a), to apply for recognition of exemption.

(iii) *Anti-abuse rule.* This paragraph (a)(3) does not apply to a corporation that, with a principal purpose of avoiding the application of paragraphs (a)(1) and (a)(2) of this section, acquires all or substantially all of the assets of another taxable corporation and then changes its status to that of a tax-exempt entity.

(4) *Related transactions.* This section applies to any series of related transactions having an effect similar to any of the transactions to which this section applies.

(b) *Exceptions.* Paragraph (a) of this section does not apply to—

(1) Any assets transferred to a tax-exempt entity if the assets are used in an activity the income from which is subject to tax under section 511(a). However, if assets on which no gain or loss was recognized by reason of the preceding sentence are disposed of by the tax-exempt entity, then, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of the preceding sentence) shall be included in the tax-exempt entity's unrelated business taxable income. If the tax-exempt entity ceases to use the assets in an activity the income from which is subject to tax under section 511(a), the entity will be treated for purposes of this subparagraph as having disposed of the assets on the date of the cessation;

(2) Any transfer of assets to the extent gain or loss otherwise is recognized by the taxable corporation on the transfer. See, for example, sections 336, 337(b)(2), 367, and 1001;

(3) Any forfeiture of a taxable corporation's assets in a criminal or civil action to the United States, the government of a possession of the United States, a state, the District of Columbia, the government of a foreign country, or a political subdivision of any of the foregoing; or any expropriation of a taxable corporation's assets by the government of a foreign country; and

(4) Any transfer of assets to a cooperative described in section 521.

(c) *Definitions.* For purposes of this section—

(1) *Taxable corporation.* A *taxable corporation* is any corporation that is not a tax-exempt entity as defined in paragraph (c)(2) of this section.

(2) *Tax-exempt entity.* A *tax-exempt entity* is—

(i) Any entity that is exempt from tax under section 501(a), section 527, section 528, or section 529;

(ii) A charitable remainder annuity trust or charitable remainder unitrust as defined in section 664(d);

(iii) The United States, the government of a possession of the United States, a state, the District of Columbia, the government of a foreign country, or a political subdivision of any of the foregoing;

(iv) An Indian Tribal Government as defined in section 7701(a)(40), a subdivision of an Indian tribal government determined in accordance with section 7871(d), or an agency or

instrumentality of an Indian tribal government or subdivision thereof;

(v) An Indian Tribal Corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 477, or section 3 of the Oklahoma Welfare Act, 25 U.S.C. 503;

(vi) An international organization as defined in section 7701(a)(18);

(vii) An entity any portion of whose income is excluded under section 115; or

(viii) An entity that would not be taxable under the Internal Revenue Code for reasons substantially similar to those applicable to any entity listed in this paragraph (c)(2) unless otherwise explicitly made exempt from the application of this section by statute or by action of the Commissioner.

(3) *Substantially all.* The term *substantially all* has the same meaning as under section 368(a)(1)(C).

(d) *Loss limitation rule.* For purposes of determining the amount of loss recognized by a taxable corporation on the transfer of its assets to a tax-exempt entity under paragraph (a) of this section, if assets are acquired by the taxable corporation in a transaction to which section 351 applied or as a contribution to capital, or assets are distributed from the taxable corporation to a shareholder or another member of the taxable corporation's affiliated group, and in either case as part of a plan a principal purpose of which is to recognize loss by the taxable corporation on the transfer of its assets to the tax-exempt entity, the losses recognized by the taxable corporation on the assets transferred to the tax-exempt entity will be disallowed. For purposes of the preceding sentence, the principles of section 336(d)(2) apply.

(e) *Effective date.* This section is applicable for transfers of assets as described in paragraph (a) of this section occurring after [*date that is 30 days after publication in the* Federal Register *of these regulations as final regulations*], unless the transfer is pursuant to a written agreement which is (subject to customary conditions) binding on or before [*date that is 30 days after publication in the* Federal Register *of these regulations as final regulations*].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–771 Filed 1–10–97; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 301

[REG–209803–95]

RIN 1545–AU18

Magnetic Media Filing Requirements for Information Returns; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code.

DATES: The public hearing is being held on Wednesday, February 5, 1997, beginning at 10:00 a.m.

ADDRESSES: The public hearing originally scheduled in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. is changed to room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register on Thursday, October 10, 1996 (61 FR 53161), announced that a public hearing relating to proposed regulations under sections 6011(e) and 6045 of the Internal Revenue Code will be held Wednesday, February 5, 1997, beginning at 10:00 a.m. in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC and that requests to speak and outlines of oral comments should be received by Wednesday, January 15, 1997.

The location of the public hearing has changed. The hearing is being held in room 2615 on Wednesday, February 5, 1997, beginning at 10:00 a.m. The requests to speak and outlines of oral comments should be received by Wednesday, January 15, 1997. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–894 Filed 1–14–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 53 and 58

[AD–FRL–5675–9]

RIN 2060–AH09

Proposed Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: correction.

SUMMARY: The EPA is correcting production errors in the printing of the proposed revisions to 40 CFR parts 53 and 58 (61 FR 65780) for particulate matter monitoring published on December 13, 1996.

FOR FURTHER INFORMATION CONTACT: Neil H. Frank at (919) 541–5560.

SUPPLEMENTARY INFORMATION: The EPA proposed revisions to 40 CFR parts 53 and 58 (61 FR 65780) on December 13, 1996 to establish requirements for designation of reference and equivalent methods of $PM_{2.5}$ and to establish ambient air quality monitoring requirements for particulate matter. A review of the notice resulted in the identification of a missing figure from § 58.13 of part 58, text that was omitted, and two difficult to read figures from Appendix D to part 58. In addition, some minor errors were identified elsewhere. This notice presents the missing figure and text, reprints several hard to read figures, and makes the other corrections.

Dated: January 7, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

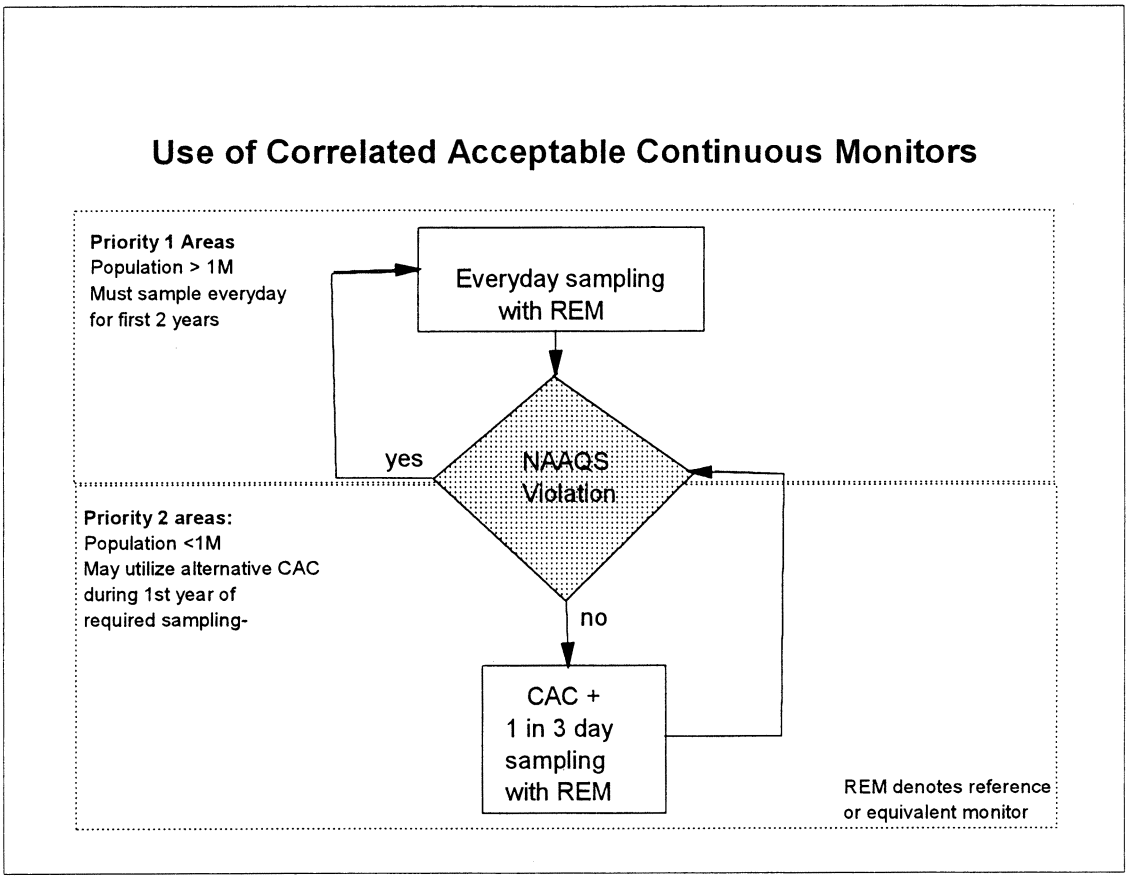
The following corrections are made to FRL–5659–2, ''Proposed Requirements for Designation of Reference and Equivalent Methods for $PM_{2.5}$ and Ambient Air Quality Surveillance for Particulate Matter'' published on December 13, 1996 (61 FR 65780).

1. On page 65800, column 1, §53.9, revise ''Designation of a candidate method as a reference method or equivalent method shall be conditioned

on the applicant's * * *'' to read ''Designation of a candidate method as a reference method or equivalent method shall be conditional to the applicant's * * *''

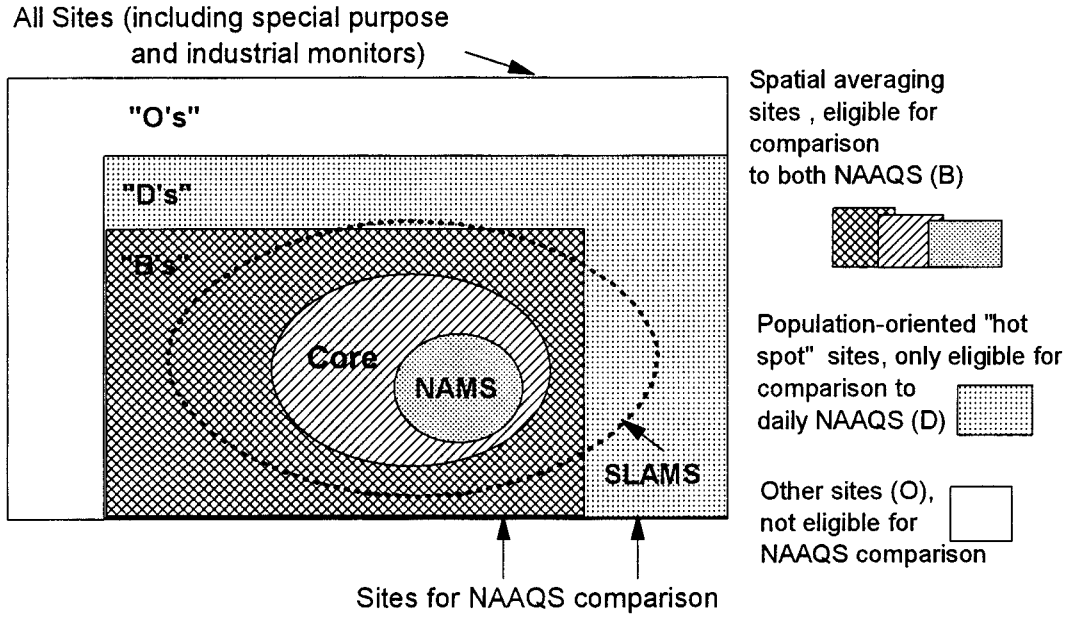
2. On page 65847, column 1, after paragraph (3), insert the following figure:

BILLING CODE 6560–50–P


Use of Correlated Acceptable Continuous Monitors
Priority 1 Areas
Population > 1M
Must sample everyday
for first 2 years
Everyday sampling
with REM
yes
NAAQS
Violation
Priority 2 areas:
Population <1M
May utilize alternative CAC
during 1st year of
required sampling-
no
CAC +
1 in 3 day
sampling
with REM
REM denotes reference
or equivalent monitor

3. On page 65862, replace Figure 1 with new Figure 1 which has easier to read shading as follows:

Figure 1. ***Sites in a Spatial Averaging Zone Eligible for Comparison to PM-2.5 NAAQS (Conceptual Venn Diagram)***



4. On page 65862, column 1, the paragraph immediately following ''2.8.2.1 Core Monitoring Stations for PM2.5'' should be identified as ''2.8.2.1.1.''

5. On page 65862, column 1, paragraph 2.8.2.1.2 change ''including at least one station in a population oriented area of expected maximum concentration; (b) At least one station in an area of poor air quality'' to ''including at least one station in a population oriented area of expected maximum concentration, and at least one station in an area of poor air quality'' and change ''(c) at least one additional core monitor'' to ''(b) at least one additional core monitor.''

6. On page 65862, column 2, change paragraph ''2.8.1.1.4'' to ''2.8.2.1.4.)

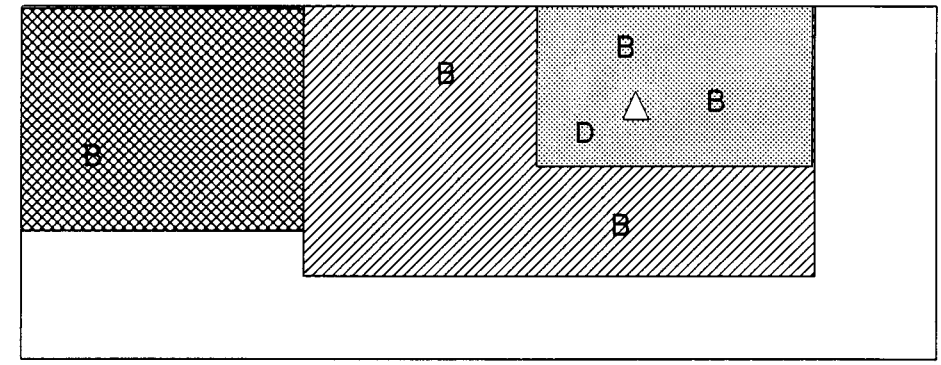
7. On page 65869, replace Figure 5 with new Figure 5 which has easier to read shading as follows:

BILLING CODE 6560–50–P

Figure 5. Hypothetical Monitoring Planning Area

Potential Spatial Averaging Zones in Western MPA

B =Population oriented sites eligible for comparison to both annual and 24-hr NAAQS
D = Population-oriented sites only eligible for comparison to 24-hr (daily) NAAQS
△ = Other special study sites



Wood Smoke Impact Residential Area

Area Source Impact ResidentialArea

Industrial Zone

Area not covered by monitoring and not included in a Spatial Averaging Zone

8. Following page 65869, insert ''2.8.3.6 In Figure 6, areas of the State included within MPA's are shown within heavy solid lines. Two MPA's are illustrated. Areas in the State outside the MPA's will also include monitors, but this monitoring coverage may be limited. This portion of the State will also be represented by SAZ's (shown by areas enclosed within dotted lines). Monitors eligible for comparison to the NAAQS are indicated by ''X.'' The appropriate monitors within an SAZ would be averaged for comparison to the annual NAAQS and examined individually for comparison to the daily NAAQS. Other monitors are only eligible for comparison to the daily NAAQS. Both within the MPA's and in the remainder of the State, some special study monitors might not satisfy applicable Part 58 requirements or will not be included in the State Monitoring Plan and will not be eligible for comparison to the NAAQS. The latter may include SLAMS monitors designated to study regional transport or to support secondary NAAQS in unpopulated areas.''

[FR Doc. 97–893 Filed 1–14–97; 8:45 am]
BILLING CODE 6560–50–C

40 CFR Part 63

[FRL–5676–9]

Request for Approval of Section 112(l) Delegated Authority; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval and delegation.

SUMMARY: EPA invites public comment on today's proposal to approve the Oregon Department of Environmental Quality (ODEQ) and the Lane Regional Air Pollution Authority (LRAPA) (collectively referred to as ''Oregon'') request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained in 40 CFR Parts 61 and 63 as these regulations apply to sources required to obtain a federal operating permit under Title V of the Clean Air Act (CAA). EPA as well invites public comment on its proposal to approve specific state rules in order to recognize conditions and limitations established pursuant to these rules, or the rules themselves, as federally enforceable.

DATES: All comments on the Oregon submittal must be received by the close of business on February 14, 1997.

ADDRESSES: Copies of the Oregon submittal are available during normal business hours at the following addresses for inspection and copying: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101–9797, and the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon, 97204–1390. Written comments should be addressed sent to: Chris Hall, U.S. EPA Region 10, 1200 Sixth Avenue (OAQ–107), Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Chris Hall, U.S. EPA Region 10, at (206) 553–1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the amended Clean Air Act of 1990 (''the Act'' or ''CAA'') established new, more stringent requirements upon a State or Local agency that wishes to implement and enforce an air toxics program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to a State or Local agency could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and Local toxics rules and programs under section 112 through formal notice and comment rulemaking. Now State and Local air agencies that wish to implement and enforce a federally-approved air toxics program must make a showing to EPA that they have adequate authorities and resources. Approval is granted by the EPA through the authority contained in section 112(l), and implemented through the Federal rule found in 40 Code of Federal Regulations (CFR) Part 63, subpart E (58 FR 62262, November 26, 1993), if the Agency finds that: (1) The State or Local program or rule is ''no less stringent'' than the corresponding Federal rule or program, (2) adequate authority and resources exist to implement the State or Local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or Local program or rule is otherwise in compliance with Federal guidance.

II. Discussion of the Oregon 112(l) Submittal

On November 15, 1993, Oregon submitted to EPA an application requesting the delegation of authority to implement and enforce the state-adopted rules for ''Hazardous Air Pollutants'' found in Oregon Administrative Regulations (OAR) Chapter 340, Division 32 in lieu of the Federal NESHAP regulations contained within 40 CFR Part 61. In the submittal, Oregon also requested that comparable delegation be provided to LRAPA to enforce the state regulations in Lane County.

On August 3, 1994, Oregon supplemented its initial application by providing additional documentation to support its initial request and seeking approval of its 112(g) rules and its rules for creating synthetic minor sources. On March 29, 1996, Oregon further supplemented its application by limiting its initial request for delegation to apply to Part 70 sources only; requested delegation for Part 70 sources only the authority to implement and enforce certain 40 CFR Part 63 NESHAP standards; and requested approval for Part 70 sources only to substitute the State asbestos regulations for the asbestos NESHAP. In the March 1996 supplement, Oregon also requested deferral of delegated federal authority to implement sections 112(g) of the federal CAA until the conclusion of federal rulemaking on this program element. By letter dated December 11, 1996, Oregon rescinded its request to substitute its state asbestos rule for the asbestos NESHAP, therefore EPA will take no action in this regard at this time.

Oregon's section 112(l) application contains the following documents: (1) A written finding by the State Attorney General and the independent legal counsel for LRAPA stating that Oregon has the legal authority to implement and enforce state-adopted regulations as well as assure compliance by all sources within their jurisdiction; (2) a copy of OAR Chapter 340, Division 32 [1] (hereafter referred to as ''OAR 340–032''), which contains the fully adopted State NESHAP regulations which would be substituted for the Federal NESHAP regulations upon approval; (3) a copy of OAR Chapter 340, Division 28 [2] (hereafter referred to as ''OAR 340–28''), which contains the permitting requirements for each source subject to OAR–340–032, including the State synthetic minor rules, the State Air

[1] As in effect October 6, 1995.
[2] As in effect on July 1, 1995.

Contaminant Discharge Permit (ACDP) program rules, and the State federal operating permit (FOP) program rules; and (4) a complete program description. The full program submittal is available for review for more detailed information.

A. Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR 63.91, Oregon is requesting delegation of authority to implement and enforce the federal NESHAP regulations contained in 40 CFR Part 61, subparts A through F, J, L, N through P, V, and Y through FF, as adopted by reference in OAR 340–032–05520 through –5580, as these rules apply to Part 70 sources. Oregon is also seeking delegation of authority to implement and enforce 40 CFR Part 63, subparts A, F through I, N, O, Q, R, T, and EE, as adopted into OAR 340–032–0510, as these rules apply to Part 70 sources.

Also, EPA proposes to approve a mechanism for Oregon to receive delegation of future NESHAP regulations that are adopted by reference into state law unchanged. The details of this mechanism are outlined in section IV.C.

B. Voluntary Limits on Emissions

Oregon requests section 112(l) approval of state-adopted regulations which would allow Oregon permitting authorities to establish federally-enforceable emission limitations by permit limiting a source's potential to emit hazardous air pollutants (HAP) below major source thresholds.

Oregon's voluntary emission limitation rules are contained in OAR 340–028–110(114); –1050; –1740; and –2110. The provisions of these sections are applicable as a matter of state law to any air contaminant and not just applicable to the criteria pollutants regulated under the EPA-approved Oregon state implementation plan (SIP).

Oregon's ACDP program regulations (OAR 340–28–1700 through 1790) provide the mechanism for the owner or operator of a source to apply for and obtain enforceable permit conditions that limit the source's potential to emit. Such limitations would be inserted into an ACDP issued by Oregon, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with these limitations. If approved by EPA, limits established pursuant to these regulations would be considered federally enforceable. Therefore, Oregon would have the ability to set limits which would be sufficient to exempt a source from the requirement to obtain a FOP and/or comply with Federal, State or Local hazardous air pollutant regulations. Approval of federally enforceable permit limits under section 112(l) is necessary because the Oregon SIP approved ACDP program only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOCs or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b)[3], however, section 112 of the Act provides the underlying authority for controlling all HAP emissions. EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR Part 63, the regulations promulgated to implement section 112(l) of the Act. In this respect, EPA is proposing to approve OAR 340–028–1740, Oregon's synthetic area source permit program, under the authority of section 112(l) of the Act. Furthermore, EPA proposes that, after final approval of this section, synthetic area source permits issued pursuant to these EPA-approved regulations including terms and conditions for HAP contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such permits were issued prior to EPA approval of this section. However, such permits would have to have been issued after the effective date of OAR 340–028–1740 (i.e., after November 4, 1993) in accordance with all of the provisions set forth in that section. It is EPA's position that further actions approving OAR 340–028–1740 will not be necessary even though 40 CFR part 63, subpart E potential to emit language revisions may not be finalized by the time this proposed action is finalized.

III. Authority and Commitments for Section 112 Implementation

Under 40 CFR Part 63, subpart E, the minimum documentation needed as part of this 40 CFR 63.91 delegation request is: A written finding by the State attorney general (and the independent counsel for LRAPA) confirming that Oregon has adequate legal authorities to implement and enforce State rule(s) or program(s); copies of the State statutes, regulations and other documents which contain the appropriate provisions for which Oregon is requesting delegation; a demonstration of adequate resources to implement and enforce all aspects of the delegated rules or program; a schedule demonstrating expeditious implementation of the delegated rules or program; a plan that assures expeditious compliance by all sources; and a demonstration of adequate legal authority to implement and enforce all delegated rules or program and to assure compliance by all sources upon approval.

A. Written Findings by Legal Counsel

40 CFR 63.91(b)(1) requires that, at a minimum, the State have the following authorities: (1) Enforcement authorities that meet the requirements of 40 CFR 70.11 of this chapter; (2) authority to request information from regulated sources regarding their compliance status; (3) authority to inspect sources and any records required to determine a source's compliance status; and (4) if ODEQ delegates authorities to a Local agency, ODEQ must retain enforcement authority unless the Local agency's authorities meet the requirements of 40 CFR 70.11. Oregon has provided to EPA legal opinions from the State Attorney General and the independent legal counsel for LRAPA which clearly outline Oregon's enforcement authorities as they pertain to the requirements of 40 CFR 63.91(b)(1).[4]

B. Copies of State Statutes and Regulations

Complete copies of the Oregon regulations, OAR 340–032 (1995) and OAR 340–28 (1995), and Oregon Revised Statutes (ORS) 468 and 468A (1993) have been provided to EPA as required by 40 CFR 63.91(b)(2). OAR 340–032 ''Hazardous Air Pollutants'' establishes Oregon's procedures for regulating sources subject to 40 CFR Part 61 and Part 63. OAR 340–032–0130 ''List of Hazardous Air Pollutants'' incorporates into state law all of the HAP listed in section 112(b) of the Act. OAR 340–032–0240 ''Permit to Operate'' requires all new, existing and modified major sources of HAPs to obtain a FOP.

OAR 340–032–0500 ''Emission Limitations for New Major Sources'' requires new major sources of hazardous air pollutants to obtain a permit prior to construction or reconstruction, as well as requires such

[3] See the Kathie A. Stein guidance memo of January 25, 1995, titled ''Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits'' which addresses the technical aspects of how criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

[4] Since the original submission of this delegation application, EPA has fully approved Oregon's Part 70 operation permit program after determining that Oregon's enforcement authorities meet the requirements of 40 CFR Part 70.11. 60 FR 50106 (November 27, 1995).

new sources to utilize maximum achievable control technology (MACT). OAR 340–032–0510 through –0620 adopts by reference 40 CFR Part 63, subparts A, F through I, M through O, Q, R, T, and EE as they apply to new major sources. OAR 340–032–2500 ''Emission Limitations for Existing Major Sources'' requires existing major sources of HAP to comply with applicable federal MACT standards and if such standards are not timely promulgated, then comply with state-adopted MACT regulations and to obtain a state-issued FOP permit. OAR 340–032–2600 through –3010 adopt by reference 40 CFR Part 63, subparts A, F through I, M through O, Q, R, T, and EE as they apply to existing major sources. OAR 340–032–4500 ''Requirements for Modifications of Existing Major Sources'' requires existing major sources of HAP to apply MACT whenever that source is modified and the modification results in an increase in HAP emissions above de minimis levels.

OAR 340–032–5500 ''Applicability'' indicates which sections of OAR 340–032 with which a stationary source identified in OAR 340–032–5530 through 5650 must comply with. OAR 340–032–5510 ''General Requirements'' requires all new sources subject to the state HAP regulations to notify Oregon prior to and after start-up. OAR 340–032–5520 ''Federal Regulations Adopted by Reference'' adopt by reference 40 CFR 61, subparts A through F, I, J, L, N through P, V, and Y through FF as in effect on July 1, 1993. OAR 340–032–5530 through OAR 340–032–5580 contain brief descriptions for each of the Federal NESHAP standards adopted by reference under OAR 340–032–5520 which helps a source determine whether it is potentially subject to the state-adopted standard without having to refer to the Code of Federal Regulations. OAR 3440–032–5590 through OAR 340–032–5650 contains the state asbestos rule language. Finally, OAR 340–32–5520 provides that if a discrepancy exists between 40 CFR Part 61 and OAR 340–32–5530 through 340–32–5650, then the applicable section of 40 CFR Part 61 shall apply.

C. Demonstration of Adequate Resources

40 CFR 63.91(b)(3) requires Oregon to provide for adequate resources to implement and enforce all aspects of the program or rule. Specifically, 40 CFR 63.91(b)(3) requires Oregon to provide: 1) a description in narrative form of the scope, structure, coverage, and processes of the State program; 2) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and 3) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

EPA believes Oregon has taken the necessary steps to provide for adequate resources to support implementation and enforcement of its air toxics program which are at least as stringent as the federal program. OAR 340–032 and OAR 340–28 provide the regulatory framework for administering Oregon's HAP program. OAR 340–32–0105 now provides that the provisions of OAR 340–032 apply ''to any new, modified, or existing source that emits or has the potential to emit any HAP'' which is defined in OAR 340–32–0120(23) as ''an air pollutant listed by the EPA pursuant to § 112(b) of the Federal CAA.'' Oregon has defined ''HAP'' such that their program at a minimum covers the same list of HAPs found in the CAA.

Oregon has adopted by reference into state law all of the 40 CFR Part 61 and Part 63 subparts for which they are requesting delegation under the authority of 40 CFR 63.91. Therefore, Oregon's air toxics programs covers the same sources and the same pollutants which are presently being covered under the Federal NESHAP regulations.

ODEQ will be implementing and enforcing OAR 340–032 and OAR 340–28 throughout the State of Oregon (with the exception of Lane County) under the authority of ORS 468 and ORS 468A. Implementation and enforcement of OAR 340–032 and 340–028 or similar local regulations will be administered by LRAPA in Lane County. OAR 340–032–0110 and ORS 468A.135 gives LRAPA authority to implement and enforce OAR regulations or adopt their own more stringent regulations.

Resources to fund implementation and enforcement of the Oregon air toxics program for sources subject to the Federal NESHAP regulations but which are not subject to FOP requirements are covered by a three-part fee system comprised of a filing fee, a processing fee, and a compliance determination fee administered through its ACDP program. Oregon has been operating this fee program since 1972. Program costs for major sources subject concurrently to NESHAP regulations and FOP requirements are covered through a separate three-part fee system composed of an emission fee, a base fee and user fees administered through its FOP program. EPA believes that Oregon assess fees which are adequate to cover the costs of implementing and enforcing the terms of each permit issued under these programs.[5]

Oregon was granted full approval of its FOP program on November 27, 1995. See 60 FR 50106. As part of this approval, EPA found that Oregon possessed adequate legal authorities and resources to implement and enforce its statewide FOP program as it applies to Part 70 sources.[6] Since Oregon has met the requirements of Part 70 for an approved Title V operating permit program, EPA considers this finding of adequate resources and authorities to be sufficient for section 112(l) purposes as well as it applies to Part 70 sources.[7]

D. Demonstration of Expeditious Implementation

Oregon has the broad legal authority to implement and enforce all Federal NESHAP regulations adopted into State law or included in a State-issued permit pursuant to OAR 340–28. EPA believes that Oregon's statutory and regulatory authorities are adequate to expeditiously implement those 40 CFR Parts 61 and 63 regulations adopted by reference in OAR 340–032 for which they are requesting delegation.

Oregon will adopt all new and amended NESHAP regulations into OAR 340–032. Oregon will implement and enforce these regulations for Part 70 sources through its FOP program. All existing major sources of HAP will be required to obtain a FOP. See OAR 340–032–0220(1) and OAR 340–28–2110(1). New major sources of HAP must obtain an ACDP construction permit prior to commencing construction. See OAR 340–032–0230(1).

E. Demonstration of Expeditious Compliance

The EPA believes that Oregon's FOP program provides for an expeditious schedule for assuring compliance with NESHAP requirements as required by 63.91(b)(5). The FOP program regulations contain adequate authority

[5] For further discussion of ODEQ's FOP fee system, see the September 14, 1994 Federal Register (59 FR 47105) rulemaking granting interim approval to the state of Oregon of its FOP program, including its three part fee system.

[6] For further discussion regarding Oregon's authorities and resources for implementing its FOP program please refer to the language contained in the September 14, 1994, Federal Register (59 FR 47105) notice proposing interim approval of the Oregon FOP program and the December 2, 1994, Federal Register (59 FR 61820) notice granting interim approval of the Oregon FOP program, and the September 28, 1995 Federal Register proposal (60 FR 50166) and direct final Federal Register (60 FR 50106) which granted full approval of ODEQ's FOP program.

[7] See the December 10, 1993, EPA policy memo from John Seitz of OAQPS titled ''Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V.''

to provide for an expeditious schedule for assuring compliance with all NESHAP requirements. Nothing in OAR 340–032 or OAR 340–028 would allow a source to avoid or delay compliance with any CAA requirement beyond the compliance date required by the Federal NESHAP regulations.

EPA also believes that the Oregon synthetic area source program meets the requirements of 40 CFR 63.91(b)(5) since this program does not allow for the waiver of any NESHAP requirement. To be more specific, sources that become minor through a permit issued pursuant to this program will still be required to meet all NESHAP requirements applicable to non-major sources.

F. Demonstration of Adequate Legal Authority

40 CFR 63.91(b)(6) requires Oregon to demonstrate that it has adequate legal authority to assure compliance as well as assure minimum enforcement authority which includes: (1) enforcement authorities that meet the requirements of 40 CFR 70.11; and (2) ability to retain enforcement authority in jurisdictions where this program has been re-delegated by the State to a local authority, unless the local authority has enforcement authorities that meet the requirements of 40 CFR 70.11. As previously indicated, ODEQ and LRAPA have enforcement authorities that meet the requirements of 40 CFR 70.11.

IV. Programs for Proposed Approval

A. Adoptions by Reference

It is EPA's belief that the Oregon submittal substantially meets the requirements of 40 CFR 63.91. Therefore, with this notice EPA proposes to grant full approval to Oregon's request for delegated authority to implement and enforce 40 CFR Part 61, subparts A through F, J, L, N through P, V, and Y through FF; and 40 CFR Part 63, subparts A, F through I, N, O, Q, R, T, and EE, as adopted into OAR 340–032. This delegation of authority to implement and enforce these rules applies only as these rules apply to 40 CFR part 70 sources. EPA will continue to administer and enforce these regulations as they apply to non-Part 70.

B. Voluntary Limits on HAP Emissions

EPA is proposing to grant approval of OAR 340–028 sections –110(114), –1050, –1740, and –2110 under the authority of section 112(l) of the Act to recognize the Oregon ACDP program as federally enforceable for the purpose of establishing potential to emit limitations. Approval of these regulations will allow Oregon to create federally enforceable emission limitations by permit for sources who have the potential to emit HAP above major threshold levels but have actual HAP emissions which are below major source levels.[8]

C. Mechanism for Delegation of Future NESHAP Standards

In addition, EPA proposes to approve a mechanism for future delegation of those Federal NESHAP regulations that Oregon adopts by reference into state law.[9] Under this streamlined approach, upon adoption of a NESHAP regulation Oregon would only need to send a letter to EPA requesting delegation for that regulation. EPA would in turn respond to this request by sending a letter back to Oregon delegating the NESHAP regulation as requested. No further formal response from Oregon would be necessary at this point, and if a negative response from Oregon is not received within 10 days of this letter of delegation from EPA, the delegation would then become final.

V. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposed approval. Copies of the Oregon submittal and other information relied upon for this action are contained in a docket maintained at the EPA Regional Office. The docket is a file of information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by February 14, 1997.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

NESHAP rule or program delegation approvals under section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that the State of Oregon is already imposing. Therefore, because the section 112 delegation approvals do not impose any new requirements, the Agency has determined that it would not have a significant impact on any small entities affected.

D. Unfunded Mandates Reform Act

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VI. Summary of Action

EPA is soliciting public comment on its proposed delegation and approval of implementation and enforcement authority to Oregon pursuant to the authority of section 112(l) of the Act. EPA is also proposing to approve a mechanism for Oregon to receive future delegation of section 112 standards that are unchanged from the federal standards, but only as these standards apply to Part 70 sources. At the request of Oregon, EPA is proposing to take no action at this time in regard to their 40 CFR 63.93 rule substitution request for the state asbestos regulations contained in OAR 340–32–5590 through 340–32–5650. Interested parties are invited to comment on all aspects of this proposed rule. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by February 14, 1997 will be considered in the final rulemaking action taken by EPA. Issues raised by those comments will be carefully reviewed and considered in the decision to approve or disapprove the submittal. The EPA expects to make a final decision on whether or not to approve the Oregon submittal by July 14, 1997 and will give notice of the decision in the Federal Register. The notice will include a summary of the reasons for

[8] The source would thereby become a ''synthetic area source'' or a ''synthetic minor source.''

[9] See section 5.1.2.b of the document ''Interim Enabling Guidance for the Implementation of 40 CFR part 63, subpart E'' (EPA–453/R–93–040, November 1993).

the final determination and a response to all major comments.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 6, 1997.

Chuck Clark,

Regional Administrator.

[FR Doc. 97–977 Filed 1–14–97; 8:45 am]

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Notices

Federal Register
Vol. 62, No. 10
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Katka Peak Environmental Impact Statement Supplement, Idaho Panhandle National Forests, Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplement to the Katka Peak environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare a supplement to Katka Peak Final Environmental Impact Statement (EIS). The notice of intent for the EIS was published in volume 57, number 137 of the Federal Register, pages 31491 through 31493 on July 16, 1992. This supplement will disclose environmental effects of a timber salvage and ecosystem rehabilitation project in the Katka Peak analysis area. A portion of the proposed activities are within the Katka Peak Roadless Area number 1–157.

The project area is approximately 7 air miles southeast of the community of Bonners Ferry. It is in the northwest portion of the Cabinet Mountains, Idaho Panhandle National Forests, Bonners Ferry Ranger District, Boundary County, Idaho. There are approximately 28,827 acres of National Forest lands within the analysis area. It includes portions of Township 61 North, Ranges 1, 2 and 3 East, and Township 60 North, Range 2 East, Boise Meridian, Boundary County, Idaho.

The decision to be made is to the extent, if anything, of activities to be accomplished for salvage, thinning, prescribed burning, watershed and fisheries habitat improvement and road reconditioning within the project area. Decisions concerning road closures for grizzly bear security habitat would affect only roads within the Boulder Bear Management Unit.

The purpose of the project is four-fold. It is to: salvage dead and dying timber; to trend productive and stagnating poletimber, sawtimber and plantation stands towards historical stocking levels and species composition; reduce the stocking of small diameter Douglas-fir, larch and other species that are invading historical dry site ponderosa pine habitat types; and, remove seed trees in previous harvest units which are now certified as regenerated.

The items covered by the 1994 Katka Peak record of decision to implement Alternative 7c are outside the scope of this analysis. This supplement will not result in any changes to the existing timber sales and related activities as analyzed and disclosed in the Katka Peak Final EIS and ROD.

This supplement to the EIS is necessary under 40 CFR 1502.9(c) due to significant new circumstances and information obtained since the Katka Peak Final EIS was completed. One significant new circumstance is the expanding market for commercial utilization of trees ranging in size from 4 to 7 inches in diameter at breast height. These small trees are increasingly in demand for pulp, posts and poles. Also, dead timber is being utilized in larger quantities for houselogs. These growing markets now make it feasible to use commercial forest product sales to treat timber stands that were designated for ''deferred treatment'' in the Katka Peak Final EIS and Record of Decision.

The scientific assessment for the Interior Columbia Basin Ecosystem Management Project (ICBEMP) has provided significant new information relevant to the project area. This area lies within the Northern Glaciated Mountains Region described in the ICBEMP assessment area. Specific recommendations for this region indicate a need to rehabilitate overstocked stands and to enhance dry site ponderosa pine habitat types by such techniques as mechanical stocking control (thinning) and prescribed fire.

DATES: Written comments and suggestions on the proposed management activities or requests to be placed on the public involvement list should be submitted on or before February 14, 1997.

ADDRESSES: Send written comments, suggestions or requests to District Ranger, ATTN: Katka Peak Supplemental EIS (Kit Katkee Salvage Project), Bonners Ferry Ranger District, Route 4 Box 4860, Bonners Ferry, Idaho 83805–9764.

FOR FURTHER INFORMATION CONTACT: Barry Wynsma, Project Leader, phone (208) 267–5561.

SUPPLEMENTARY INFORMATION: The Katka Peak Supplemental EIS (Kit Katkee Salvage Project) was initiated in October of 1995 pursuant to procedures in Section 2001 of Public Law 104–19 (Pub.L. 104–19). New direction issued by Forest Service Chief Jack Ward Thomas and Department of Agriculture Secretary Dan Glickman on July 2, 1996 resulted in this project being subject to standard NEPA procedures for supplements to environmental impact statements. This project is no longer subject to Pub.L. 104–19 procedures because the estimated total volume of live timber proposed for removal in stocking reduction treatments is expected to exceed 25 percent, which is the upper limit for a salvage sale under Pub.L. 104–19.

This project-level EIS supplement incorporates the Katka Peak Final EIS and Record of Decision (July 12, 1994) and tiers to the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987). The Forest Plan provides overall guidance of all land management activities on the Idaho Panhandle National Forests.

Use of prescribed fire, timber harvest, road closures, road reconstruction and obliteration, water quality improvement and instream fish habitat structures, and access management are all being considered to achieve or trend toward the desired condition.

Proposed salvage and ecosystem rehabilitation management activities would take place in timber stands with the highest treatment needs and with low potential for producing and delivering sediment to streams. Thinning treatments would remove trees between 4 and 9 inches in diameter at breast height (dbh). Activities would include: Approximately 1,800 acres of roundwood thinning (trees less than 7 inches dbh), approximately 3,800 acres of understory removal treatments, including salvage of dead/down timber; approximately 135 acres of final removal of seed trees in certified

regenerated harvest units (keeping reserve trees for wildlife); approximately 730 acres of plantations scheduled for precommercial thinning; approximately 340 acres of dry site ponderosa pine habitat enhancement treatments, using both mechanical methods and prescribed fire; approximately 11 water quality/fisheries improvement projects, mostly road stabilization on existing roads; and, access management to meet security habitat for threatened and endangered wildlife species.

The proposal includes precommercial thinning and prescribed fire treatments in the Katka Peak Roadless Area (1–157). Approximately 329 acres of dry-site ponderosa pine habitat would be underburned and 217 acres of overstocked pole-sized timber stands would be precommercially thinned. There would not be any use of heavy equipment, no road construction, and no removal of forest products within the roadless area.

These proposed actions are being considered together because they represent either connected, similar, or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The Idaho Panhandle National Forests Forest Plan provides the guidance for management of activities through goals, objectives, standards and guidelines, and management area directions. The proposed salvage and ecosystem rehabilitation management activities are within Forest Plan designated management Areas 2 and 19. These areas can be described briefly as follows:

Management Area 2—Manage identified grizzly bear habitat to support a recovered grizzly bear population while providing for long-term growth and production of commercially valuable wood products.

Management Area 19—Manage for a semi-primitive recreation setting while providing low levels of timber harvest with minimum standard roads.

The Forest Service will consider two alternatives to the proposed action. One alternative will be ''No Action'' in which none of the proposed activities would be implemented. Another alternative will consider the effects of treating all stands that have a component of dead timber, that are overstocked, that are in ponderosa pine habitat that currently do not exhibit the historical species and stocking levels of this habitat type, or have final removal needs.

The supplement to the Katka Peak Final EIS will analyze the direct, indirect, and cumulative environmental effects of the proposed action and alternatives. Past, present, and reasonably foreseeable activities on both private and National Forest lands will be considered. Analysis of site-specific mitigation measures and their effectiveness will be disclosed.

Public participation is an important part of the analysis and decisionmaking process. Scoping began with publication of the proposed project in the October 1995 IPNF NEPA Quarterly Schedule of Proposed Actions and through newspaper articles and letters to interested persons. The public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision.

The following preliminary issues have been identified at this time:

1. How will access management and project timing affect habitat and security needs for Threatened, Endangered, Sensitive and Management Indicator species?

2. How will the fisheries and water quality in the project area be protected, maintained, or improved?

3. What timber stands have stocking levels and species compositions that are above and outside of their historic range of variability? Also, what stands are experiencing or at risk of unacceptably high levels of insect and disease activity? In relation to stands experiencing high levels of tree mortality, what are the fuel loading concerns and are the stands in need of fuels reduction?

4. How will the project contribute to maintaining the customary flow of goods and services to communities?

5. How will the project affect the Katka Peak Roadless Area?

6. How will the visual resource be affected by the project?

7. How will the project protect sensitive plant species?

8. How will the project protect cultural resources?

This list may be expanded, verified or modified based on continuing public participation in this project.

The Draft Supplement to the Katka Peak Final EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February of 1997. At that time, EPA will publish a Notice of Availability (NOA) of the Draft Supplemental EIS in the Federal Register. The comment period on the Draft Supplemental EIS will end 45 days from the date the NOA appears in the Federal Register. It is very important that those interested in the management of the Katka Peak area participate at that time. To be most helpful, comments on the Draft Supplemental EIS should be as site- and project-specific as possible and relate only to proposals made in the EIS supplement. The Final Supplemental EIS is anticipated to be completed by April, 1997.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. versus NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon versus Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. versus Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the Katka Peak Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplement to the Final EIS should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the draft supplement or the merits of the alternatives formulated and discussed in the supplement.

I am the responsible official for this supplement to the environmental impact statement.

Dated: December 26, 1996.

Elaine J. Zieroth,

District Ranger, Bonners Ferry Ranger District.

[FR Doc. 97–887 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On July 8, 1996, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Reviews.''

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Andrea Chu (Intertechnique, SNFA, SNR), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde, Rollix Defontaine), Matthew Rosenbaum (SKF), or Kris Campbell.

Germany

Thomas Barlow (Torrington Nadellager), Davina Hashmi (INA), Chip Hayes (NTN Kugellagerfabrik), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde and Rollix Defontaine), Matthew Rosenbaum (SKF), Thomas Schauer (FAG), Kris Campbell, or Richard Rimlinger.

Italy

Matthew Rosenbaum (SKF), Mark Ross (FAG), Kris Campbell or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Chip Hayes (NTN), Michael Panfeld (NPBS), Mark Ross (Asahi Seiko), Thomas Schauer (NSK Ltd.), or Richard Rimlinger.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Andrea Chu (Hoffman U.K.), Hermes Pinilla (NSK-RHP), Matthew Rosenbaum (Rose Bearing Co., Ltd.), Thomas Barlow (Timken-UK), or Kris Campbell.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On July 8, 1996, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore, and the United Kingdom (61 FR 35713). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995. We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held public hearings as follows: General Issues, August 16, 1996, Germany, August 20, 1996, and Japan, August 19, 1996. The Department has conducted these administrative reviews in accordance with section 751 of the Tariff Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes of kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix,'' which is appended to this notice of final results.

Use of Facts Available

In accordance with section 776 of the Tariff Act, we have determined that the use of the facts available is appropriate for a number of firms. For a discussion of our application of facts available, see the ''Facts Available'' section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
France	SKF	BBs
	SNR	BBs
Germany	FAG	BBs, CRBs, SPBs
	INA	BBs, CRBs
	SKF	BBs, CRBs, SPBs
Italy	FAG	BBs
Japan	Asahi Seiko	BBs
	Koyo	BBs, CRBs
	Nachi	BBs, CRBs
	NSK	BBs, CRBs
	NTN	BBs, CRBs, SPBs
Singapore	NMB/Pelmec	BBs
United Kingdom.	NSK-RHP	BBs, CRBs

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the ''Issues Appendix'' which is appended to this notice of final results.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1994, through April 30, 1995:

Company	BBs	CRBs	SPBs
France			
Franke GmbH	[1] 66.42	([3])	([3])
Hoesch Rothe Erde	([2])	([3])	([3])
Intertechnique	1.55	([2])	([2])
Rollix Defontaine	([2])	([3])	([3])
SKF	17.23	([2])	42.79
SNFA	66.42	18.37	([3])
SNR	2.37	2.50	([2])
Germany			
FAG	30.68	23.17	12.11
Franke GmbH	[1] 132.25	([3])	([3])
Hoesch Rothe Erde	([2])	([3])	([3])
INA	20.57	19.12	([2])
NTN	18.38	([2])	([2])
Rollix & Defontaine	([2])	([3])	([3])
SKF	2.92	10.22	7.84
Torrington Nadellager	([2])	76.27	([3])
Italy			
FAG	5.15	([2])	([3])
SKF	2.97	([3])	([3])
Japan			
Asahi Seiko	2.65	([3])	([3])
Koyo Seiko	18.90	3.88	[1] 0.00
NPB	45.83	([2])	([2])
NSK Ltd.	12.81	22.42	([2])
NTN	4.01	3.76	1.06
Singapore			
NMB Singapore/Pelmec Ind	2.44	([3])	([3])
United Kingdom			
NSK–RHP	20.25	25.01	([3])
Hoffman U.K.	61.14	48.29	([3])
Rose Bearings	61.14	48.29	([3])
Timken Bearings	([2])	([2])	([3])

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net value for that exporter's sales for each relevant class or kind to the United States during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the export price and constructive export price (CEP) deposit rates (using the export price and CEP respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both export price and CEP sales by the combined total value for both export price and CEP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an

unaffiliated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis,* the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993), and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 61 FR 66472 (December 17, 1996). These rates are the ''All Others'' rates from the relevant LTFV investigations.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of AFBs.

1. Export Price Sales

With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and export price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 6, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Scope Appendix Contents

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. Ball Bearings and Parts Thereof

These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule

(HTS) subheadings: 4016.93.10, 4016.93.50, 6909.19.5010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.70.6060, 8708.93.6000, 8708.99.06, 8708.99.3100, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.58, 8708.99.8015, 8708.99.8080.

2. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof

These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 4016.93.10, 4016.93.50, 6909.19.5010, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080.

3. Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof

These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 6909.19.5010, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made.

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV)*, 54 FR 19006, 19019 (May 3, 1989):

Products Covered

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination (*see International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 54 FR 21488, (May 18, 1989))
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990 (*see Scope Rulings*, 55 FR 42750 (October 23, 1990)):

Products Excluded

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990 (*see Scope Rulings*, 55 FR 43020 (October 25, 1990)):

Products Covered

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings completed between April 1, 1991, and June 30, 1991 (*see Notice of Scope Rulings*, 56 FR 36774 (August 1, 1991)):

Products Excluded

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I)*, 56 FR 31692, 31696 (July 11, 1991):

Products Covered

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between July 1, 1991, and September 30, 1991 (*see Scope Rulings*, 56 FR 57320 (November 8, 1991)):

Products Covered

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products Excluded

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991 (*see Notice of Scope Rulings*, 57 FR 4597 (February 6, 1992)):

Products Covered

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992 (*see Scope Rulings,* 57 FR 19602 (May 7, 1992)):

Products Covered

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products Excluded

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992 (*see Scope Rulings,* 57 FR 32973 (July 24, 1992)):

Products Excluded

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992 (*see Scope Rulings,* 57 FR 57420 (December 4, 1992)):

Products Covered

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992 (*see Scope Rulings,* 58 FR 11209 (February 24, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products Excluded

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993 (*see Scope Rulings,* 58 FR 27542 (May 10, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993 (*see Scope Rulings,* 58 FR 47124 (September 7, 1993)):

Products Covered

- Certain series of INA bearings

Products Excluded

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993 (*see Scope Rulings,* 59 FR 8910 (February 24, 1994)):

Products Excluded

- Certain textile machinery components

Scope rulings completed after March 31, 1994:

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1994 and December 31, 1994 (*see Scope Rulings,* 60 FR 12196 (March 6, 1995)):

Products Excluded

- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope rulings completed between April 1, 1995 and June 30, 1995 (*see Scope Rulings,* 60 FR 36782 (July 18, 1995)):

Products Covered

- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope rulings completed between January 1, 1996 and March 31, 1996 (*see Scope Rulings,* 61 FR 18381 (April 25, 1996)):

Products Covered

- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope rulings completed between April 1, 1996 and June 30, 1996 (*see Scope Rulings,* 61 FR 40194 (August 1, 1996)):

Products Excluded

- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.

Issues Appendix

Company Abbreviations

Asahi—Asahi Seiko
FAG Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
Hoesch—Hoesch Rothe Erde AG
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
Koyo—Koyo Seiko Co. Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPB—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
Rollix—Rollix Defontaine, S.A.
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR France—SNR Nouvelle Roulements
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NV—Normal Value
HM—Home Market
HMP—Home Market Price
ICC(s)—Inventory Carrying Costs
ISE(s)—Indirect Selling Expenses
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
URAA—Uruguay Round Agreements Act

AFB Administrative Determinations

AFBs LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).

AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).

AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs III—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs IV—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFBs V—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

CIT AFB Decisions

FAG v. United States, Slip Op. 95–158 (CIT 1995) *(FAG I).*

FAG Kugelfischer Georg Schaefer KGAa v. United States, 932 F. Supp 315 (CIT 1996) *(FAG II).*

FAG UK Ltd. v. United States, Slip Op. 96–177 (CIT 1996) *(FAG III).*

Federal Mogul Corp. v. United States, 813 F. Supp 856 (CIT 1993) *(Federal Mogul I).*

Federal Mogul Corp. v. United States, 839 F. Supp 881 (CIT 1993), vacated, 907 F. Supp 432 (1995) *(Federal Mogul II).*

Federal Mogul Corp. v. United States, 884 F. Supp 1391 (CIT 1993) (Federal Mogul III).

Federal Mogul Corp. v. United States, 17 CIT 1015 (CIT 1993) *(Federal Mogul IV).*

Federal Mogul Corp. v. United States, 924 F. Supp 210 (CIT 1996) *(Federal Mogul V).*

Koyo Seiko Co., Ltd. v. United States, 796 F. Supp 1526 (CIT 1992) *(Koyo).*

NPBS v. United States, 903 F. Supp 89 (CIT 1995) *(NPB).*

NSK Ltd. v. United States, 910 F.Supp 663 (CIT 1995) *(NSK I).*

NSK Ltd. v. United States, 896 F.Supp 1263 (CIT 1995) *(NSK II).*

NSK Ltd. v. United States, 919 F.Supp 442 (CIT 1996) *(NSK III).*

NTN Bearing Corporation of America v. United States, 903 F. Supp 62 (CIT 1995) *(NTN I).*

NTN Bearing Corporation of America v. United States, 905 F.Supp.1083 (CIT 1995) *(NTN II).*

SKF USA Inc. v. United States, 876 F. Supp 275 (CIT 1995) *(SKF).*

The Torrington Company v. United States, 818 F.Supp 1563 (CIT 1993) *(Torrington I).*

The Torrington Company v. United States, 832 F.Supp. 379 (CIT 1993) *(Torrington II).*

The Torrington Company v. United States, 881 F.Supp 622 (CIT 1995) *(Torrington III).*

The Torrington Company v. United States, 926 F. Supp 1151 (CIT 1996) *(Torrington IV).*

CAFC AFB Decisions

NTN Bearing Corp. v. United States, 74 F.3d 1204 (CAFC 1995) *(NTN III).*

The Torrington Company v. United States, 44 F. 3d 1572 (CAFC 1994) *(Torrington V).*

The Torrington Company v. United States, 82 F.3d 1039 (CAFC 1996) *(Torrington VI).*

1. Assessment

Comment: NMB/Pelmec argues that, in calculating the assessment rate in this review, the Department should use the statute and regulations in effect as of December 31, 1994, rather than the antidumping statute effective as of January 1, 1995. It notes that the Statement of Administrative Action (H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. (1994)) (SAA) states that ''there are two express exceptions to the general transition rule in Article 18.3. In the case of refund procedures under Article 9.3, national authorities will use the rules in effect at the time of the most recent determination or review applicable to the calculation of dumping margins,'' citing the SAA at 819. NMB/Pelmec argues that this exception must be interpreted to mean that the assessment rate should be calculated using the same rules which were used to calculate the original deposit rate for entries subject to the review or refund procedure. It contends that, because the most recent cash-deposit determination which applied to the entries during the 1994/95 administrative review was *AFBs IV,* the assessment rate for the 1994/95 entries should also be determined using the statute and regulations in effect as of December 31, 1994. Therefore, NMB/Pelmec asserts, the Department should calculate the assessment rate under the prior law by making an exporter's-sales-price-offset adjustment, by including any below-cost sales in the calculation of profit for CV, and by not making a CEP-profit adjustment to U.S. sales.

Torrington maintains that the U.S. practice is not inconsistent with Article 18.3.1 and that the Department should apply the new law to calculate assessment rates for this review period. It notes that, because refund instructions will not be provided to Customs until after this review is completed, the final results for this review will be the ''most recent determination or review'' as referred to by Article 18.3.1.

Department's Position: We agree with Torrington. In this case, the ''most recent review'' for purposes of refund procedures is the final results for 1994/95 review. Therefore, the rules applicable to the calculation of dumping margins for the 1994/95 review are the provisions of the statute effective January 1, 1995 and the regulations, as amended by the interim regulations effective May 11, 1995 (*see* SAA at 819 and 895).

2. Facts Available

We determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for SNFA, Hoffman U.K., and Rose Bearings, all with respect to BBs and CRBs, for Torrington Nadellager with respect to CRBs only, and for SKF France with respect to SPBs only, because these firms did not respond to our antidumping questionnaire. We find that these firms have withheld ''information that has been requested by the administering authority.'' Furthermore, we determine that, pursuant to section 776(b) of the Tariff Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire. For the weighted-average dumping margins of these firms, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. Such data is considered secondary information within the meaning of section 776(c) of the Tariff Act.

Section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from

independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, for SKF France, SNFA, Torrington Nadellager, Hoffman U.K. and Rose Bearings, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. These rates are the highest available rates and no evidence exists in the record that indicates that the selected margins are not appropriate as adverse facts available.

We also determine, in accordance with section 776(a) of the Tariff Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for NPB because, despite the Department's attempts to verify necessary information provided by NPB, the Department could not verify the information as required under section 782(i) of the Tariff Act. Furthermore, section 782(e) of the Tariff Act authorizes the Department to decline to consider information that is submitted by an interested party that is necessary to the determination under certain circumstances, such as when such information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination or when such information cannot be verified.

Generally, and in the process of verification, the Department's analysis of the completeness of a respondent's U.S. sales database is essential because the database is used to calculate the dumping duties. Where we have allowed for reduced reporting but determine that U.S. sales are missing from the database, we are especially concerned about the reliability and accuracy of any margin we might calculate. An incomplete U.S. and HM sales database is normally sufficient to render a respondent's response inadequate for the purpose of calculating a dumping margin. See, *e.g., Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

It is our practice to examine at verification only a selected subset of the reported U.S. sales, a practice that the CIT has upheld. See *Bomont Industries* v. *United States,* 733 F.Supp. 1507, 1508 (CIT 1990) (''verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe''); see *also Monsanto Co.* v. *United States,* 698 F. Supp. 275, 281 (CIT 1988) (''verification is a spot check and is not intended to be an exhaustive examination of the respondent's business''). Generally, we assume that the selected subset of U.S. sales is representative of the entire universe of U.S. sales.

Where we find discrepancies in this subset, we judge the effect on the unexamined portion of the response. Where we determine that U.S. sales are misreported (in critical areas, such as model number and further-manufacturing status) in a selected subset, we are particularly concerned about the reliability and accuracy of any margin or duties we might calculate from the database.

In addition, the Department's identification of further-manufactured sales is essential in order for the Department to conduct two critical portions of its analysis. First, in the course of the Department's model matching analysis, the unique model number associated with a particular model determines the appropriate home market model to match to the U.S. sale. Second, in determining the adjustments to CEP, we are dependent on the data a respondent provides in order for us to identify whether to deduct such costs of further manufacturing. In fact, section 772(d)(2) of the Tariff Act requires us to reduce the price we use to establish CEP by ''the cost of any further manufacture or assembly.'' Thus, our questionnaire requires that respondents identify further-manufactured sales and provide a unique code to identify the bearing model as entered on a sale-by-sale basis. The questionnaire also requires that the cost of further manufacturing be reported on a model-specific basis.

Despite our efforts at verification, we were unable to verify information which is necessary and must be verified in order for us to make a determination under section 751 of the Tariff Act. Specifically, we were unable to verify the data NPB provided concerning its U.S. and HM sales. Most significantly, we found that NPB's U.S. and HM databases were incomplete. In this case, we examined at verification the sales reported for three of the six sample weeks and found missing U.S. sales in all three weeks. As we have indicated above, incompleteness of these databases, particularly the incompleteness of the U.S. sales database, was crucial and was a factor which, by itself, was an adequate basis for our determination to use facts available.

We also found that NPB's U.S. database was inaccurate. In a supplemental response, NPB reported that only 12 models entered the United States as housed models during the POR. Yet at verification, during which we selected, at random, a limited number of entry documents, we discovered an additional five models that entered as housed models during the POR. NPB's U.S. sales listing contained sales of these five models. However, NPB reported that these sales entered as unhoused bearings that were further-manufactured in the United States. The contradiction between NPB's entry documents and its response prompted us to elicit support for its further-manufacturing claim. While records NPB provided do demonstrate that some assembly did take place during the POR, these same records document assembly that occurred six months *after* the last of the five U.S. sales. NPB could not support its claim that further manufacturing occurred *prior* to the selected sales, nor did NPB provide evidence of entries of unhoused bearings prior to the dates of sale. Therefore, NPB could not support the designation of these sales as being

further-manufactured merchandise. See United States Sales Verification Report, dated June 13, 1996. Because we reviewed a limited number of randomly-selected entry documents and U.S. sales, we must conclude that, had we examined all possible documentation, we would have found additional models and sales that were incorrectly reported as further-manufactured merchandise. Because we found NPB's reporting of this information to be inaccurate, we cannot calculate CEP properly as directed by section 772(d) of the Tariff Act nor can we match approximately two-thirds of NPB's sales to the correct HM model.

Thus we have determined that although NPB provided information we requested which was necessary in order for the us to perform our analysis, the information could not be verified as required by section 782(i) of the Tariff Act. Thus, in accordance with section 782(e)(2) of the Tariff Act, we have declined to consider information submitted by NPB because it could not be verified. Because we were unable to verify necessary information, in addition to the fact that NPB failed to support its designation of certain sales as being further-manufactured merchandise, we were unable to employ our normal antidumping analysis. Under section 776(a) of the Tariff Act, we are required, in reaching our determination, to use facts available because we could not verify NPB's data. Thus, for NPB, we have determined that it is appropriate to select from the facts otherwise available to the Department.

In selecting from among the facts otherwise available, the Department is authorized, under section 776(b) of the Tariff Act, to use an inference that is adverse to the interests of a party if the Department finds that the party has failed to cooperate by not acting to the best of its ability to comply with (the Department's) request for information. We examined whether NPB had acted to the best of its ability in responding to our requests for information, such as U.S. sales data. We took into consideration the fact that, as an experienced respondent in reviews of the AFBs orders, its ability to comply with our requests for information could be distinguished from, for example, the ability of a less experienced company. Thus, NPB can reasonably be expected to know which types of essential data we request in each review under this order, and to be conversant with the form and manner in which we require submission of the data. We note that NPB committed, in this review, some of the same errors and discrepancies regarding the completeness and accuracy of its sales databases that it made in previous reviews of the instant order.

In addition to taking into account the experience of a respondent, the Department may find it appropriate to examine whether the respondent has control of the data which the Department is unable to verify or rely upon. The record reflects that NPB was in control of the data which was vital to our dumping calculations and which we were unable to verify or rely upon. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

An additional factor we have considered, is the extent to which NPB might have benefitted from its own lack of cooperation. The SAA states that ''[w]here a party has not cooperated, [the Department] may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Id.* at 870. In accordance with our policy, we considered the overall effect of NPB's errors. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for NPB. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

In light of NPB's familiarity with the annual review process under the order on AFBs from Japan, its control of the necessary data, and the potential benefits it may have received, we have determined that NPB failed to act to the best of its ability in providing the data we requested. Therefore, in accordance with section 776(b) of the Tariff Act, we have, on the basis of the record in this case, determined that it is appropriate for us to make the adverse inference authorized under that subsection of the statute. Accordingly, for these final results, we continue to base NPB's margin on adverse facts available.

In selecting a margin which would appropriately reflect our decision to use adverse facts available for NPB, we examined the rates applicable to ball bearings from Japan throughout the course of the proceeding. As adverse facts available, we have selected a rate of 45.83 percent, which reflects the all-others rate from the Less Than Fair Value (LTFV) investigation and is a rate which we have applied to NPB in previous proceedings under the old law concerning AFBs from Japan. Given NPB's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding.

As indicated above, section 776(c) of the Tariff Act requires the Department to corroborate secondary information used as facts available to the extent practicable. ''Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' SAA at 870. Because the facts available applied to NPB for this review is secondary information within the meaning of section 776(c) of the Tariff Act, we have, in accordance with section 776(c), corroborated this information with independent sources.

As noted above in our discussion of corroboration with regard to other respondents, the SAA provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). After reviewing the record, we are satisfied that this information has probative value because it includes the average of calculated margins from the LTFV investigation of this order. Thus, we have determined that information and inferences which we have applied are reasonable to use under the circumstances of this review. See SAA at 869. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (See, *e.g.*, Fresh Cut Flowers.)

Comment: NPB contends that the Department erred in assigning it a margin based on adverse facts available. NPB contends the following: (1) It classified all U.S. housed, unhoused, and further-manufactured models properly; (2) it reported its U.S. sales properly; (3) errors in its reporting of certain U.S. sales and adjustments are limited and correctable; and (4) it reported nearly all of its home market sales properly. NPB argues that, although it did make some errors in its response, the errors are small in number and are determinable in extent. NPB requests that the Department use that portion of its response which is free of errors and, if it still finds NPB's reporting of further-manufactured items in error, limit its application of facts available to the U.S. sales of five particular models the Department identified as improperly reported in its verification report. Moreover, NPB contends that application of adverse facts available is not appropriate because NPB acted to the best of its ability.

NPB notes that the dominant issue in the Department's analysis memorandum

of June 27, 1996, regards NPB's reporting of housed, unhoused, and further-manufactured models. NPB contends that all of its U.S. sales are CEP sales, and, as such, the questionnaire required NPB to report its sales to the first unaffiliated customer during the POR and not its entries of the merchandise during the POR. NPB states that approximately one-third of NPB's U.S. sales are of unhoused bearings and are imported as such, and that it sells the vast majority of the remaining sales as housed bearings which are further-manufactured from unhoused bearings. NPB contends that it reported both of these categories of U.S. sales properly. NPB asserts that only five models (which the Department discovered at verification had entered the United States as housed models) are in dispute. NPB contends that its reporting of sales of the five models is appropriate. NPB argues that, because a bearing imported as a housed unit and a bearing that is imported as an unhoused unit and further-manufactured into a housed unit are physically indistinguishable, it is impossible to determine whether the particular merchandise withdrawn from inventory for sale was imported as a housed bearing or was further manufactured into a housed bearing without tracing the particular merchandise to a particular U.S. Customs entry. NPB argues that it cannot make such a link and contends that the Department has recognized that, generally, it cannot tie sales to entries, citing *AFBs III* at 28360.

Because the five models, which NPB contends were imported as both housed and unhoused models, contain ''bearings exported to the United States prior to any further processing in the United States,'' and because each model which underwent a further-manufacturing process contains ''bearings exported to the United States prior to any further processing in the United States,'' NPB asserts that it identified each of these five models properly as further-manufactured models. NPB states that the Department's analysis memorandum, dated June 27, 1996, failed to cite any statute, regulation, or questionnaire instruction that required NPB to report otherwise. Moreover, NPB contends that it provided ''assembly audit lists'' that demonstrate that there was some further manufacturing of these models during the POR. Therefore, NPB contends that it responded properly to the questionnaire.

Torrington argues that the Department is statutorily required to use facts available in cases where it is unable to verify the accuracy of the information respondent submits and may apply an adverse assumption if it determines that the firm has not complied to the best of its ability. Torrington asserts that, as a whole, the number and significance of NPB's errors and omissions constitute a failed verification, noting that the most serious of NPB's deficiencies was the Department's inability to verify the completeness of the HM and U.S. sales databases. Torrington asserts that the complete and accurate reporting of sales databases goes to the heart of the antidumping proceeding, citing *Federal-Mogul IV* at 1020. Further, Torrington states that in *AFBs II*, the Department applied best information available to NPB because NPB failed to report a substantial number of its HM sales. Torrington contends that both the significance and number of omissions and errors with NPB's response in this review call for a similar result, citing *NPB* at 93–95.

Moreover, Torrington argues that, because NPB had control of the data requested in the Department's questionnaire and, given that NPB has participated in many previous reviews and is knowledgeable of the correct data to report, NPB did not act to the best of its ability. Torrington requests that the Department apply a margin based on adverse facts available for the final results.

Department's Position: We agree with Torrington. In this case, we are required to use facts available because we were unable to verify NPB's response. Furthermore, in using facts available, we are authorized to employ an inference adverse to the interests of NPB because we have determined that NPB has failed to act to the best of its ability in responding to our requests for necessary information. Thus, for these final results, as adverse facts available, we have selected a rate of 45.83 percent, which reflects the all-others rate from the LTFV investigation and is a rate which we have applied to NPB in previous proceedings under the old law concerning AFBs from Japan. As stated above, in light of NPB's level of participation in this segment of the proceeding, we determine that this rate is sufficiently adverse to encourage full cooperation in future segments of the proceeding.

We disagree with NPB's view that it reported its U.S. sales correctly, that errors in its reporting of certain U.S. sales and adjustments are limited and correctable, and that it reported nearly all of its home market sales properly. As we have stated above, it is our practice to examine at verification only a selected subset of the reported U.S. sales, a practice that the CIT has upheld. See *Bomont Industries* v. *United States,* 733 F.Supp. 1507, 1508 (CIT 1990); see also *Monsanto Co.* v. *United States,* 698 F. Supp. 275, 281 (CIT 1988). As discussed above, we assume that the randomly selected subset of U.S. sales is representative of the entire universe of U.S. sales. In this case, we found discrepancies and omissions in this subset. Thus, in accordance with our normal practice, we judged the effect on the unexamined portion of NPB's response. Because we determined that U.S. sales had been omitted, we are concerned about the reliability and accuracy of any margin or duties we might calculate from NPB's database. We reiterate that an incomplete U.S. and HM sales database is normally sufficient to render a respondent's response inadequate for the purpose of calculating a dumping margin. See, *e.g., Persico Pizzamiglio, S.A.* v. *United States,* Slip Op. 94–61 (CIT 1994) (*Persico*) (upholding the Department's use of best information available for a respondent who was unable to demonstrate the completeness of its U.S. sales at verification).

We also disagree with NPB's assertion that it classified all housed, unhoused, and further-manufactured models properly. NPB was unable to support its designation of certain U.S. sales as further-manufactured sales. *See* U.S. Sales Verification Report, dated June 13, 1996 at 9. We also disagree with NPB that it was required to report its further-manufactured sales in a sales-specific manner.

As explained above, identification of further-manufactured sales is essential in order for the Department to conduct two critical portions of its analysis. First, the unique model number determines the appropriate home market model to match to the U.S. sale. (In this case, NPB reported HM sales of models that matched both the ''housed'' bearings and the ''unhoused'' bearings.) Second, in determining the price adjustments to calculate CEP, we are dependent on the data NPB provides to identify whether to deduct such costs of further manufacturing. Section 772(d)(2) of the Tariff Act requires us to reduce the price we use to establish CEP by ''the cost of any further manufacture or assembly * * *.'' Our questionnaire requires that respondents identify further-manufactured sales and provide a unique code to identify the bearing model as entered on a sale-by-sale basis. The questionnaire also requires that the cost of further manufacturing be reported on a model-specific basis. Thus, contrary to NPB's assertion, we have determined that NPB had an

obligation to identify and report this data on a sales-specific basis.

NPB suggests that its misreportings are limited to the five particular models that we discovered at verification. However, as we have indicated above, because we reviewed a limited number of randomly-selected entry documents, we must conclude that, had we examined all possible documentation, we would have found additional models and sales that were incorrectly reported as further-manufactured merchandise. Moreover, because NPB did not identify the unique model number on a sale-specific basis correctly, we are unable to match approximately two-thirds of NPB's U.S. sales of housed models to an appropriate NV or calculate CEP properly.

As we have indicated above, in this case, inaccuracy of NPB's databases, particularly the inaccuracy of its U.S. sales database, was crucial and was a factor which, by itself, was an adequate basis for our determination to use facts available. However, our attempted verifications yielded additional flaws in NPB's response, providing further bases for our decision to employ facts available. For example, we found that NPB did not report a particular type of price adjustment for sales to its largest HM customer, and that NPB understated entered values and thus under-reported all adjustments to CEP that were allocated by entered value. (For a complete listing of all flaws, see the analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996. For a more detailed discussion of NPB's post-preliminary arguments and our position on these flaws, see analysis memorandum dated January 3, 1997.)

Because of the gravity and the magnitude of the flaws in NPB's response, we have determined that NPB's information is unverifiable, and that there is no record evidence demonstrating that errors in NPB's reporting of certain of its U.S. sales are limited and correctable. Accordingly, we disagree with NPB's view on this issue. Thus, as explained above, we must use facts available in determining a margin for NPB, as required under section 776(a) of the Tariff Act.

We also disagree with NPB that an adverse inference is not warranted in determining a margin for NPB because, as required under section 776(b), we find that NPB has not acted to the best of its ability in responding to our requests for information. As noted above, NPB has participated in numerous reviews and verifications in this proceeding and is aware of the type of information we require. However, NPB has failed to provide two fundamental elements of a response: a complete sales listing and correct identification of further-manufactured sales and models. The identification of further-manufactured sales and their unique model numbers (as entered) is not a new requirement of the URAA. Contrary to NPB's assertions, the fact that NPB could not support its reporting of this critical information cannot be attributed to one of the ''subtle changes'' in the antidumping law which, as NPB suggests, prevented it from knowing which data to report. Nor was the questionnaire vague in this regard. Likewise, the complete reporting of U.S. and HM sales is not a new concept under the URAA. Furthermore, we note that NPB made numerous other errors in its response that worked in its favor. See the analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996.

As we have indicated above, in accordance with our policy, we considered the overall effect of the errors to ensure that NPB does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Thus, an additional factor we have considered is the extent to which NPB might have benefited from failing to cooperate fully if we had not made our determination on the basis of facts available. See SAA at 870. In this case, we have determined that the use of the flawed response would have yielded a more favorable margin for NPB. See analysis memorandum from Holly A. Kuga to Joseph A. Spetrini, dated June 27, 1996. Furthermore, no comments have dissuaded us from our view that NPB has failed to act to the best of its ability in responding to our requests for necessary information. Thus, in disagreement with NPB's view, for these final results, we have applied adverse facts available to NPB in accordance with section 776(c) of the Tariff Act.

3. Discounts, Rebates, and Post-Sale Price Adjustments (PSPAs)

We have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. We did not treat such adjustments as direct (or indirect) selling expenses, but rather as direct adjustments necessary to identify the correct starting price. While we prefer that respondents report these adjustments on a transaction-specific basis (or, where a single adjustment was granted for a group of sales, as a fixed and constant percentage of the value of those sales), we recognize that this is not always feasible, particularly given the extremely large volume of transactions involved in these AFBs reviews. It is inappropriate to reject allocations that are not unreasonably distortive in favor of facts otherwise available where a fully cooperating respondent is unable to report the information in a more specific manner. See section 776 of the Tariff Act; see also *Facts Available,* above. Accordingly, we have accepted these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions.

In applying this standard, we have not rejected an allocation method solely because the allocation includes adjustments granted on merchandise that is not subject to these reviews (out-of-scope merchandise). However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it is sold. Significant differences in such areas may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of in-scope and out-of-scope merchandise. While we carefully scrutinize any such differences between in-scope and out-of-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would not be reasonable to require that respondents submit sale-specific adjustment data on out-of-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by respondents that have cooperated to the best of their ability.

Where we have found that a company has not acted to the best of its ability in reporting the adjustment in the most specific and non-distortive manner feasible, we have made an adverse inference in using the facts available with respect to this adjustment, pursuant to section 776(b) of the Tariff Act. With respect to HM adjustments, in accordance with the CAFC's decision in

Torrington VI (at 1047–51), we have not treated improperly allocated HM price adjustments as if they were indirect selling expenses (ISEs), but we have instead disallowed downward adjustments in their entirety. However, we have included positive (upward) HM price adjustments (*e.g.*, positive billing adjustments that increase the final sales price) in our analysis of such companies. The treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to reduce NV and margins. That is, if we were to disregard positive billing adjustments, which would be upward adjustments to NV, respondents would have no incentive to report these adjustments in the most specific and non-distortive manner feasible. See *AFBs V* at 66498.

Comment 1: Torrington asserts that some respondents reported home-market discounts, rebates, and PSPAs by allocating amounts across all sales, or across all sales to a given customer, even when some sales were not entitled to the adjustment. Torrington contends that the CAFC, in *Torrington VI* at 1047–51, ruled that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment to foreign market value (now normal value), and that the Department may not make an indirect-selling-expense adjustment for improperly allocated direct expenses. Torrington contends that the new statute does not change the CAFC's rulings and, therefore, the Department should deny all rebates, discounts, and PSPAs that respondents did not report on a transaction-specific basis or which they did not allocate in such a manner as to be tantamount to reporting on a transaction-specific basis.

Koyo, NSK, NSK/RHP, SKF Germany, SKF France, and SKF Italy argue that the Department should make adjustments to NV so long as the allocation methodology is reasonable. Koyo, SKF Germany, SKF France, and SKF Italy argue further that the SAA at 823–24 indicates that the Department will accept allocations of certain direct expenses when transaction-specific reporting is not feasible. SKF Germany, SKF France, and SKF Italy also contend that denial of such adjustments, when the party acted to the best of its ability and the data can be used without undue difficulties, would be the unlawful use of adverse inferences in applying facts available, while Koyo argues that the denial of such adjustments would be unjustly punitive. Koyo also argues that the Department should not disallow an improperly allocated downward adjustment while allowing the same adjustment if it increases NV and contends that the CIT rejected such an approach in *Torrington IV* at 1151.

FAG Germany, FAG Italy, INA, NTN Japan, and NTN Germany contend that they reported such adjustments on a transaction-specific basis.

Department's Position: We agree with Koyo, NSK, NSK/RHP, SKF Germany, SKF France, and SKF Italy in part. As discussed in the introductory remarks to this section, our practice is to accept these adjustments when it was not feasible for a respondent to report the adjustment on a more specific basis, provided that the allocation method the respondent used does not cause unreasonable inaccuracies or distortions. We agree with Torrington, however, that when we find that a respondent has allocated a HM discount, rebate, or PSPA in a distortive manner or if we determine that a respondent has not acted to the best of its ability, then we should deny such adjustments rather than treat them as an indirect expense.

In our view, *Torrington VI* is of limited relevance to this issue because the CAFC did not address the propriety of the allocation methods respondents used in reporting the price adjustments in question. Although the CAFC appeared to question whether price adjustments constituted expenses at all (see *Torrington VI* at n.15), it merely held that, assuming the adjustments were expenses, they had to be treated as direct selling expenses rather than indirect selling expenses. The CAFC did not address appropriate allocation methodologies.

However, we disagree with Koyo that we should not treat positive HM billing adjustments as direct adjustments. As discussed in our introductory remarks above, the treatment of positive HM billing adjustments as direct adjustments is appropriate because disallowing such adjustments would provide an incentive to report positive billing adjustments on an unacceptably broad basis in order to minimize margins.

Comment 2: NSK and Torrington submitted comments regarding the treatment of NSK's HM lump-sum rebates (REBATE2H). NSK argues that the Department's treatment of this rebate as an indirect expense in the preliminary results was incorrect and requests that the Department treat this adjustment as a direct expense. NSK asserts that the CIT has determined, pursuant to the CAFC's decision in *Torrington VI*, that this expense is a direct expense (citing *The Timken Co.* v. *United States*, Slip Op. 96–86 at 38 (CIT 1996)).

NSK argues that it did not grant this adjustment on a product-specific or transaction-specific basis and that the rebate does not relate to specific sales to a customer. NSK notes that it allocated this adjustment by summing all such POR rebates by customer and dividing this amount by total POR sales to the customer. NSK contends that its allocation methodology accurately apportions the adjustment between subject and non-subject merchandise because, although NSK used a customer-specific factor, the ratio of subject to non-subject merchandise purchased by its customers was relatively constant throughout the POR. NSK notes that it submitted evidence to support its contention that this ratio was relatively constant during the POR in its response to the Department's supplemental questionnaire. NSK argues that the Department accepted this approach in principle in the 1992/93 review but did not allow the adjustment due to the small number of customers for which NSK provided information regarding sales of subject versus non-subject merchandise. NSK contends that, in the current review, it submitted such information for a substantially larger number of customers.

NSK suggests that its situation should not be confused with that of another respondent, Koyo, which granted PSPAs on a product-specific basis but reported them on an aggregate basis. NSK argues that its reporting methodology is customer-specific by necessity, not because of imprecise record-keeping, and, for the reasons described above, is not distortive. Finally, NSK argues that, at a minimum, the Department should treat PSPAs respondents granted to certain customers that only purchased subject merchandise during the POR as direct expenses.

Torrington responds to NSK's arguments, claiming that NSK's description of the allocation methodology for this expense demonstrates that NSK's reporting is not consistent with a ''fixed and constant'' allocation, which the Department and the CIT have held is necessary for an allocation of such expenses to be accepted (citing *AFBs IV* at 10929 and *Torrington I* at 1578–79). Torrington also contends that the Department should reject NSK's argument that the Department should, at a minimum, allow a direct adjustment for those customers who purchased only subject merchandise during the POR for the same reasons. Torrington argues that, even if certain customers purchased

only subject merchandise during the POR, NSK's allocation fails to target those specific sales related to the PSPAs or to report the specific PSPA amounts actually incurred by those sales and is, therefore, distortive.

In its affirmative brief, Torrington argues that, because NSK failed to report lump-sum rebates on a transaction-specific basis or as a fixed and constant percentage of the sales on which the rebates were granted, the Department should disallow the adjustment entirely. Torrington suggests three reasons for rejecting NSK's lump-sum rebates as an adjustment to NV. First, citing *Torrington VI* at 1050, Torrington argues that the CAFC has stated that expenses that are directly related to particular sales cannot be treated as ISEs. Therefore, Torrington contends, because NSK did not report PSPAs on the basis on which they were incurred, the Department cannot deduct them as direct adjustments to NV and, because expenses that are direct in nature cannot be treated as indirect expenses, the Department has no choice but to make no adjustment to NV for this item.

Second, Torrington argues that NSK failed to demonstrate that it paid all reported PSPAs on sales of subject merchandise. Torrington argues that the Department has previously rejected NSK's argument that an analysis of certain customers' sales sufficiently indicates that all customers receiving PSPAs had stable purchasing patterns and states that the Department should reject NSK's assertion that ''relatively constant'' purchasing patterns constitute the basis for a reasonable allocation. Torrington asserts that the CIT has held repeatedly that the Department may not ''use a methodology which allows for the inclusion of [PSPAs] and rebates on out-of-scope merchandise in calculating adjustments to FMV'' (citing *Torrington I* at 1578–79).

Third, Torrington argues that NSK did not demonstrate that all PSPAs were contemplated at the time of sale. Torrington argues that NSK itself stated that, in certain instances, lump-sum amounts were paid retroactively and that, therefore, NSK has not shown that the terms of these rebates were known at the time of sale. Torrington argues that the Department's policy is to allow rebates only when the terms of sale are predetermined (citing *AFBs IV* at 10932).

NSK responds that the Department verified NSK's lump-sum rebates and that the Department found no discrepancies in the data which it examined. Second, NSK argues that it has fully explained the circumstances under which it grants lump-sum PSPAs and that Torrington's argument that NSK did not show that the rebates were contemplated at the time of sale is not supported by the record and has been previously rejected by the Department.

Department's Position: We agree with NSK that we should treat its lump-sum rebates as a direct adjustment to NV. Although NSK allocates these rebates on a customer-specific basis, we determine that NSK acted to the best of its ability in reporting this information using customer-specific allocations. Our review of the information NSK submitted and our findings at verification indicate that, given the lump-sum nature of this adjustment, the fact that NSK's records do not readily identify a discrete group of sales to which each rebate pertains, and the extremely large number of POR sales NSK made, it is not feasible for NSK to report this adjustment on a more specific basis.

We also do not find that the customer-specific POR-allocation methodology NSK used shifts expenses incurred on sales of out-of-scope merchandise to sales of in-scope merchandise or that it is otherwise unreasonably distortive. NSK submitted evidence to support its contention that the ratio of subject to non-subject merchandise purchased by its customers was relatively constant throughout the POR. We examined this evidence and found that it adequately supported NSK's contention.

Further, our analysis of the record evidence and our findings at verification give us no reason to believe that NSK is more likely to grant these rebates on sales of non-subject merchandise than it is on sales of subject merchandise. In this regard, we note that, as with other respondents in these reviews, NSK is primarily in the business of selling bearings, some of which are within the scope of the AFB antidumping orders and others of which are non-subject merchandise. In addition, we have not found that the subject and non-subject merchandise NSK sold varies significantly in terms of value, physical characteristics, and the manner in which it is sold and, therefore, we find that it is likely that NSK granted this adjustment in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise.

Regarding the relevance of the holding of the CAFC in *Torrington VI*, *see* our response to comment 1, above.

Comment 3: Torrington argues that the Department improperly allowed a direct adjustment to NV for NSK's return rebates (REBATE1H). Torrington contends that NSK grants return rebates on individual transactions and that NSK did not report return rebates on a transaction-specific basis or as a fixed and constant percentage of sales. Torrington argues that, because NSK failed to tie actual rebate amounts to the particular transactions to which they relate, the Department should not make any adjustment to NV for return rebates (citing *Torrington VI* at 1050).

NSK responds that the Department properly deducted return rebates as a direct adjustment to NV. NSK notes that its methodology allocates return rebates on a part-number and customer-specific basis and that the Department fully verified its methodology. NSK also argues that Torrington raised this issue prior to the preliminary results and the Department rejected its argument at that time. NSK states that Torrington has offered no new arguments in its case brief.

Department's Position: We disagree with Torrington. Initially, we note that we consider NSK's return rebates to be a promotional expense, as opposed to a price adjustment, because NSK grants these rebates to promote sales made by distributors. As such, NSK incurred this expense on behalf of NSK's customers. Because NSK has shown that this expense relates directly to the products under review, we consider it to be a direct selling expense. Further, the company has demonstrated that it has reported this expense on a model-specific and customer-specific basis, which satisfies our standard for treatment of promotional expenses as direct selling expenses. See our response to comment 2 of section 4.B (Commissions), below, and *AFBs V* at 66503. Therefore, we have made a direct adjustment to NV for NSK's return rebates for the final results. With regard to the relevance of *Torrington VI*, *see* our response to comment 1, above.

Comment 4: Torrington argues that the Department should use actual 1995 rebates instead of the estimated 1995 U.S. rebates reported by NSK, FAG Germany, and FAG Italy. Torrington notes that, at verification, NSK submitted, and the Department verified, actual rebate percentages. Torrington also contends that improving economic activity in the United States may result in higher U.S. rebates granted than estimated. Torrington argues that the Department should use, therefore, the actual rebate information it gathered from NSK at verification and should request FAG to provide updated U.S. rebate information for use in the final results.

NSK argues that the Department examined the actual rebate percentages at verification in order to determine whether NSK's estimated rebates were reasonable. NSK notes that it was

unable to report actual 1995 rebates in its original response because its response was due prior to the end of 1995. NSK argues that its estimated rebates were reasonably calculated and that the Department should use them for the final results.

FAG argues that, because the response had to be filed before the end of 1995, rebates ultimately paid on 1995 sales had to be estimated. FAG argues that its methodology conforms to the Department's practice and was fully verified by the Department.

Department's Position: We disagree with Torrington. The purpose of examining the actual rebates at verification was to determine the accuracy of the responses. Verification is not normally an appropriate venue for the submission of new factual information, and we generally collect and use information gleaned at verification only when minor discrepancies are found or when we believe a respondent's methodology may not have been reasonable. In this case, verification was an opportunity to determine whether the companies' estimates represented a reasonable approximation of their experience in granting rebates. Our conclusion was that there was no reason to believe that the actual data would differ significantly from the estimates. For instance, as a result of verifying NSK's response, we determined that while the rebate percentages were overestimated for some customers and underestimated for others, on balance NSK's estimates were a reasonable reflection of its actual experience and that any distortion caused by such estimates would be insignificant. Torrington's proposal would convert verification, which is an opportunity to check the accuracy of information previously submitted, into a data-gathering exercise.

In fact, the actual information concerning rebates granted in 1995 is not generally available until approximately the end of the first quarter of 1996, after the end-of-year 1995 rebates are granted and recorded in the companies' records. A requirement that respondents calculate actual per-unit rebate amounts for 1995 sales using this data would be unreasonable, given the stage in the proceeding at which the actual 1995 data becomes available.

Furthermore, in NSK's case, although we have the data to replace the estimated rebates with actual rebates, the change to our calculations, given the advanced stage of the review, would impose an unreasonable burden upon both us and respondents with no significant increase in accuracy in light of the results of our verification. Therefore, we have relied on NSK's estimated rebates.

Moreover, while we have the discretion to solicit new information at any time during an administrative review, we generally do so only when we learn of information not on the record that has the potential of having a substantial impact on the margin. See Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42837 (August 19, 1996).

Therefore, for the reasons stated above, we have used these companies' estimated rebates on 1995 sales for the final results, as we have with respondents generally in these reviews.

Comment 5: Torrington argues that the Department should disallow the following HM PSPAs reported by SKF Germany: early-payment discounts (EARLYPYH), support rebates (REBATE2H), and downward home-market billing adjustments (BILLAD2H). Torrington makes the following general comments regarding these adjustments: (1) section 782(e) of the Tariff Act, previously cited by SKF Germany, provides the rules governing when the Department may reject a response due to systematic difficulties, which is not the case here; (2) the language in the proposed regulations concerning when the Department may allow allocations does not govern this situation because the items at issue are price adjustments, not direct selling expenses; and (3) even assuming such proposed regulatory language did apply, SKF Germany's allocations are sufficiently distortive as not to meet the standard for allowing such allocations.

With respect to early-payment discounts, Torrington states that, because SKF Germany's reporting method fails to identify early payment discounts actually taken on subject merchandise, the Department should deny these adjustments to NV. Torrington argues that disproportionately greater amounts may be paid on out-of-scope merchandise than on in-scope, resulting in the mis-allocation of out-of-scope discounts to subject merchandise. The Department, according to Torrington, should continue to reject this claim, as it did in *AFBs IV*.

With respect to support rebates, Torrington states that SKF Germany reported them on a customer-specific basis only because these rebates are earned on sales by SKF Germany's customer rather than by SKF Germany and cannot be associated with specific SKF Germany transactions. Torrington claims that there is no evidence that distributors were allowed these rebates as a result of poor sales results on subject merchandise as distinct from products not covered by the antidumping order, and suggests that this evidence is clearly necessary under what Torrington refers to as the ''*Torrington VI* rule.'' Torrington argues that SKF Germany cannot claim that any poor sales results which may be experienced by distributors on resales of SKF Germany products necessarily justify rebates allocated to given classes or kinds. According to Torrington, the Department rejected the same claim by SKF Germany in the 1992/93 review (citing *AFBs IV* and *Torrington VI*).

With respect to billing adjustment 2, Torrington argues that SKF Germany's claim for an adjustment cannot be allowed because its reporting is inconsistent with the so-called *Torrington VI* rule. Torrington argues further that, because this is the sixth administrative review, SKF Germany has had ample time to modify its record-keeping system to permit the reporting of accurate amounts. Torrington adds that the Department rejected the same basic claim in *AFBs IV*. Torrington contends that, to avoid a benefit to respondent, the Department should only reject the downward adjustments to NV for billing adjustment 2. Torrington also asserts that the Department should reject SKF Germany's argument, in which it cites the Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19, in *The Torrington Company* v. *United States*, Ct. No. 92–07–00483, that the Department must either accept SKF Germany's reporting as is or reject all reported adjustments. Torrington claims that this ruling is not applicable because the Court's remand instructions that SKF Germany develop a methodology to remove billing adjustments would not be possible here.

Torrington argues that the Department should also reject SKF Germany's argument, in its May 24, 1996 submission, that selective rejection of the reported billing adjustment 2 is an unlawful use of an adverse inference. Torrington contends that, because this provision is limited to the selection of facts among facts otherwise available it does not detract from the Department's authority to reject certain information provided by the respondent while retaining other information, also provided by the respondent.

SKF Germany responds that, in the preliminary results, the Department treated SKF Germany's reported early-payments discounts, support rebates and billing adjustment 2 correctly as direct adjustments to price. According to SKF Germany, Torrington is mistaken

in relying on *Torrington VI.* SKF Germany claims that the CAFC did not hold that the Department must reject allocations of direct expenses. Moreover, SKF Germany argues, the *Torrington VI* decision is not relevant under the new law, because the SAA indicates that the Department will accept allocations of certain direct expenses when transaction-specific reporting is not feasible, citing the SAA at 823–24. In addition, according to SKF Germany, the Department indicated in its explanation to the proposed regulations, 61 FR 7329, that it will balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting on an allocated basis. SKF Germany argues that, if the Department rejects the adjustments, it would be acting contrary to section 782(e) of the statute that information not meeting all of the Department's requirements must still be accepted if timely, verifiable, reliable, the party acted to the best of its ability, and the data can be used without undue difficulties. SKF Germany states that Torrington's position that allocations involving upward adjustments to comparison-market prices must be included in the NV calculation would contravene this section of the statute. SKF Germany adds that the Department rejected a similar suggestion by Torrington in a remand determination in the appeal of the 1990/91 administrative review of AFBS, citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States,* Ct. No. 92–07–00483. SKF Germany states that allocations may be necessary and appropriate and that rejection of such reporting would mean that actual expenses incurred on the subject merchandise or foreign like product would not be captured in the antidumping calculation. SKF Germany argues that, even if the *Torrington VI* decision still applies under the new law, the Department should treat all PSPAs as direct adjustments if reasonably reported.

SKF Germany argues further that, with respect to early payment discounts, the Department has found that transaction-by-transaction reporting is simply not possible because of the manner in which customers take those discounts. SKF Germany states that the Department has verified SKF Germany's reporting of this adjustment, and respondent claims that it could not have reported the discounts on a more specific basis.

SKF Germany argues that, with respect to its allocated rebates, the Department has found that transaction-by-transaction reporting is simply not possible due to their very nature. SKF Germany argues further that, with respect to its allocated billing adjustments, the Department has found that transaction-by-transaction reporting is simply not possible because the involved adjustments related to multiple transactions and, therefore, it could not have reported the adjustments more specifically. SKF Germany adds that the Department verified its reporting of these adjustments.

SKF Germany argues, citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States,* Ct. No. 92–07–00483, that the lesson of the court's remand order and the Department's response thereto is that when an adjustment is denied it is denied; it is not allowed in part. In addition, SKF Germany asserts that the Department rejected Torrington's argument that SKF Germany would receive a ''windfall benefit'' if the Department denied all of SKF Germany's billing adjustments 2 as opposed to denying only the downward price adjustments, in that same remand.

Department's Position: We agree with SKF Germany regarding early payment discounts, support rebates, and billing adjustment 2. SKF Germany reported these adjustments to the best of its ability. SKF Germany did not report these adjustments on a transaction-specific basis due to their very nature and we find that SKF Germany's methodology is not unreasonably distortive. Further, there is no information on the record that would lead us to believe that these adjustments were not granted in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. Torrington's argument that SKF's allocations is distortive is purely speculative.

SKF Germany calculated customer-specific averages of its early-payment discounts for the periods January 1994 through December 1994 and January 1995 through April 1995. *See* SKF Germany's September 26, 1995 questionnaire response at pages 28–29. Our examination of its records and our findings at verification indicate that it is not feasible for SKF Germany to allocate this adjustment more specifically, given the large volume of transactions involved, the level of detail contained in SKF's normal accounting records, and the time constraints imposed by the statutory deadlines under which all parties must operate. We are satisfied that this reporting methodology reflects the nature in which SKF Germany does business and that SKF Germany reported early-payment discounts to the best of its ability, and that its methodology is not unreasonably distortive. Regarding the relevance of the holding of the CAFC in *Torrington VI,* see our response to comment 1, above.

Due to the nature of support rebates, transaction-specific reporting is not feasible. While Torrington argues that there is no evidence that distributors were allowed these rebates as a result of poor sales results on subject merchandise, as distinct from products not covered by orders, we do not believe SKF Germany's allocation to be distortive, as we believe that such adjustments were granted in proportionate amounts with respect to sales of out-of-scope merchandise. SKF Germany grants these rebates to distributors/dealers to ensure that they obtain a minimum profit level on sales to select customers. Hence, because SKF Germany does not issue these rebates based on specific sales to the distributor/dealers, SKF Germany cannot report transaction-specific rebate amounts. Therefore, we find that SKF Germany's reporting methodology is not unreasonably distortive and that SKF Germany responded to the best of its ability.

With respect to billing adjustment 2, SKF Germany reported billing adjustments not associated with a specific transaction. These adjustments included credit or debit notes that SKF Germany issued relating to multiple invoice lines. SKF Germany could not tie these adjustments to a specific transaction because the billing adjustments reported in this field were part of credit or debit notes, issued to the customer, that related to multiple invoices, products, or multiple invoice lines. In these cases, the most feasible reporting methodology that SKF Germany could use was a customer-specific allocation, given the large volume of transactions involved in these AFBs reviews and the time constraints imposed by the statutory deadlines. For these reasons, we find that this methodology is not unreasonably distortive.

As mentioned in the introductory remarks at the beginning of this section, we agree with Torrington that, when we reject a respondent's allocation, we should only reject the downward adjustments to NV. However, since we are accepting the reporting of SKF Germany's billing adjustments, Torrington's argument is not applicable.

Comment 6: Torrington argues that the Department should apply a five-percent upward adjustment to all of SKF

France's HM sales because SKF France did not report billing adjustments of less than five percent of gross unit price (BILLAD2H). Torrington notes that billing adjustments are invoice-specific and can either decrease or increase price. Torrington states that it was not appropriate for SKF France to decide what amounts are insignificant for purposes of 19 CFR 353.59(a). Further, according to Torrington, the fact that reporting is inconvenient is not an excuse for failing to report all amounts on a sale-by-sale basis. Torrington states that adverse inferences are appropriate because SKF France refused to supply the information. In response to SKF France's argument made in a submission during these reviews that its failure to report was detrimental to SKF France as the total net value of billing adjustments would have decreased NV, Torrington answers that the total net value of the adjustment is irrelevant.

Torrington asserts that the statutory changes introduced by the URAA do not diminish or invalidate the standard articulated by *Torrington VI.* Torrington contends that the statutory provision upon which SKF France relies in its pre-preliminary comments, section 782(e), addresses the situation where systemic difficulties exist with a response, and does not apply here. In this case, Torrington asserts, the Department may reject the response in favor of facts available. The amended statute, according to Torrington, makes clear that the Department should accept a response only if the response was timely, verifiable, and reliably complete, if the respondent acted to the best of its ability, and if the information can be used without undue difficulties. Torrington asserts that these requirements are not met in this case.

Torrington argues that the above-discussed grounds for rejection also apply to Steyr sales, to which SKF France allocated billing adjustments on the basis of customer numbers. Torrington requests that the Department draw adverse inferences and adjust all Steyr prices upward by five percent as facts available.

SKF France asserts that the Department, in the preliminary results, correctly rejected Torrington's argument regarding adverse facts available for SKF France's and Steyr's billing adjustment 2. SKF France claims that there is no basis for the Department to reject SKF France's reporting methodology, and notes that it has reported this adjustment in the same manner in prior reviews and the Department verified and accepted this approach in the 1992/93 review.

Regarding Steyr, SKF France argues that although the Department, pursuant to the CIT's decisions, has disallowed similar billing adjustments in the 1992/93 review of AFBs, the URAA and the SAA require a different result in this review. Under the new statute, SKF France contends, the Department is required to accept information that may not meet all of the Department's requirements, provided certain conditions are met. SKF France claims that Steyr reported billing adjustments using the most specific reporting method feasible, given the manner in which the adjustment are incurred and recorded in the normal course of business. SKF further claims that it acted to the best of its ability in reporting these adjustments and that the use of these adjustments would cause no undue difficulty to the Department. In addition, according to SKF France, the SAA indicates that the Department will accept allocations of certain expenses when transaction-specific reporting is not feasible and requires the Department to balance the difficulties of reporting transaction-specific expenses against the potential inaccuracies of reporting on an allocated basis. SKF France argues that, in light of the recent decision by the CAFC in *The Torrington Co.* v. *United States,* Ct. Nos. 95–1210–1211 (CAFC 1996), and the SAA's directive to consider allocated expenses, it is imperative that the Department retain the discretion to consider how respondents report a price adjustment, given that respondent's ordinary business practices and the nature of the specific adjustment rather than simply reject all allocated expenses.

SKF France states that it would be inappropriate for the Department to increase Steyr's prices by five percent as facts available, and notes that the Department rejected a similar suggestion by Torrington to apply an adverse inference and selectively accept certain billing adjustments in a remand determination in the appeal of the 1990/91 administrative review of AFBs (citing Final Results of Redetermination Pursuant to Court Remand (August 14, 1995) at 18–19 filed in *The Torrington Co.* v. *United States,* Ct. No. 92–07–00483). Further, according to SKF France, even if the Department determines not to accept Steyr's reporting of billing adjustments, a five-percent across-the-board upward price adjustment would amount to an unlawful use of an adverse inference. SKF France states that, according to the URAA, an adverse inference is only permitted when a party has failed to cooperate by not acting to the best of its ability (citing 782(e) of the statute). SKF France claims that it cooperated fully with the Department and has acted to the best of its ability with respect to its reporting of billing adjustment 2.

Department's Position: We agree with SKF France regarding billing adjustment 2 for SKF France and Steyr. According to SKF France's February 16, 1996 supplemental questionnaire response at pages 36–37, it generally uses the field for billing adjustment 2 for SKF France to include those billing adjustments that were less than five percent of the gross unit price and less than 1,000 French Francs. However, in this case SKF France reported zero values in this field, as it has for previous reviews, because it found the total value of these adjustment to be insignificant. There is nothing on the record to suggest that SKF's information is inaccurate. This policy of disregarding insignificant adjustments is consistent with our policy in prior reviews.

Regarding Steyr's billing adjustments as reported in billing adjustment 2, it was not feasible for SKF France to allocate these adjustments other than on a customer-specific basis because they relate to multiple invoices or multiple invoice lines. Due to the non-transaction-specific nature of the expense, the volume of HM transactions reported by SKF, and the time constraints imposed by the statutory deadlines, we believe that SKF France reported billing adjustments for Steyr to the best of its ability. Further, even though SKF France included out-of-scope merchandise in the allocation of the adjustment, we have no reason to believe that such adjustments were not granted in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. Hence, we believe that the customer-specific allocation that SKF France used for Steyr's adjustments is not unreasonably distortive.

Comment 7: Torrington contends that the Department should disallow all of INA's claimed downward billing adjustments in calculating NV because INA provided only a brief description of its home market billing adjustments which did not indicate whether the adjustments were limited to in-scope merchandise. Torrington argues that the CAFC held that direct PSPAs must be reported on a sale-specific basis before the Department can make a downward adjustment in calculating NV (citing *Torrington VI* at 1047–1051).

INA responds that it reported product- and invoice-specific billing adjustments in accordance with the instructions in the Department's original questionnaire. INA contends that the

Department verified that it reported home market billing adjustments properly and cites to the verification report. INA states that there is no basis to disregard downward home market billing adjustments in calculating NV.

Department Position: We disagree with Torrington. INA reported this adjustment on an invoice-specific basis. Where INA had more than one transaction on an invoice, INA used the same fixed and constant percentage for all transactions on the invoice. Therefore, we determine that this is the equivalent of reporting the adjustments on a transaction-specific basis. Furthermore, we verified INA's HM billing adjustment and found no discrepancies (Memo from Analyst to File, Verification of HM Sales Information Submitted by INA Walzlager Schaeffler KG, at 4, Exhibit 9, June 28, 1996). We have allowed, therefore, both INA's reported upward and downward home market billing adjustments.

Comment 8: Torrington argues that Koyo reported its home market rebates on a customer-specific basis, even though they were incurred on an invoice-specific basis. Torrington maintains that the Department's policy states clearly that it only accepts rebates, discounts, and price adjustments as direct adjustments if respondents report actual amounts for each transaction.

In rebuttal, Koyo argues that it reported its rebate expenses in this review in the same manner as it has in past reviews and that the Department has repeatedly verified and accepted the claimed expense (citing Home Market Verification Report of Koyo Seiko dated April 16, 1996).

Department's Position: We agree with Koyo. During the verification of Koyo's rebates, we noted that, once a distributor participating in the rebate program had purchased a pre-established amount of sales, Koyo applied a pre-established percentage rebate to all sales to that distributor. Therefore, reporting the percentage is the equivalent of reporting its rebates on a transaction-specific basis because the rebate was granted as a fixed and constant percentage of all affected sales. We also note that, even under the old law, we would have found Koyo's methodology to be permissible. See *AFBs V* at 66498. Therefore, we determine that Koyo acted to the best of its ability and that its response methodology is not unreasonably distortive.

Comment 9: Torrington argues that, although the Department accepted Koyo's billing adjustment (BILLADJ1H) in the preliminary results, it should deny Koyo's downward or negative billing adjustments. Torrington states that post-sale price adjustments must be reported on a sale- or model-specific basis, if incurred on those bases. Torrington contends that Koyo failed the standard set forth in *Torrington VI.* Torrington recommends that the Department deny negative HM billing adjustments and include positive billing adjustments in the antidumping analysis. Torrington further suggests that, since Koyo did not report positive billing adjustments on a transaction-specific basis, the Department should not use the reported positive billing amounts but should apply, as partial facts available, Koyo's highest reported positive billing adjustment to all sales involving positive adjustments.

Koyo acknowledges that it reported billing adjustments using customer-specific allocations. Koyo maintains, however, that in *Torrington VI* the CAFC held that an expense incurred as a direct expense must be reported as a direct expense, even if allocated. Koyo maintains further that this holding conforms with the decision in *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1580 (CAFC 1983), in which the CAFC, when looking at customer-specific rebates, held that an allocation methodology did not deprive the rebates of their direct relationship to the sales under consideration.

Department's Position: We agree with Koyo that we should treat its billing adjustment as a direct adjustment to NV. We determined at the home market verification that in preparing its response to the Department Koyo summed, on a customer-specific basis, the amount of this adjustment, which was only granted on in-scope merchandise, and then allocated the customer-specific total expense over in-scope merchandise on a customer-specific basis. Koyo acted to the best of its ability in reporting this information using customer-specific allocations. Information in Koyo's responses and our findings at the home market verification indicate that, although Koyo does not maintain this information on an invoice-specific basis, the customer-specific allocation methodology it used to report this expense to the Department was not unreasonably distortive. With regard to Torrington's discussion of the CAFC's decision in *Torrington VI,* see our response to Comment 1.

Comment 10: Torrington contends that the Department should disregard the U.S. early payment discounts that NMB/Pelmec reported, and instead use the highest discount rate for all transactions or the highest rate any other respondent reported in these proceedings. Torrington argues that the Department should only accept the reporting of U.S. discounts if NMB/Pelmec reported actual transaction-specific amounts. Torrington states that NMB/Pelmec reported U.S. early payment discounts on a customer-specific basis.

NMB/Pelmec argues that its methodology accurately reflects the early payment discounts it granted. It claims that its records show that it granted the discount rates to each customer on all or virtually all sales. NMB/Pelmec also claims that its records show that customers always took the discount because the amount of discounts it actually granted to each customer relative to total sales to each customer comports with the discount rate it offered. NMB/Pelmec notes that it used this method, as verified by the Department, in two prior reviews. NMB/Pelmec notes that, because it reported a discount on all sales to eligible customers at the customer's rate, any distortion caused by this allocation would be to NMB/Pelmec's detriment .

Department's Position: We agree with NMB/Pelmec. We have found that NMB/Pelmec's reporting methodology for early-payment discounts is not unreasonably distortive. NMB/Pelmec granted discounts at a fixed and constant percentage of the value of all sales to each eligible customer. Therefore, reporting the percentage is the equivalent of reporting its rebates on a transaction-specific basis. Therefore, we determine that NMB/Pelmec acted to the best of its ability and that its response methodology is not unreasonably distortive. We also note that, even under the pre-URAA law, we would have found NMB/Pelmec's methodology to be permissible. See AFBs V at 66498.

Comment 11: Torrington states that the Department's verification report indicates that, as a result of a new contract INA entered into with two of its U.S. customers, there were several retroactive price changes to certain prices INA reported. Torrington contends, however, that the verification exhibit reveals that the record is incomplete with respect to this issue. Torrington requests that the Department correct the reported sales information to reflect the change in price. Torrington also states that the Department should require INA to develop the record to include a full explanation of the nature of the contracts into which it entered, and to reflect the corrections in the database, including quantities, price, transaction dates and part numbers. Torrington states that it is necessary to

further develop the record because changes to price as a result of retroactive price adjustments call into question the reliability of all reported U.S. sales.

INA responds that the Department verified all information concerning the revisions to some prices for U.S. customers. In addition, INA states that, as the Department noted in its verification report, the sales affected by the retroactive price adjustments were limited to the sales transactions that INA presented to the verification team at the outset of verification.

Department Position: We agree with respondent and are satisfied that, given our thorough examination at verification, the record is complete with respect to this issue. We included the corrected retroactive price adjustments we received from respondent at verification in our preliminary analysis because, in our verification of these adjustments, we found that there were no price adjustments on other transactions (verification report, at 1). Therefore, we do not question the reliability of INA's reported U.S. sales and for these final results, we have adjusted the U.S. database to reflect these price changes.

Comment 12: Torrington asserts that the Department should disallow NTN's HM billing adjustments to NV. Petitioner cites the CAFC's decision in *Torrington VI* that adjustments of this sort are, by their nature, indirect and may not be allocated across all sales. Torrington claims that NTN's description of billing adjustments in its questionnaire response is unclear as to whether the adjustment is product-and invoice-specific. Petitioner contends that NTN has not met its burden of proof of establishing entitlement to the adjustment.

NTN counters that it did not allocate the adjustment broadly across all sales and that the Department verified the accuracy of the adjustment and the methodology NTN used to report it. NTN maintains the Department was correct in accepting the adjustment in the preliminary results and should do so for the final results.

Department's Position: We disagree with Torrington. NTN's reporting methodology was consistently customer-and product-specific for billing adjustments. As a result of our verification of NTN's HM sales, we found that NTN reported the great majority of billing adjustments on a transaction-specific basis. As stated in our introductory remarks to this section, we prefer transaction-specific amounts for these kinds of adjustment claims. Because NTN acted to the best of its ability in reporting the adjustment and its allocations are not unreasonably distortive, we have accepted the reported adjustments for the final results.

Comment 13: Torrington contends that NTN Germany's HM discounts and rebates should be rejected in the calculation of NV. Petitioner maintains that these adjustments are direct adjustments that respondent has improperly reported on a customer-specific basis. Torrington claims that respondent has reported its discount adjustment incorrectly based on information in the public version of the home market verification report for the 1992–93 administrative review. Because the adjustments are not reported on a transaction-specific basis, petitioner argues that the Department must reject them.

NTN Germany counters that it has reported its discounts and rebates in a consistent and accurate manner in each administrative review and that the Department should accept them as reported in this review.

Department's Position: We disagree with Torrington. NTN Germany explained in its response that the adjustments were based on agreements with customers for eligible products. Resulting total amounts for each customer were allocated to sales to the customer. Based on NTN Germany's response and information on the record from verifications of previous reviews, we believe respondent has acted to the best of its ability in reporting the adjustments and its allocations are not unreasonably distortive.

4. Circumstance-of-Sale Adjustments

4.A. Technical Services and Warranty Expenses. Comment 1: Torrington argues that the Department should reject NSK's claim for an adjustment to NV for technical service expenses. Torrington asserts that NSK's description of these expenses indicates a direct relationship to specific transactions, despite NSK's claim that it could not isolate technical services for specific sales. Citing *Torrington VI* at 1050, Torrington argues that NSK cannot claim direct expenses as an indirect adjustment merely because it is inconvenient for NSK to report them on the same basis on which they were incurred. Torrington also argues that NSK's reported technical service expense does not distinguish between that paid on subject merchandise and that paid on non-subject merchandise.

NSK contends that, while it provides technical service with respect to specific customers or even to specific part numbers, it does not incur expenses on that basis. NSK argues that the expenses referred to by Torrington are expenses such as salaries, benefits, rent, utilities, and depreciation and can be characterized as fixed expenses. NSK also argues that, because such expenses are ISEs, NSK is under no burden to remove such expenses as might theoretically relate to sales of non-subject merchandise because such expenses are incurred to support NSK's sales generally.

Department's Position: We disagree with Torrington. We have examined the information on the record and have concluded that, based on NSK's description, its home market technical service expense (such as the salaries and benefits of technical service employees) is a fixed expense and does not vary with sales volumes. Therefore, we conclude that they are of an indirect nature. We further agree with NSK that, due to the nature of ISEs, NSK need not segregate such expenses between those paid on subject and non-subject merchandise.

Comment 2: Torrington argues that the Department should treat NSK's U.S. technical service expense as a direct expense instead of an indirect expense. Torrington asserts that NSK admitted that it did incur direct technical service expenses in the United States but claimed that allocation of direct technical service expense resulted in a *de minimis* factor, instead aggregating them with its indirect technical service expense. Citing *AFBs IV* at 10911, Torrington contends that, when a respondent fails to report U.S. technical service expenses in direct and indirect portions, it is the Department's practice to treat the expenses as a direct adjustment to CEP.

NSK argues that it attempted to identify which portion of its technical service expenses is direct and which is indirect, and it found that it had no direct technical service expenses which it could identify. NSK asserts that its technical service expenses are salaries, repairs, maintenance, and the like, which NSK asserts the Department has routinely recognized as indirect expenses. Finally, NSK contends that the Department has always treated its technical service expenses as an indirect expenses and Torrington has offered no reason for the Department to reverse itself.

Department's Position: We agree with NSK. In its response to our questionnaire, NSK identified certain technical service expenses which NSK said could be considered direct in nature. After examining these expenses, which are separately identified in NSK's Proprietary Exhibit C–12, we concluded that reclassifying these expenses as direct would have no material impact

on the margin calculation. *See* NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. Therefore, we have treated all of NSK's U.S. technical service expenses as indirect expenses for the final results.

Comment 3: Torrington argues that the Department should reject FAG Germany's reported HM direct warranty expense because the expense was allocated over all sales, regardless of model, class or kind, or customer. Citing *Federal-Mogul V* at 220, Torrington contends that the CIT has affirmed the Department's practice of rejecting direct deductions to foreign market value (now NV) for warranty and technical service expense because, although they were not incurred as a fixed percentage of sales value, they were allocated over all sales.

FAG argues that it allocated variable warranty costs over subject merchandise only, that it explained its allocation in its response, and that the Department verified its direct warranty expense. FAG argues that the court case Torrington cites is inapposite because in that case the allocations were made over both subject and non-subject merchandise.

Department's Position: We agree with FAG Germany. Similar to discounts and rebates (see item 3, above), we have accepted claims for home market direct selling expenses as direct adjustments to price if we determined that the respondent reported the expense: (1) on a transaction-specific basis; (2) as a fixed and constant percentage of the value of sales on which it was incurred; or (3) on an allocated basis, provided that it was not feasible for the respondent to report the expense on a more specific basis and the allocation does not cause unreasonable inaccuracies or distortions (*e.g.*, if granted proportionately on sales of out-of-scope versus in-scope merchandise). We have disallowed any allocated HM direct selling expense which did not meet this standard pursuant to *Torrington V*.

We find that FAG Germany has reported its HM variable warranty expenses in the most feasible manner possible. The Department has long recognized that it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses can be incurred on pre-POR sales. Likewise, FAG may not incur warranty expenses on POR sales until a future time period. Therefore, warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary. FAG Germany allocated its warranty expenses related to sales of scope merchandise and its methodology is not unreasonably distortive. Accordingly, we have treated FAG's reported HM direct warranty adjustment as a direct adjustment to NV.

Comment 4: Torrington argues that the Department should disallow Koyo's HM ISE-offset claim because the company failed to report direct warranty expenses separately in the manner in which it incurred them. Torrington, citing *Torrington VI* at 1047–1051, maintains that direct expenses, if not reported in the manner in which they are incurred, must be denied altogether.

Koyo responds that its methodology for reporting its warranty expenses in this review is the same as that it used in a number of previous reviews of the orders on AFBs and tapered roller bearings. Koyo further states that the Department has verified and accepted Koyo's methodology in previous reviews and has never raised any complaints regarding Koyo's treatment of warranties.

Department's Position: We disagree with Torrington. In general, it is not possible to tie POR warranty expenses to POR sales, since the warranty expenses are incurred on pre-POR sales. Further, Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, as in *AFBs III* (at 39743), in *AFBs IV* (at 10910), and in *AFBs V* (at 66485), where Koyo used the same allocation methodology. In these reviews, we also find that Koyo's allocation of warranty expenses is not unreasonably distortive, and we have accepted them for these final results.

Comment 5: Torrington requests that the Department deny an adjustment to NV for FAG Italy's reported HM technical service expense, arguing that the company failed to report the adjustment in the manner the Department requested. Torrington contends that FAG Italy averaged total HM direct technical service expenses over all POR sales instead of on a customer-specific basis as requested by the Department. Moreover, Torrington claims that the Department should not treat the claimed HM technical service expense as an indirect expense because the expense is direct in nature, citing *Torrington VI* at 1050–1051 in support of its argument that the Department may not treat direct expenses as indirect.

FAG Italy argues that it properly calculated and reported its HM technical service expenses and that the Department lawfully permitted the adjustment to NV as it has in all prior reviews of these AFB orders. In support of the Department's treatment of the HM technical service expenses as direct, FAG Italy states that the expenses are variable and that they are dependent only upon sales of the merchandise under review. In conclusion, FAG Italy contends that Torrington's reference to *Torrington VI* is inappropriate because the adjustments at issue in that case were indirect expenses allocated over all sales (scope and non-scope) whereas FAG Italy's HM technical service expenses are direct and are only allocated over scope merchandise.

Department's Position: We agree with FAG Italy. In our questionnaire, we instructed FAG Italy to report the technical service expenses directly related to sales of the foreign like product, less any reimbursement received from the customer. In its questionnaire response, FAG Italy stated that it first subtracted the fees that it received from its customers from the pool of technical service expenses and allocated the remainder by dividing by the ''applicable home market sales.'' This reporting methodology is consistent with FAG Italy's accounting and record-keeping systems and is an accurate representation of the company's technical service expenses. Since FAG Italy's reporting of this information is the most specific that is feasible and is not unreasonably distortive, we have accepted the company's HM variable technical service expenses as a direct adjustment to NV.

Comment 6: Torrington states that SNR's response indicates that it allocated HM warranty expenses over both scope and non-scope merchandise, despite the Department's verification report indicating that the expenses were allocated over sales of scope merchandise only. Torrington urges the Department to ensure for the final results that HM warranty expenses were properly allocated and have not been overstated.

SNR asserts that the Department verified its direct warranty expenses, which it limited to returns of scope products and allocated over sales of only scope products. Therefore, SNR concludes, the Department found its HM warranty expenses to be properly allocated and not overstated.

Department Position: We agree with SNR that it allocated only HM warranty expenses related to scope products over scope products. As we indicated in the verification report, we verified those warranty expenses and did not find any discrepancies.

4.B. Commissions. Comment 1: Torrington argues that the Department should reject NSK's claimed adjustment to NV for commissions paid for delivery on behalf of NSK. Torrington notes that NSK summed all commissions paid to a

commissionaire for deliveries and allocated that amount over total NSK sales to the commissionaire. Torrington contends that it is not evident that NSK actually incurred commissions on all sales to the commissionaire. Torrington also argues that the total commissions and the total sales to the customer include commissions paid on sales of non-subject merchandise, which is contrary to law, citing *Torrington I* at 1579. Finally, Torrington argues that, even if the Department permits an adjustment for such commissions, the Department should disregard those commissions NSK paid to affiliated commissionaires because NSK failed to demonstrate that they were made at arm's length.

NSK argues that the Department correctly deducted commissions for delivery on behalf of NSK as a direct expense. NSK argues that the proposed regulations for implementing the URAA allow respondents to allocate expenses if transaction-specific reporting is not feasible, as long as the allocation is not distortive (citing Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7330, 7381 (February 27, 1996) (proposed §351.401(g) and commentary)). NSK contends that its records are not maintained on a transaction-specific basis and, therefore, it cannot report HM commission expenses on a transaction-specific basis. NSK claims that its allocation methodology is non-distortive.

Department's Position: We disagree with Torrington. We conclude that, although NSK may not have allocated these commissions on the same basis that they were incurred, the allocation methodology is sufficiently accurate that whatever distortion may exist will have no material impact on NSK's margin. As we noted in the home market verification report, NSK calculated customer-specific factors by dividing the total commission paid to a commissionaire by the sum of the sales that generated the commission. See Home Market Verification Report dated April 26, 1996, at page five. As the allocation is customer-specific, there is no possibility of shifting expenses from one customer to another. Moreover, because NSK allocated these commissions over only those sales that actually incurred such commissions, there is no possibility that NSK reported commissions for sales which did not incur them. Finally, for business proprietary reasons discussed in the analysis memorandum, we conclude that there is no possibility that NSK included in its reporting any commissions paid on non-subject merchandise. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. For these reasons we disagree with Torrington, and we conclude that NSK's allocation methodology is not unreasonably distortive and that NSK acted to the best of its ability in reporting these commissions. Therefore, we determine that a direct adjustment to NV for commissions for delivery on behalf of NSK is appropriate.

We agree with Torrington that we should disregard commissions that NSK paid to affiliated commissionaires for delivery on behalf of NSK. As discussed in the final results analysis memorandum, we conclude that the commissions NSK paid to affiliated commissionaires were not made at arm's-length. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

Comment 2: Torrington argues that the Department should reject NSK's claim for an adjustment to NV for distributor-incentive commissions. Torrington notes that the Department treated this as a direct adjustment to NV for the preliminary results even though NSK requested that these commissions be treated as ISEs. Torrington argues that NSK failed to demonstrate that these commissions do not include payments it made on non-subject merchandise or that it, in fact, paid any commissions on subject merchandise. Torrington also claims that NSK's allocation methodology is distortive, because the possibility exists that it claimed an adjustment on sales for which it paid no commission. Torrington asserts that the Department disallowed this expense in *AFBs IV*, as well as in Tapered Roller Bearings from Japan, 56 FR 64720, 64723 (1993), and was affirmed by the CIT in *NSK III*. Finally, Torrington argues that, even if the Department permits an adjustment for such commissions for the final results, the Department should disregard commissions NSK paid to affiliated commissionaires.

NSK argues that the Department should continue to treat distributor-incentive commissions as a direct expense. NSK contends that, while the Department rejected its distributor-incentive commissions in *AFBs IV*, it later treated such commissions as a direct expense and this practice was affirmed in *Torrington IV*.

Department's Position: We agree with Torrington that we should not treat distributor-incentive commissions as a direct adjustment to NV. Our treatment of these commissions as a direct adjustment for the preliminary results was an inadvertent error on our part. As NSK explained in its supplemental response, ''this expense is earned on the basis of the distributor's resale, rather than on NSK's sale to the distributor.'' See NSK's response to our supplemental questionnaire, dated December 7, 1995. We later verified this information. See NSK home market verification report, dated April 26, 1996. We conclude that NSK did not incur this expense directly on its sales to its customers. Based on the nature of this expense, we conclude that it is not really a commission. Rather, we agree with NSK's characterization in its supplemental response that distributor-incentive commissions are an indirect promotional expense as opposed to a price adjustment because NSK grants these ''commissions'' to promote sales made by distributors.

We disagree with Torrington that we should disregard distributor-incentive commissions NSK paid to affiliated commissionaires. As discussed in the final results analysis memorandum, we conclude that the commissions NSK paid to affiliated commissionaires were made at arm's length. Therefore, we have adjusted NV for these commissions. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

4.C. Credit. Comment 1: Torrington argues that the Department should adjust NSK's HM credit expense calculations by excluding discounted notes. Torrington argues that discounted notes are not part of an unpaid balance but rather represent paid amounts, albeit at a discount, during the month. Torrington argues that the burden is on NSK to demonstrate that it did not include notes that had been paid, and contends that NSK did not demonstrate this on the record. Therefore, Torrington argues, the Department should either exclude discounted notes from NSK's credit-expense calculation or use the lowest credit expense NSK reported for all HM sales during the POR.

NSK argues that the Department verified that, while NSK included unpaid notes receivable in its credit calculation, it did not count notes receivable that had been paid. NSK also argues that it used the term ''discounted'' to differentiate one specific type of notes receivable from other types.

Department's Position: We disagree with Torrington. While discounted notes do not technically represent an unpaid balance, NSK does not obtain the use of the entire balance owed by the customer for the note. When a company discounts a note through a bank, the bank typically assesses a charge or fee for discounting the note. Therefore, when discounting a note

through a bank, the company incurs a cost for obtaining a smaller amount of money than that to which it would be entitled had it held onto the note until maturity. NSK calculated the interest rate for its discounted notes in a manner similar to that which it did for other loans. At verification, we found that NSK does incur discounted-note expenses, and we determined in our analysis of NSK's reported HM credit expense that respondent accounted for discounted notes properly in its methodology.

Comment 2: Torrington comments that FAG Germany improperly added one credit day in calculating credit expense for HM sales, by claiming that, under operating procedures common to the German banking system, there is a lag in the availability of funds in Germany which does not exist in the United States. Torrington contends that, even if the alleged banking delay was supported by the record, it would apply to all payments in Germany, whether completed upon delivery or after the expiration of an agreed-upon term. Thus, Torrington argues, the one-day period allegedly required by the bank to process the payment is no more relevant to the imputed credit expense calculation than, for example, a respondent's own administrative delays. Torrington argues that the Department should recalculate FAG Germany's reported home market credit expense by reducing the time between sale and payment by one day.

FAG Germany argues that, in accordance with specific procedures which the Department verified, it does not technically receive payment from its customers until the day after its banks actually received the customer's check or transfer. FAG Germany contends that, in accordance with Departmental reporting requirements, it reports all expenses on the same basis in which they are incurred, and that, where funds are not available in FAG's accounts until one day after deposit by German law and practice, it has legitimately incurred an extra day of credit costs.

Department's Position: We agree with FAG. As we noted in the HM verification report, we analyzed several credit notes, promissory notes, and short-term loan agreements to determine the accuracy of FAG's submission and found no discrepancies. Therefore, we found that FAG reported its dates of payment in its response accurately. Had FAG not justified the extra day reported in the home market at verification, we would have noted it and adjusted FAG's HM credit expenses accordingly. As this was not the case, we have accepted FAG's HM credit expenses as reported.

Comment 3: Torrington contends that the Department should not accept FAG Italy's HM credit expense data that the company provided after verification unless the Department is fully satisfied that the amounts are accurate. Torrington notes that, at verification, the Department discovered FAG Italy had failed to report credit amounts for certain HM customer codes. Torrington's concern is that when FAG Italy submitted the credit expense information on the record after verification it may have overstated its customers'' actual credit expenses. Torrington requests that the Department compare the average credit expenses FAG Italy reported after verification to the average credit expenses it reported originally to ensure that the new credit expense figures typify FAG Italy's experience.

FAG Italy contends that it reported accurately the missing credit expenses discovered at verification. FAG Italy notes that its inadvertent reporting error affected very few transactions and argues that Torrington's concern about the credit expenses being over-reported is unfounded since the Department successfully verified the calculation of the missing HM credit expenses and the data used therein.

Department's Position: We agree with FAG Italy that it reported accurately the missing HM credit expenses we discovered at verification. To test whether FAG Italy reported these expenses accurately in its revised database, we compared the average credit expenses the company reported after verification to the average credit expenses it reported originally. We found that the new credit expenses typify FAG Italy's experience and we made the adjustment to NV for the final results.

Comment 4: Torrington argues that the Department should ensure that it deducts NSK–RHP's credit expense on all relevant U.S. sales. Torrington claims that NSK–RHP did not report a U.S. credit expense for those sales for which it was unable to determine the appropriate date of payment. Torrington states further that, in response to Torrington's pre-preliminary comments, NSK–RHP asserted that the Department should calculate the credit expense based on the due date of respondent's supplemental response, January 11, 1996, which was the last time NSK–RHP submitted data. Torrington claims that NSK–RHP left the credit expense for certain U.S. sales blank even though the information was subsequently available. Torrington proposes that an appropriate amount for credit expense for such sales should be based on the number of days from shipment to the date of the preliminary results.

Torrington states that, with respect to those U.S. sales for which INA did not report a payment date, the Department should estimate a payment period, for the purpose of calculating credit expenses, based on the difference between the date of sale and the date of the final results of review.

NSK–RHP argues that the Department instructed NSK–RHP to leave the date of payment variable blank for all transactions for which NSK–RHP or its affiliated companies could not determine the date of payment. NSK–RHP contends that it followed the Department's instructions and has cooperated fully with the Department's requests for information and, thus, use of adverse facts available is inappropriate in this case. NSK–RHP concludes by stating that the Department calculated its credit expense correctly for the preliminary results.

INA agrees with Torrington that the Department should estimate a credit period for U.S. sales without a payment date but disagrees with Torrington's proposed methodology. INA contends that the period Torrington proposes is arbitrary and an application of adverse facts available, for which there is no basis. Instead, INA argues, the Department should apply the methodology it employed in other cases, where the Department calculated a surrogate credit period based on the average number of days between the date of sale and the date of payment for all U.S. sales.

Department's Position: We agree with Torrington that NSK–RHP did not provide date of payment information for those U.S. sales for which it contends that it could not determine the date of payment. However, the record illustrates that, as is the case with INA, NSK–RHP completed this field for as many transactions as possible and left it blank for only those transactions in which it could not determine the date of payment as instructed in our original questionnaire at page C–11, field 12.0.

Under section 776(a)(1), the Department shall use the facts otherwise available in reaching its final determination when the necessary information is not on the record. Because the final date of payment is not known for certain transactions for these respondents, we must resort to facts otherwise available in determining a reasonable period of time for calculating credit expenses. We agree with Torrington that we should estimate a payment period for those sales for which NSK–RHP and INA did not

provide the date of payment. However, we disagree with Torrington's recommendation that we use the number of days from shipment to the date of the preliminary results as a surrogate. This treatment would constitute an adverse inference and is not warranted by the facts of this case. Therefore, for these final results, we used the average credit period for all transactions with reported shipment and payment dates as a surrogate for the actual credit period in calculating credit expenses for those sales without a known date of payment. See Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30332 (June 14, 1996).

Comment 5: Torrington argues that the Department should ensure that SKF France has reported appropriate payment dates for HM sales. Torrington contends that SKF France identified the payment date as the date the payment is deposited in SKF's bank and that this date may be several days after the date which the customer actually paid SKF. Torrington asserts that, if the Department cannot determine that SKF France reported the actual payment date, it should apply a facts-available approach, such as an estimate of the number of days between receipt of check and deposit in the bank, and adjust the credit expense accordingly.

SKF France argues that the Department has verified and accepted SKF France's credit expense calculation, as well as its record-keeping and accounting payment on invoices. SKF France adds that it linked the invoice number to the dates of payment electronically such that, in all but a very few instances, it reported the actual payment date.

Department's Position: We agree with SKF. We have no reason to believe that SKF France reported payment dates for HM sales inappropriately. Torrington does not offer any evidence that SKF France's reported payment date is not the actual date SKF France received payment. Further, as SKF France stated in its September 26, 1995 response, only in a few cases did it not report the actual payment date. Where SKF France could not identify the actual payment date it used an average customer-specific or company-specific accounts-receivable days-outstanding date. See SKF France's questionnaire response at 48. Hence, we are satisfied that SKF France's reporting of its HM payment date is not unreasonably distortive.

Comment 6: Torrington contends that, based on information in NTN's financial statements, respondent has under-reported the days outstanding for the calculation of U.S. credit expenses. Petitioner provides analysis of the financial statements as applied to sampled sales and suggests that the Department recompute the expense.

Department's Position: We disagree with Torrington. We examined credit expenses at our verification of the U.S. response. NTN reported customer-specific days outstanding on payments rather than transaction-specific days outstanding. Although there were instances of slight variation from the customer-specific days outstanding to the transaction-specific days outstanding, the reported outstanding periods were largely accurate and reasonably reflect the days outstanding basis for the calculation.

4.D. Indirect Selling Expenses.

Comment 1: Torrington contends that INA's method of calculating its U.S. ISE ratio (selling expenses incurred on sales of imported merchandise to total sales of imported merchandise) is distortive. Torrington asserts that INA's records do not allow for a distinction to be made between selling expenses on imported merchandise and selling expenses on U.S.-produced merchandise. Torrington states that some of the cost centers, for which INA applied ratios to total expenses accumulated in each cost center to obtain an estimated amount for expenses attributable to import sales, were associated with U.S.-produced merchandise. Torrington also states that, for many cost centers, INA was unable to calculate a specific ratio. Torrington concludes that the Department should reject INA's reported U.S. ISE rate and recalculate it based on total expenses and sales.

INA agrees with Torrington's proposal that the Department recalculate the U.S. ISE rate based on total expenses and sales of produced and imported merchandise. INA provides proposed revised rates which it states are based on corrected data it submitted to the Department in its supplemental questionnaire response.

Department Position: We disagree with Torrington's assertion that INA's U.S. ISE ratio is distortive. We verified the calculation of this expense thoroughly and were satisfied with INA's methodology. As we indicated in the verification report, INA applied a specific ratio for those cost centers for which INA maintains separate records in its monthly sales detail. For those cost centers for which it was unable to calculate a more specific ratio, INA applied general ratios to total expenses associated with U.S.-produced merchandise. We believe that INA's method of allocating its U.S. ISEs is not unreasonably distortive and have relied on it for the final results.

Our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise and are in accordance with the GAAP of its home country. See, *e.g.*, Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value (Canned Pineapple from Thailand), 60 FR 29553, 29559 (June 5, 1995); Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value, 57 FR 53693, 53705 (November 12, 1992). See also Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value, 60 FR 22550, 22556 (May 8, 1995) (''(t)he Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting records do not reasonably reflect the COP of the merchandise'). The CIT has upheld the Department's use of expenses recorded in a company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See, *e.g., Laclede Steel Co.* v. *United States*, Slip Op. 94–160 at 22 (CIT 1994). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it determines that a company's normal accounting practices result in a unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. See, *e.g.*, New Minivans from Japan; Final Determination of Sales at Less Than Fair Value, 57 FR 21937, 21952 (May 26, 1992). In this case, we are satisfied that INA's calculations reasonably reflect its ISEs. The fact that INA calculated a general ratio for only some of its cost centers does not prevent us from reasonably using the data provided to us by INA concerning its ISEs. Thus, the application of facts available is not warranted; we have not recalculated INA's reported U.S. ISEs.

Comment 2: Torrington contends that the Department should modify its calculation of INA's U.S. ISEs incurred in the country of exportation in order to reflect the addition of certain cost centers INA reported in its supplemental questionnaire response.

INA asserts that the Department included the revised U.S. ISE rate in the preliminary results and that this rate is

actually higher than the U.S. ISE rate that would result under Torrington's proposed methodology.

Department Position: We disagree with Torrington. As stated in response to Comment 1, we disagree with the view that we should adopt Torrington's methodology for recalculating U.S. ISEs (*see* Comment 1 of this section). Moreover, INA is correct in its assertion that we included the revised U.S. ISEs in the preliminary results calculations. Because no party has adequately supported an alternative methodology, we have no basis for determining that our preliminary results calculations were not reasonable. Accordingly, we have maintained this revision of INA's U.S. ISEs for the final results of review.

Comment 3: Torrington contends that the Department's verification report indicates that INA did not allocate its domestic ISE ratio on the same basis as its export ISE ratio. Torrington argues that, as a result, INA has overstated its domestic ISEs because, while the denominator for the export ISE ratio includes all export sales, the denominator for the HM ISE ratio does not include all domestic sales. In addition, Torrington cites to the Department's verification report as support for its argument that the numerator of the domestic ISE ratio includes costs that are not selling expenses. Torrington asserts that, by including such expenses, INA has overstated the numerator of this ratio. Torrington contends that, if it is feasible, the Department should recalculate the domestic ISE ratio; otherwise, Torrington argues, the Department should reject the reported HM ISEs.

INA responds that it reported home market indirect selling expenses properly. INA takes issue with Torrington's assertion that the Department's verification report stated that INA's allocation of its domestic indirect selling expenses is inconsistent with its allocation of export selling expenses. INA explains that it determined the sales and expenses of the enterprise that produces the subject merchandise in the home market on a consolidated basis, eliminating transactions between the HM entities which comprise the HM manufacturing entity. INA states that the consolidated entities do not include those outside the home market because such entities are not associated with the enterprise that manufactures subject merchandise; rather, they are customers of the enterprise. INA also takes issue with Torrington's assertion that the numerator of the ratio INA used to allocate domestic ISEs includes costs which are not selling expenses. INA contends that, in calculating the numerator amount, it excluded those categories that it reported under other classifications (in accordance with the Department's instructions in the questionnaire), and those which were not applicable to HM sales. INA states that it classified the remaining cost centers as domestic selling expenses as directed by the questionnaire.

Department Position: We disagree with Torrington. As we indicated in response to comment 1, in determining whether to adhere to an individual firm's recording of costs, an important factor is whether we are satisfied that its reporting reasonably reflect the expenses being examined. In this case, we find that INA's methodology is not distortive. Indeed, we examined INA's reporting methodology for ISEs thoroughly at verification. Based on our examination, we are satisfied that INA's allocation of its domestic ISEs is consistent with its allocation of its export selling expenses.

Comment 4: Torrington argues that the Department should adjust NSK's claimed HM ISEs to disallow a certain expense included in the pool of ISEs. Torrington argues that, although NSK did not report how it calculated this expense, NSK claimed this expense as a direct adjustment to foreign market value (FMV) in prior reviews. Torrington contends that NSK incurred this expense on specific transactions and that, pursuant to *Torrington VI* at 1050, the Department cannot treat it as an indirect expense. Torrington also argues that NSK's allocation is distortive because it is not reported on the basis on which it is incurred and that NSK's allocation does not distinguish between subject and non-subject merchandise.

NSK argues that the Department has determined in prior reviews that the expense is not incurred directly on sales NSK made. NSK contends that it reported this expense in a manner consistent with the Department's prior rulings on this expense.

Department's Position: We disagree with Torrington and, for these final results, have treated all of NSK's claimed HM ISEs as indirect expenses. In determining whether to treat these and other expenses at direct or indirect expenses, we examined whether they vary with the quantity of subject merchandise sold (see *Zenith Electronics Corp.* v. *United States*, 77 F.3d 426, 431 (CAFC 1996)), or were related to a particular sale (see *Torrington Co.* v. *United States*, 68 F.3d 1347, 1353 (CAFC 1995). This analysis did not lead us to conclude that, as argued by Torrington, NSK incurred the ISEs on specific transactions. Thus, although the proprietary nature of this expense makes it impossible to give a full discussion of this issue in this notice, we note that it is evident from the record that NSK did not incur this expense directly on sales to its customers. This issue is discussed further in NSK's analysis memorandum. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996. Therefore, we conclude that the expense is not related directly to any sales NSK reported in its HM sales database and it is proper to treat it as an indirect expense.

Comment 5: Torrington argues that the Department should treat NSK's U.S. advertising expense as a direct expense instead of as an indirect expense. Torrington contends that NSK did not adequately prove that its advertising expenses were indirect, stating that NSK did not provide examples of U.S. advertising and that the Department did not examine examples of NSK's U.S. advertising in the course of verification.

NSK argues that the Department has rejected similar arguments made by Torrington in prior reviews and argues that its catalogs and show exhibits are not aimed at the customer's customer and, therefore, are indirect in nature.

Department's Position: We agree with NSK. For advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer. *See AFBs I* at 31725. The examples of U.S. advertising submitted by NSK are not specific to bearings but instead are general in nature, as NSK suggests. NSK's supplemental response dated December 7, 1995, at page 56, described the advertising expenses that NSK incurs. We examined these expenses and determined that they are not aimed at the customer's customer. Therefore, we are satisfied that NSK's U.S. advertising expenses are indirect. With regard to the catalogs, it is apparent that they are not aimed at any particular customers or group of customers. While NSK's customers' customers may have used some catalogs, it is not evident that only the customers' customers used them or that the catalogs were targeted for the customers' customer. With regard to the show exhibit expense, it is clear from information on the record that this expense was aimed at NSK's customers and not to the customers' customer. Finally, other NSK advertising expenses, such as hats and shirts that carry NSK's logo, are ''image'' advertising and not aimed at any customer or group of customers. The

record in this review reflects that NSK's U.S. advertising expenses are indirect in nature. Therefore, we conclude that none of these advertising expenses are direct in nature and have treated them as ISEs for these final results.

Comment 6: Torrington contends that FAG Germany never explained its HM ISE-allocation methodology in any of its responses and that the Department recognized this failure in its verification report. Torrington contends that, although the Department included an explanation of the allocation methodology in its verification report, the explanation applies to only one of the legal entities that comprise FAG KGS. Torrington claims that, although FAG Germany indicated that it used the same methodology for the other entities, the Department's verification report appears to refute FAG Germany's claim.

Torrington argues that FAG Germany's failure to provide an explanation deprives the domestic interested party of an adequate opportunity to comment on the claimed expenses and distorts the investigative process. Torrington contends that there are a number of unexplained inconsistencies in FAG Germany's allocation methodology. Torrington argues that the Department should reject FAG Germany's reported ISEs and apply, as facts available, a single expense rate based on the lowest of the several expense rates FAG Germany reported.

FAG Germany argues that it did explain its allocation methodology in both its original response and its supplemental response and that the Department verified its methodology completely without finding any discrepancies. FAG Germany contends that it used the same methodology for all entities comprising FAG KGS and notes that the Department's verification report states that ''because FAG used the same allocation methodology for each entity, [its] discussion below details the Department's trace only through that documentation provided for [FAG Automobiltechnik AG],'' citing FAG Germany Home Market Verification Report at 7. FAG Germany also argues that Torrington was afforded adequate opportunity to comment on the claimed expenses. Finally, in response to Torrington's argument that there are unexplained inconsistencies in FAG Germany's methodology, respondent notes that the Department found no discrepancies at verification.

Department's Position: We agree with FAG Germany. While it is true that respondent did not explain the allocation methodology fully in its original response, we examined FAG Germany's methodology in detail at verification and described the methodology in the verification report. In addition, we took exhibits supporting our findings at verification. Based upon the record, inclusive of the verification report and exhibits, we determined that FAG Germany's allocation of ISEs was not unreasonably distortive.

In response to Torrington's assertions that (1) although the Department included an explanation of the allocation methodology in its verification report, the explanation applies only to one of the legal entities that comprise FAG KGS, and (2) although FAG Germany indicated that it used the same methodology for the other entities, the Department's verification report appears to refute FAG Germany's claim, we point out that the Department's verification report states that ''because FAG Germany used the same allocation methodology for each entity, our discussion below details the Department's trace only through that documentation provided for (one of the legal entities).'' In other words, we used the same verification process for each entity we examined, but set out the steps in detail for only one of the entities.

With regard to Torrington's contention that it was deprived of an adequate opportunity to comment on the claimed expenses, we note that we gave Torrington the same opportunity to comment on any facet of our preliminary results that all interested parties receive. Moreover, Torrington's counsel received proprietary versions of the verification report and exhibits under administrative protective order. Therefore, Torrington was not deprived of an adequate opportunity to comment on this aspect of the review.

Comment 7: Torrington contends that FAG Germany's and FAG Italy's reporting methodology for U.S. ISEs does not accurately reflect selling expenses on the reviewed U.S. sales because the allocation methodology includes expenses on sales of FAG Canada to U.S. customers. Torrington requests that the Department reject FAG Germany's and FAG Italy's reported U.S. ISEs and recalculate the adjustment based on U.S. sales and U.S. selling expenses only.

FAG Germany and FAG Italy contend that their U.S. ISE calculation methodology properly includes certain expense and sales data relating to FAG U.S.'s facilitation of sales by FAG Canada to the U.S. market. They contend that it is not possible for FAG U.S. to isolate expenses it incurred in providing the sales support to FAG Canada. FAG Germany and FAG Italy note that the Department verified their data and allocation methodology for U.S. ISEs with no discrepancies noted and that the Department accepted the same methodology in previous reviews.

Department's Position: We disagree with Torrington. After reviewing the allocation methodology FAG Germany and FAG Italy used, we have determined that it reasonably reflects the companies' U.S. ISEs. FAG Germany and FAG Italy reported that it was impossible to segregate the ISEs which FAG U.S. incurred on its own sales from those it incurred in support of FAG Canada's sales to the United States. We found nothing in the response or at verification to contradict this statement.

This being the case, were we to recalculate respondents' U.S. ISE factors by excluding FAG Canada's sales and expenses, we would effectively overstate the ISE factors by not allocating the expenses over all of the sales on which they were incurred. Therefore, we must include FAG Canada's sales in the calculation. In order to avoid distortions, we have also included a portion of FAG Canada's ISEs applicable to its U.S. sales. To not include these expenses would effectively dilute the ISE factor because, while all sales incurring the expense would be included, not all of the expenses FAG U.S. incurred would be included in the calculation. Therefore, given FAG Germany's and FAG Italy's factual situation, the ISE allocation methodology they employed is appropriate.

Comment 8: Torrington argues that the Department incorrectly accepted certain of Koyo's claimed HM ISEs, stating that Koyo did not provide a full explanation as to why these expenses are considered ISEs rather than general administrative expenses. Torrington identifies these expenses as follows: benefits and directors fees, tax and rate, maintenance, environment and safety control, cleaning, quality control, fuel and maintenance of forklifts, intellectual property, enterprise tax, and a miscellaneous category.

Koyo maintains that it reported its HM ISEs as it has in previous reviews and that the Department has verified its ISEs on various occasions and accepted the reported expenses, with the exception of the bad-debt allowance, in all past reviews.

Department's Position: We agree with Koyo. As reported in our verification report, Koyo's methodology of calculating allocation factors reflected the nature of the expenses involved. See Verification Report of February 23, 1995 at 10. During verification, Koyo's management provided an explanation of

these ISE items. When we verified these various ISE items, we not only tied all selected expenses to source documents but we also examined the nature of these items and found that they were related to the sales of subject merchandise. Based on the discussions and the findings at verification, we conclude that Koyo properly included these expenses as ISEs.

Comment 9: Torrington claims that the Department should disallow downward adjustments to U.S. ISEs for interest incurred by respondents when borrowing to finance deposits for estimated antidumping duties. Torrington relies on the Department's decision in *AFBs IV* (at 10918) to support its position.

Koyo counters that the issue is directly comparable to the Department's policy of not deducting antidumping duty deposits from CEP, given that these do not bear a relationship to the actual dumping duties owed. Koyo argues that it is likewise inappropriate for the Department to deduct expenses incurred for the purpose of making those deposits, such as the interest incurred to finance the deposits.

Department's Position: We disagree with Torrington that we should disallow this downward adjustment for interest expenses respondents incurred when borrowing to finance cash deposits of estimated antidumping duties, and we consider it proper to allow the downward adjustment to U.S. ISEs. The Department considers these expenses to be comparable to expenses for legal fees related to antidumping proceedings. The expenses were incurred only because of the existence of the antidumping duty orders and respondents' involvement therein. Therefore, the expenses cannot be categorized as selling expenses. It is the Department's longstanding practice not to treat expenses related to the dumping proceedings as selling expenses. For example, in Color Television Receivers From the Republic of Korea, 58 FR 50336, the Department stated that such expenses ''are not expenses incurred in selling merchandise in the United States.'' The CIT recognized this line of reasoning in *Daewoo Electronics Co.* v *United States,* 712 F. Supp. 931 (CIT 1989) (*Daewoo*), when it concluded that the classification of such expenses as selling expenses subject to deduction from price ''would create artificial dumping margins and might encourage frivolous claims * * * which would result in increased margins.'' Respondents incurred these expenses as part of the process attendant to the antidumping duty orders; had the antidumping duty orders not existed, respondents would not have incurred these expenses. By their nature, such expenses are not a selling expense, and we should not deduct them from CEP.

We clarified our position on this issue in our Results of Redetermination Pursuant to Court Remand, Slip Op. 96–37, which we submitted to the CIT on September 20, 1996. In that remand the Department was ordered to explain its acceptance of the downward adjustment to NTN's ISEs in *AFBs III.* In the redetermination we determined that the interest expenses to finance cash deposits were not borne, directly or indirectly by NTN's U.S. subsidiary firm, to sell the subject merchandise in the United States. The interest expenses at issue, like legal fees, are an expenditure which respondents actually incurred, but clearly did not incur in *selling* AFBs to the United States. Consequently, these expenses were not eligible to be deducted from CEP under section 772(e) of the Tariff Act. We also stated that we believed that we erred in not allowing the offset to U.S. ISEs in *AFBs IV*. For these reasons we consider it reasonable to accept this offset to U.S. ISEs for these final results.

We believe that the adjustment should be allowed, whether a respondent limits its calculation to only those interest expenses incurred on cash deposits during the period under review or calculates a cumulative adjustment which reflects not only the interest expenses incurred on cash deposits made during the period being reviewed but the interest expenses incurred during the POR on cash deposits made in previous review periods as well. When a respondent finances cash deposits it incurs a financing expense which reflects the opportunity costs which arise when funds are used to pay cash deposits rather than in other interest-yielding financial arrangements. Because the monies used to fund cash deposits for a given POR are unavailable until final antidumping duties are assessed for that POR, this opportunity cost will accrue until liquidation. For example, if a respondent pays cash deposits for entries during a particular POR but antidumping duties are not assessed on entries for several years, the financing costs of funding the cash deposits will not only be incurred in the POR but will be incurred until actual duties are assessed at the time of liquidation. As a result, an interest expense associated with the cash deposits made in the POR will be incurred during subsequent review periods. While a cumulative adjustment amount does affect a respondent's margin, dumping cannot be distorted or obscured when an adjustment is made for an expense attributable to an antidumping duty order. In fact, if we fail to allow the adjustment, we risk calculating margins which are overstated due to our failure to take into account an expense attributable solely to an order.

In addition, the Department considers the acceptance of a cumulative adjustment amount to be consistent with the statute. We do not regard cash deposits as actual antidumping duties paid at the time of importation for which subsequent adjustments for over- and under-payment are coupled with interest payments to approximate as closely as possible the payment of actual duties at time of import. We have long maintained the position that ''duty deposits are not actual antidumping duties but estimates of future dumping liability'' (see AFBs IV at 10900). We have expressed the identical position in another antidumping proceeding, stating that ''the cash deposit requirements are estimates of antidumping duties. The actual dumping margins applicable * * * will be reflected in final assessment'' (see Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof From Japan, 55 FR 38720 (September 20, 1990)). The CIT and CAFC have consistently recognized that a distinction exists between cash deposits and actual antidumping duties and that cash deposits are only estimates of final antidumping duties. For example, when ruling on the issue of whether the Department must calculate the cash deposit and antidumping duty rates using an identical methodology, the CAFC stated in *The Torrington Company and Federal-Mogul Corp.* v. *United States,* Court Number 94–1117 (January 13, 1995), that ''(s)ection 1675(a)(2) does not require the same methodology of calculation for assessment rates and cash deposits rates * * * Moreover, Title 19 bases the cash deposits rate on *estimated* antidumping duties on future entries * * * Thus, Title 19 requires only *cash deposit estimates,* not absolute accuracy. This estimate need only be reasonably correct pending the submission of complete information for an *actual* and accurate assessment * * * No evidence compels this court to find that deriving cash deposit rates from entered values leads to a more accurate *estimation of future duties* * * *'' (emphasis added). Therefore, cash deposits are clearly not payments of actual antidumping duties and, by allowing a cumulative adjustment, the Department is treating the interest expenses respondents

incurred on cash deposits as expenses attributable solely to the antidumping duty orders.

Comment 10: Torrington claims that NTN's adjustments to selling expenses for expenses of affiliated firms have distorted the allocation of expenses to scope and non-scope merchandise. Petitioner believes NTN's method of initially allocating the affiliates'' expenses was flawed and understates NTN's ISEs for AFBs. Torrington asserts that the Department should add the affiliates'' expenses back into the pool of expenses before allocation to NTN's U.S. sales.

Department's Position: We disagree with Torrington. We examined NTN's allocation methodologies and expenses associated with affiliated firms at the verification of the U.S. response. We found these to be accurately compiled and NTN's allocation is not unreasonably distortive. Therefore, we have accepted NTN's allocation for these final results.

Comment 11: Torrington contends that the Department should reject NTN's allocation of certain U.S. ISEs based on level of trade. Petitioner notes that the Department rejected this methodology in *AFBs IV* as bearing no relationship to the way in which NTN incurred expenses.

NTN responds that the Department has verified its methodology at several verifications and found it to be reasonable. Therefore, NTN believes that the Department should accept the methodology.

Department's Position: We agree with Torrington. In *AFBs III* (and subsequently in *AFBs IV* at 10940 and *AFBs V* at 66489) we determined that the methods NTN used for allocating its ISEs did not bear any relationship to the manner in which it incurred the expenses in question, thereby leading to distorted allocations. The CIT upheld this decision in *NTN Bearing Corp.* v. *United States*, 905 F. Supp. 1083, 1094–95 (1995). Further, we found that the allocations NTN calculated according to levels of trade were misplaced and that it could not conclusively demonstrate that its ISEs vary across levels of trade. In the course of this review respondent did not provide sufficient evidence demonstrating that its selling expenses are attributable to levels of trade. Therefore, we have recalculated NTN's expenses to represent selling expenses for all U.S. sales for the final results.

Comment 12: Torrington states that the Department found that SNR had allocated depreciation expenses to all sales but, in fact, the respondent did not include them in the ISEs it reported for U.S. sales. Accordingly, Torrington contends, the Department should ensure that SNR has reported all U.S. ISEs and should reallocate a portion of the depreciation expenses SNR incurred in the home market to its U.S. sales.

SNR contends that, although the company failed to allocate a portion of its depreciation expenses to U.S. sales, the error was harmless. SNR states that these expenses, incurred in France, are indirect and the Department has not deducted such expenses in calculating CEP. SNR proposes that, if the Department decides to deduct such indirect selling expenses as part of U.S. ISEs incurred in the home market, the Department can derive a per-unit amount by the formula SNR provided in its rebuttal brief. SNR further notes that the depreciation expenses are de minimis and can be disregarded under 19 CFR 353.59(a).

Department Position: We agree with Torrington that SNR's depreciation expenses allocated to its U.S. sales should be part of ISEs we deduct from CEP. We verified SNR's response and, based on our findings at verification, we have made this deduction for our final results.

4.E. Other Selling Expenses.

Comment 1: NSK/RHP argues that the Department should deduct other HM direct selling expenses from NV. NSK/RHP notes that, in a supplement to its questionnaire response, it provided an explanation for direct selling expenses which separate cost centers incurred in selling to OEM-Automotive, OEM-Industrial, and AM customers. NSK/RHP explains further that the reported expenses are for selling activities for specific customers. NSK/RHP asserts that, since the Department never questioned whether these expenses are direct selling expenses, the Department should deduct them from NV for the final results.

Torrington contends that the Department should not deduct NSK/RHP's other HM direct selling expenses from NV, claiming that the record contains inconsistent information. Torrington maintains that NSK/RHP must prove that the expenses are direct. However, Torrington contends that, due to contradictions in the submitted data, the record fails to support NSK/RHP's claim for an adjustment. In support of its argument for not making the adjustment, Torrington also notes that NSK/RHP's HM sales data was not subject to verification.

Department's Position: We agree with NSK/RHP. Although we chose not to verify NSK/RHP's HM sales data, Torrington has not provided, nor is there evidence on the record to support Torrington's claim that NSK/RHP's information on other HM direct selling expenses is not accurate and complete. Therefore, we have deducted NSK/RHP's other HM direct selling from NV for these final results.

5. Level of Trade

As set forth in section 773(a)(7) of the Tariff Act and in the SAA at 829–831, to the extent practicable, we have determined NV based on sales at the same level of trade as the export price or CEP. When we were unable to find comparison sales at the same level of trade as the export price or CEP, we compared the sales in the United States to sales at a different level of trade in the comparison market. We determined the level of trade of export price sales on the basis of the starting prices of sales to the United States. We based the level of trade of CEP sales on the price in the United States after making the CEP deductions under section 772(d) but before making the deductions under section 772(c). Where HM prices served as the basis for NV, we determined the NV level of trade based on starting prices in the NV market. Where NV was based on CV, we determined the NV level of trade based on the level of trade of the sales from which we derived SG&A and profit for CV.

In order to determine whether sales in the comparison market are at a different level of trade than the export price or CEP, we examined whether the comparison sales were at different stages in the marketing process than the export price or CEP. We made this determination on the basis of a review of the distribution system in the comparison market, including selling functions, class of customer, and the level of selling expenses for each type of sale. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Similarly, as further discussed in our response to Comment 2, below, while customer categories such as ''distributor'' and ''wholesaler'' may be useful in identifying different levels of trade, they are insufficient in themselves to establish that there is a difference in the level of trade. See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 51891, 51896 (October 4, 1996).

While we conducted a similar analysis in the preliminary results, we limited our inquiry to the selling functions incurred by respondents at

each level of trade. See Preliminary Results at 35718–35723. As noted, for these final results we have included in our analysis the class of customer and the level of selling expenses at each marketing stage in addition to selling functions. However, the inclusion of these additional factors in our analysis has not changed our identification of the levels of trade involved in sales in the U.S. and comparison markets, nor has it resulted in a change in our findings concerning which levels, for each respondent, are at a more advanced stage in the distribution process. Our discussion of the specific selling functions that we examined, as well as our company-specific findings in this regard, are contained in the preliminary results.

As in the preliminary results, where we established that the comparison sales are at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the difference in level of trade affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant levels of trade in the comparison market.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving export price sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the home market but we could only match the U.S. sale to HM sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted NV as the level-of-trade adjustment.

We were unable to quantify such price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP did not exist in the home market for any respondent. We also did not find the same level of trade in the home market for some export price sales. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondent's HM sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that ''if information on the same product and company is not available, the [level-of-trade] 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 expenses of other producers in the foreign market for the same product or other products.'' *SAA* at 830. Accordingly, where necessary, we examined the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us to apply these alternative methods.

In those situations where we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, and in which the U.S. sales were export price sales, the statute requires no further adjustments in regard to level of trade. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the comparison sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Tariff Act.

Comment 1: Torrington argues that the Department improperly analyzed U.S. levels of trade for purposes of level-of-trade adjustments and CEP offsets by reference to what are in effect ex-factory export transactions instead of CEP resale transactions. Torrington argues that the statute makes resale transactions to unaffiliated purchasers the relevant sales for identifying the U.S. levels of trade, not ex-factory sales to the U.S. affiliate. In this regard, Torrington first notes that the statute requires a finding of differences in levels of trade between the ''constructed export price'' and NV before making a level-of-trade adjustment or a CEP offset (citing section 773(a)(7)(A) of the Tariff Act). Torrington claims that, in turn, the focus of the statutory definition of ''constructed export price,'' which defines CEP as ''the price at which the subject merchandise is first sold * * * in the United States * * * to a purchaser not affiliated with the producer or exporter, as adjusted * * *,'' is on resale transactions in the United States, not on the transaction between the home market parent and the U.S. subsidiary (citing section 772(b) of the Tariff Act).

Torrington suggests that, in the preliminary results, the Department implicitly recognized the incorrectness of its level-of-trade/CEP offset approach by comparing, for matching purposes, HM sales to U.S. sales based on the distribution channel (customer category) of the unaffiliated U.S. purchaser in all instances, including CEP comparisons. (In Comment 2, below, Torrington requests that the Department explain the legal basis for matching sales in this manner.)

FAG Germany, FAG Italy, INA, NSK, SKF France, SKF Germany, SKF Italy, SNR, Koyo, and NMB/Pelmec respond that the statutory definition of CEP does not support Torrington's argument that the appropriate U.S. level of trade is that of the U.S. affiliate to the unaffiliated customer. While respondents agree with Torrington that the Department must compare the level of trade of the ''CEP'' with that of sales made in the home market in the level-of-trade analysis, they disagree that the statutory definition of ''CEP'' focuses on the resale to the unaffiliated customer. Rather, they suggest that a complete reading of the definition in section 772(b) reveals that the CEP is the resale price as adjusted for U.S. selling expenses and profit. Respondents contend, therefore, that the Department correctly excluded selling functions related to such U.S. expenses in its analysis of the level of trade of the CEP for the preliminary results.

Koyo takes issue with Torrington's argument that, by matching sales using the customer category of the unaffiliated U.S. customer, the Department is implicitly acknowledging that its level-of-trade analysis was in error. Koyo instead contends that the statute does not preclude matching U.S. and home market sales, to the extent possible, based on parallel channels of distribution. Koyo argues that this practice achieves the statutory mandate of making ''fair comparisons'' and that it is well within the Department's authority to adopt such a methodology.

NTN Japan and NTN Germany agree with Torrington that the transaction to the first unaffiliated party in the United States should determine the level of trade.

Department's Position: We disagree with Torrington, NTN Japan, and NTN Germany. The statutory definition of ''constructed export price'' contained at section 772(d) of the Tariff Act indicates clearly that we are to base CEP on the U.S. resale price as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. See SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a ''constructed'' export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Tariff Act (''Additional Adjustments for Constructed Export Price''), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section.

Contrary to Torrington's assertions, this approach does not result in a reliance on what is in effect an ex-factory transfer price to the U.S. affiliate in our level-of-trade analysis. First, we note for clarity that transfer prices do not enter into our analysis because the CEP is a calculated price derived from the resale price. More importantly, Torrington's argument suggests inaccurately that the deductions we make under section 772(d) involve all direct and indirect selling expenses. As noted above, these deductions remove only expenses associated with economic activities in the United States. Thus, CEP is not a price exclusive of all selling expenses because it contains the same type of selling expenses as a directly observed export price.

Comment 2: Torrington argues that the Department erred by identifying levels of trade by reference to selling activities performed by the seller rather than functions performed by buyers. Torrington contends that the statute assigns independent meaning to the expression ''level of trade'' which is separate from the expression ''selling activities.'' Torrington then claims that the SAA does not require a different interpretation, despite a statement suggesting that a ''difference in the level of trade'' is equivalent to ''a difference between the actual functions performed by the sellers at the different levels of trade'' (citing SAA at 829). Torrington suggests that this statement contrasts starkly with other relevant SAA statements that indicate that ''level of trade'' has a meaning separate and apart from ''selling activities.'' Specifically, Torrington notes that the SAA speaks in terms of selling merchandise ''to'' different levels of trade, and suggests that it is meaningless to speak of different activities involved in selling ''to'' different activities. Finally, Torrington argues that the Department's focus on selling activities is susceptible to manipulation by respondents.

Torrington proposes that the Department should determine levels of trade by conducting its analysis along traditional lines; that is, the Department should focus on the functions of unaffiliated buyers in the market under consideration. In order to establish a basis for any level-of-trade adjustment, Torrington asserts, respondents should be required to demonstrate that different levels of trade exist, that different selling activities are involved at the levels, and that the differences are reflected in differences in price patterns. Torrington suggests that, if the Department retains the methodology it employed for the preliminary results, it should at least clarify the legal underpinning of that methodology; specifically, it should explain why it compared sales on the basis of the U.S. resale level of trade instead of the CEP level of trade. Torrington does not disagree with this approach but argues, as it did in Comment 1, above, that it appears to be an attempt to avoid distortive results inherent in the Department's methodology.

FAG Germany, FAG Italy, INA, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that nothing in the statute or SAA refers to functions performed by buyers in identifying levels of trade and that the Department's interpretation of the statute and SAA are proper. Koyo argues that the Department did not in fact equate level of trade with selling activities, but that the Department considered existing channels of distribution and determined, based on selling functions, that some channels constituted a different level of trade than other channels. Koyo suggests that this methodology is consistent with Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30335 (June 14, 1996).

Department's Position: We agree, in part, with Torrington. Torrington is correct that levels of trade are not defined solely in terms of selling functions. However, we disagree with Torrington that we should determine levels of trade by focusing primarily on buyer functions. We also disagree that, for CEP sales, the relevant ''buyer'' in the level-of-trade analysis is the unaffiliated U.S. customer.

While neither the statute nor the SAA defines level of trade, we agree with Torrington that the structure of the relevant provision in the statute (section 773(a)(7)(A)) uses the term ''level of trade'' as a concept distinct from selling activities. Specifically, this sub-section allows for a level-of-trade adjustment where there is a difference in levels of trade and that difference ''involves'' the performance of different selling activities. The SAA (at 829) also ascribes a meaning to level of trade that suggests that an analysis of selling activities alone is insufficient to establish the level of trade by suggesting that the Department could reasonably find that two sales with some common selling activities were nonetheless made at different levels of trade.

However, although the identity of the customer is an important indicator in identifying differences in levels of trade, the existence of different classes of customers, as well as different functions performed by such customers, is not sufficient to establish a difference in the levels of trade. Accordingly, we consider the class of customer as one factor, along with selling functions and the selling expenses associated with these functions, in determining the stage of marketing, *i.e.*, the level of trade associated with the sales in question.

Although we consider customer identity in determining levels of trade, we disagree with Torrington that, for CEP sales, the relevant customer in our level-of-trade analysis is the unaffiliated U.S. customer. Rather, it is the customer at the level of the CEP (*i.e.*, the U.S. affiliate for all companies with CEP sales in these reviews) for the reasons provided in our response to Comment 1, above.

Although we have not considered the customer category of unaffiliated U.S. purchasers in determining the level of trade of the CEP, we have considered the customer category of unaffiliated U.S. purchasers in matching CEP sales to HM sales (none of which are at the same level of trade as the level of the CEP), *i.e.*, in determining the CEP offset. *See* our response to Comment 7 for an explanation of the basis of this aspect of our methodology.

Comment 3: Torrington argues that the Department should require respondents to make a sale-by-sale demonstration of their level-of-trade claims. Torrington argues that CEP and NV are prices in specific sales transactions and that, even to a given customer, each sale does not necessarily involve the same activities. Torrington contends that, because no respondent attempted to identify selling activities on a sale-by-sale basis, the Department should reject all claimed level-of-trade adjustments and CEP offsets.

FAG Germany, FAG Italy, INA, Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR contend that Torrington's suggested standard of a sale-by-sale demonstration would be impossible given the number of transactions that respondents make and is required neither by the statute nor the SAA.

Department's Position: We disagree with Torrington that levels of trade must be demonstrated on a sale-by-sale basis. Given the complexity of this case, combined with the many thousands of transactions that respondents report, it would be impossible to make such a demonstration within statutory deadlines. This would effectively neutralize the level-of-trade aspect of the statute. Further, there is nothing in the statute or SAA indicating that determining levels of trade on the basis of identifiable groups of sales is inappropriate.

Comment 4: Torrington argues that the statute requires that level-of-trade adjustments may only be granted where it is established that there is a difference in prices ''due to'' the different functions performed by sellers involved. Torrington contends that no respondent demonstrated that differences in prices were due to differences in selling functions and, citing the response of one respondent, suggests that factors other than selling functions (such as competition) drive prices more than do selling functions. Torrington argues that the burden is on respondents to demonstrate that differences in prices are due to differences in selling functions and that, because no respondent has made such a showing, the Department should reject all claimed level-of-trade adjustments and CEP offsets.

Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that there is no ''due to'' standard for a level-of-trade adjustment as Torrington suggests. Respondents argue that a level-of-trade adjustment should be made when two facts are proven: (1) that different selling functions exist at each claimed level of trade, and (2) that there are price differences between claimed home market levels of trade.

Department's Position: We disagree with Torrington. The adoption of Torrington's proposed ''due to'' standard would impose an independent causation requirement upon both the level-of-trade-adjustment and CEP-offset provisions. Such a requirement is neither required by the statute nor administratively feasible.

Although Torrington is correct that the level-of-trade adjustment provision of the statute (section 773(a)(7) of the Tariff Act) requires a finding of price differences between the export price or CEP and NV ''due to'' differences in the levels of trade, Torrington's analysis ignores the fact that this provision provides a specific means of establishing this price effect: namely, based on a pattern of consistent price differences between sales at different levels of trade in the home market (or third country). As noted by respondents, in order to grant a level-of-trade adjustment, we must find that the export price or CEP sale (as appropriate) was made at a different level than that of the NV sale and that this difference involved (1) different selling activities, and (2) affected price comparability based on a pattern of consistent price differences between sales at different levels of trade in the home market (or third country). See section 773(a)(7)(A) of the Tariff Act. There is no causation requirement independent of the ''effect on price comparability'' requirement noted above. We note further that the statute merely requires that the price differences be ''wholly or partly due'' to differences in levels of trade; it does not require a determination of the exact price effect caused by level-of-trade differences and it would not be possible to do so, given the variety of market forces that affect the sales price of each transaction we review.

Comment 5: Torrington asserts that the SAA (at 830) instructs the Department to ensure that expenses previously deducted from NV are not deducted a second time through a level-of-trade adjustment, stating that ''Commerce will ensure that a percentage difference in price is not more appropriately attributable to differences in the quantities purchased in individual sales.'' Torrington notes that a number of respondents admitted that quantities affect price. Torrington argues, therefore, that because quantities may affect price as much as selling functions, a level-of-trade adjustment should not be granted.

Koyo, NMB/Pelmec, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR respond that the SAA language Torrington cites serves simply as a reminder not to double-count adjustments.

Department's Position: We agree with Torrington that we must not ''double-count'' expenses we deduct from NV. This is why we calculate level-of-trade adjustments and CEP offsets after making other adjustments to NV, so that we do not, in effect, deduct expenses such as rebates or warranty expenses twice. As far as quantity adjustments are concerned, we made no quantity adjustments for any respondents in this review. Therefore, no possibility of double-counting quantity adjustments exists.

Comment 6: Torrington argues that the selling function charts respondents prepared are inadequately supported by factual evidence. While Torrington acknowledges that the Department attempted to verify respondents'' claims, Torrington argues that the evidence the Department collected does not support all of the assertions respondents made. Torrington also claims that some of the assertions respondents made, such as the paucity of reported selling functions between a respondent and its U.S. affiliate, defy common sense.

FAG Germany, FAG Italy, Koyo, NSK, NTN Japan, NTN Germany, SKF France, SKF Germany, SKF Italy, and SNR argue that the Department conducted extensive verification of the information they provided in the charts to which Torrington refers, and NSK adds that it is less important whether the Department verified any individual assertion than that all assertions were subject to verification.

Department's Position: We disagree with Torrington. We have established an adequate factual base upon which to make determinations with regard to the levels of trade involved in the sales under review. As respondents note, we collected voluminous information prior to our verifications and, at verification, we examined the information respondents provided in detail. While we did not examine every piece of information that respondents submitted, it is not our practice, nor is it possible or required that we do so. See *Bomont Industries* v. *United States*, 733 F.Supp. 1507 (CIT 1990). As NSK suggests, the fact that the information is subject to verification is a strong incentive for accurate reporting. In these reviews, we have invested considerable time and effort at each verification to ensure the accuracy of respondents' level-of-trade claims and have found no discrepancies with regard to respondents' reported selling activities.

Comment 7: NSK and NSK/RHP argue that the Department should match CEP sales to home market OEM sales because home market OEM sales are the closest home market level of trade to the level of the CEP sales. NSK and NSK/RHP contend that, because the Department deducts all U.S. expenses from the sales price to arrive at CEP and because they reported similar selling activities associated with all sales to the affiliated reseller in the United States, all CEP

sales belong to the same level of trade. NSK and NSK/RHP state further that the CEP level of trade is a different and less-advanced level of trade than that involved in all home market sales. NSK and NSK/RHP contend that the statute and SAA direct the Department to identify and use the HM level of trade that is closest to that involved in the U.S. sale, since more remote HM levels are associated with higher prices. NSK and NSK/RHP contend that they and other respondents have demonstrated that prices to distributors for the aftermarket are higher than prices to OEM customers in the home market. NSK and NSK/RHP argue that it follows that the aftermarket level of trade is more remote than the OEM level of trade, and that the Department must compare CEP sales to home market OEM sales, excepting only those CEP sales for which no home market OEM matches exist.

NMB/Pelmec argues that the Department must base NV upon the most comparable level of trade as the U.S. sale and that HM distributor sales are the closest level of trade in the home market to CEP sales. NMB/Pelmec contends that the Department found that HM OEM sales were at a more advanced level of trade than HM distributor sales and that CEP sales were less advanced that either HM level of trade. NMB/Pelmec asserts that the Department's refusal to compare all CEP sales to its HM distributor level of trade is contrary to law.

Torrington responds to NSK by stating that, because U.S. resale transactions should be the relevant transactions for identifying level of trade, CEP sales do not necessarily represent a single level of trade. Torrington contends further that, even if CEP sales could be considered a single level of trade, all home market sales must still be considered and the Department must identify home market groups that correlate to U.S. transactions to ensure ''apples-to-apples'' comparisons. Finally, Torrington argues that price levels do not define levels of trade in either the statute or SAA.

Torrington responds to NMB/Pelmec by stating that the Department did not find that HM OEM sales were more advanced than HM distributor sales for NMB/Pelmec.

Department's Position: We disagree with NSK and NSK/RHP that we should prefer HM OEM sales in our matching methodology. We also disagree with NMB/Pelmec that we should prefer its HM distributor sales. We have determined that there is a single level of trade of the CEP for NSK, NSK/RHP, and NMB/Pelmec. For these respondents, and for respondents with CEP sales generally in these reviews, we usually had two possible home market levels of trade from which to choose when comparing CEP sales to home market sales. We concluded from the evidence on the record that CEP sales are all made at a less-advanced level of trade than any home market level of trade. See Preliminary Results at 35718–35723. We then determined which home market sales to compare with CEP sales.

Where there are no home market sales at the same level of trade as the U.S. sale, the statute does not require that we match the U.S. sale to home market sales at the closest level of trade. Under the circumstances of these reviews, in order to calculate the CEP offset as accurately as possible, we matched sales in each market likely to include similar categories of selling expenses—OEM sales in the United States to OEM sales in the home market and aftermarket sales in the United States to aftermarket sales in the home market. Thus, we determined the CEP-offset ''cap'' for home market sales to OEMs on the basis of the indirect selling expenses for sales in the United States to OEMs and we determined the CEP-offset cap for aftermarket sales in the home market on the basis of the indirect selling expenses for aftermarket sales in the United States.

NSK and NSK/RHP have asserted that we should have compared their CEP sales to their home market OEM level of trade because it is closer to the level of the CEP than their aftermarket level of trade; conversely, NMB/Pelmec contends that we should compare its CEP sales to its home market distributor sales because such sales are made at a level of trade that is closer to the level of the CEP. As described above, under the circumstances presented in these reviews, it is more appropriate to match CEP sales to HM sales based on the category of the unaffiliated U.S. customer. Furthermore, these respondents' assertions are not sufficiently supported by factual evidence. We did not find that one HM level of trade for either company, or for any respondent in these reviews, has conclusively more selling functions than another HM level. Rather, the HM levels of trade each involve different degrees of various selling functions.

For instance, we found that selling functions at the OEM level typically emphasize technical services, sales calls to end users, and price negotiation with the customer, among other services, while selling functions at the distributor/aftermarket level typically emphasize advertising, inventory maintenance, and packing. This shows that the HM levels of trade are different, but it does not demonstrate that one level is necessarily more advanced than the other. Indeed, the fact that NSK and NSK/RHP argue that the OEM level is less advanced than the distributor/aftermarket level, while NMB/Pelmec argues the reverse, demonstrates the difficulty in ranking these HM levels.

We have concluded therefore that we can make no determination from the evidence on the record that any home market level of trade is more or less advanced than any other home market level of trade. The conclusion we draw from the evidence on the record is, as a general matter, that levels of trade defined as ''OEM'' are different from, but not necessarily more or less advanced than, those defined as ''distributor/aftermarket.'' As Koyo points out correctly with regard to another comment (see Comment 1, above), there is no prohibition or denigration of such a practice in either the statute or SAA. However, this still leaves us with an uneven match because the level of trade of the CEP is less advanced than either home market level of trade. Therefore, in such cases, because we have no basis upon which to calculate a level-of-trade adjustment and because the level of trade of the CEP is less advanced than either home market level of trade, we have granted a CEP offset.

We also disagree with NSK's and NSK/RHP's assertion that, because OEM prices are lower than distributor/aftermarket prices, the OEM level of trade is less advanced than the distributor/aftermarket level of trade. As described above, we concluded that the OEM level of trade and the distributor/aftermarket level of trade are different from each other but neither is more or less advanced than the other. The fact that OEM prices were higher for some respondents and lower for other respondents than distributor/aftermarket prices in spite of the relatively constant selling functions among respondents suggests to us that our conclusions about the home market levels of trade are correct.

In any event, differences in prices do not determine the existence of levels of trade. As noted above, we only make level-of-trade adjustments when there is a difference in prices shown to be wholly or partly due to differences in levels of trade. The differences in prices, however, have nothing to do with our determination of whether different levels of trade exist. We determine whether one level of trade is more advanced than another on the basis of the selling functions performed by a

respondent with respect to the two levels of trade. OEM and distributor/aftermarket sales are more advanced than the level of trade of the CEP because comparatively fewer selling functions are associated with the CEP than are performed for sales to either of the other levels of trade. This, and not any likelihood that sales to the level of trade of the CEP may be made at a lower price than sales to the other two levels of trade, is the basis for our granting a CEP offset.

Comment 8: NTN Japan and NTN Germany argue that it is inconsistent for the Department to deny NTN a price-based level-of-trade adjustment merely because there is no home market equivalent to CEP. NTN argues further that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level-of-trade adjustment and that this would be consistent with the Department's matching methodology. NTN argues that the Department's approach effectively precludes a level-of-trade adjustment for CEP sales and contends that there is nothing in the SAA or the legislative history that specifies that a level-of-trade adjustment can only apply to export price transactions.

Torrington argues that NTN should not be granted a level-of-trade adjustment for the reasons given in Torrington's affirmative case brief. See Comments 1 through 6 of this section, above.

Department's Position: We disagree with NTN Japan and NTN Germany. As we noted in response to Comment 1, above, the level of trade is determined for the transaction between the exporter and its affiliated importer. As with other respondents in these reviews, after we have deducted the importer's expenses from resale prices pursuant to section 772(d), the level of trade of the CEP was not equivalent to the levels reported for any HM sales. Because NTN Japan's and NTN Germany's level of trade of the CEP sales was less advanced than any of their HM levels, we made a CEP offset to NV for all of NTN Japan's and NTN Germany's CEP sales.

Comment 9: Koyo argues that it qualified for a level-of-trade adjustment for CEP sales but that the Department erroneously granted only a CEP offset. Koyo contends that the Department calculated the level of trade for CEP sales correctly on the basis of the sale to the unaffiliated party as adjusted for selling, movement, and other expenses pursuant to the statute. Koyo argues that it established that it had different levels of trade in both the United States and the home market and that it demonstrated that these differences affected price comparability. Koyo argues that the fact that there is no HM level of trade analogous to the level of trade of the CEP should not prevent the Department from making a level-of-trade adjustment. Rather, the Department should use Koyo's suggested methodology of constructing a home market level of trade analogous to the adjusted CEP. Koyo argues that this provides the Department with the data and means necessary to provide a price-based level-of-trade adjustment for CEP comparisons. Koyo contends that its suggested methodology implements the relevant instructions of the URAA properly. Finally, Koyo argues that the Department's denial of a level-of-trade adjustment for CEP sales effectively eviscerates the statutory level-of-trade provision, since there will never be a HM level equivalent to the level of trade of the CEP.

Torrington argues that Koyo's suggested use of constructed NV is an attempt to circumvent the statute and should be rejected. Torrington contends that nowhere does the statute suggest that a level-of-trade adjustment can be based on constructed HM prices and that, if the data available do not allow the demonstration required by the statute, then no level-of-trade adjustment is permitted.

Department's Position: We agree with Torrington. We may not base level-of-trade determinations or adjustments upon ''constructed,'' or artificial, HM levels. Koyo's claimed constructed NV levels of trade are not levels at which Koyo actually sold AFBs in the home market during the POR. As stated above, we use starting prices in determining whether different levels of trade exist. There is no statutory basis for us to ''construct'' levels in the home market or elsewhere. Because Koyo was unable to show a pattern of consistent price differences between its level of trade of the CEP and its HM levels, we did not make a level of trade adjustment for Koyo's CEP sales. However, because the level of Koyo's CEP was less advanced than any of its HM levels, we made a CEP offset to NV for all of our comparisons of Koyo's CEP sales.

Comment 10: SNR argues that the Department should have granted it a level-of-trade adjustment, rather than a CEP offset, for comparisons of CEP sales to HM distributor sales. SNR notes that the Department determined correctly that there were two HM levels of trade, which were both more advanced than CEP. SNR argues, however, that, although the HM OEM level is more advanced than the level of the CEP, the HM OEM and CEP are similar, and that the Department should make a level-of-trade adjustment when comparing CEP sales to HM distributor sales, which SNR contends are made at a more advanced level of trade. SNR asserts that, because the OEM level of trade is more advanced than the level of trade of the CEP, its claim of the price difference between the distributor level of trade and OEM level of trade is less than it would be were a HM level of trade equivalent to the level of trade of the CEP. SNR also argues that it should continue to receive the CEP offset when the Department compares CEP sales to HM OEM sales.

Torrington argues that SNR is not entitled to its claimed level-of-trade adjustment because it did not provide supporting evidence for its contention that the level of trade of the CEP and OEM sales were similar. Moreover, Torrington contends, the Department did not indicate that it found the levels of the CEP and OEM sales to be similar.

Department's Position: We disagree with SNR. We found SNR's CEP level of trade and its home market OEM level of trade to be separate, distinct levels of trade. There is no HM level of trade analogous to that of CEP sales. Therefore, there is no basis upon which to calculate a level-of-trade adjustment. Concerning SNR's suggestion that we grant a level-of-trade adjustment equal to the difference between HM OEM and HM distributor sales because OEM sales are allegedly similar to CEP sales and are, in any event, closer to CEP sales than distributor sales, we note that SNR demonstrated neither that HM OEM sales are similar to CEP sales nor that OEM sales are less advanced than distributor sales. SNR demonstrated only that it had two distinct HM levels of trade, both of which were more advanced than the level of trade of the CEP. Therefore, we conclude that a CEP offset is appropriate for all of SNR's CEP sales.

Comment 11: NTN contends that the Department should make a CEP offset to NV based on CV in instances where it matches U.S. sales to CV. NTN claims that NV based on CV is not comparable to the level of trade of the CEP. Therefore, NTN asserts, those sales are eligible for a CEP offset. NTN requests that the Department make such an adjustment for the final results.

Department's Position: We agree with NTN. As noted in the introductory remarks to this section, where NV was based on CV, we determined the NV level of trade based on the level of trade of the sales from which we derived SG&A and profit for CV. Therefore, because we derived SG&A and profit for CV from home market sales, we

determined that the NV levels of trade for CV are equivalent to levels of trade in the home market. Furthermore, we note that the statute, at section 773(a)(8), permits us to make the same adjustments to NV when it is based upon CV as we make to NV based upon prices. Thus, for NTN's CEP sales, we determine that a CEP offset is appropriate when NV is based upon CV. See our introductory remarks for this section, above, for a discussion of why we determine that a CEP offset is appropriate for CEP sales in this case. Finally, we note that we made CEP offsets to CEP sales we compared to CV in the preliminary results, and we have not changed this practice for the final results.

6. Cost of Production and Constructed Value

A. Cost-Test Methodology. Comment 1: Torrington argues that the statute requires the Department to apply two tests to determine whether sales are below the cost of production and to disregard sales if either test is met. Torrington contends that below-cost sales must be disregarded if either: (1) The volume of such sales represents 20 percent or more of the volume of sales during the period of review, or (2) the weighted-average per-unit price of the sales under consideration is less than the weighted-average per-unit cost of production. Torrington contends that the Department only applied the first test in the preliminary results and argues that the Department should apply both tests for the final results.

FAG Germany argues that the Department correctly and reasonably declined to invoke the second substantial-quantities test in its cost investigation. Respondent contends that the statute does not specifically direct the Department to use both tests and argues further that the SAA, at 832, indicates that the second test was meant to be used in cases involving highly perishable products.

Department's Position: We disagree with Torrington. We first note that both of the above tests concern only one aspect of the determination whether to disregard below-cost sales from our analysis, namely whether sales made at prices below the cost of production were made in substantial quantities. Neither the statute at section 773(b)(2)(C) nor the SAA require that both tests be performed in any given proceeding; the SAA in fact indicates that the second test is the measurement of substantial quantities in cases involving highly perishable agricultural products (as was the case under the pre-URAA statute). Not only does this indicate that only one substantial-quantities test is to be performed, but it also clarifies the circumstances under which use of the second test is appropriate.

Comment 2: Torrington claims that the Department should default to NV based on a family match when sales of an identical match are disregarded as below cost, rather than default to NV based on CV. Petitioner argues that, because family matches are sales of the foreign like product, section 773(b)(1) requires the Department to use these ''remaining sales of the foreign like product in the ordinary course of trade'' in its comparisons to U.S. sales when sales of identical matches have been disregarded as below cost. Torrington believes that defaulting to family matches conforms to the Department's long-standing preference for using sales rather than costs. INA, FAG-Italy, and FAG-Germany agree with Torrington.

SKF responds that Torrington misconstrues the selection process for sales comparisons. Respondent points out that the selection of the foreign like product is conducted prior to, and independently of, the cost test. SKF explains that section 771(16) of the Tariff Act authorizes the selection of the foreign like product based on a comparison of physical characteristics to those of the U.S. merchandise whereby once a match is determined, that specific home market merchandise is the single foreign like product. SKF comments that there is no devolution to a ''second-best'' foreign like product. Therefore, SKF contends, in AFBs, when there are sales of identical merchandise, that merchandise is the foreign like product and there is no authority to then default to a family match, even when the identical match is disregarded as below cost.

SNR notes that the changes in the language of section 773(b) of the Tariff Act were made to implement the new twenty-percent cost test in place of the Department's previous 10–90–10 test. In SNR's view, Congress did not intend that this change alter the selection of foreign like product. SNR mirrors SKF's contention that section 771(16) of the Tariff Act does not sanction a cascade search for foreign like product. SNR contends that section 771(16) of the Tariff Act identifies merchandise in the first applicable category as the foreign like product, not any applicable category of merchandise.

Department's Position: We disagree with Torrington, INA, FAG-Italy, and FAG-Germany. While our cost-test methodology has changed in accordance with the new law, our methodology for selecting the foreign like product has not. Section 771(16) of the Tariff Act directs us to select the foreign like product ''in the first'' of several categories: identical in physical characteristics, similar in physical characteristics and commercial value, or of the same general class or kind that can be reasonably compared. The Department interprets the reference in section 773(b)(1)(B) of the Tariff Act to basing NV ''on the remaining sales of the foreign like product in the ordinary course of trade'' to mean the selected foreign like product, not a succession of foreign like products.

We clarified our methodology in *AFBs* V at 66490–91 when we stated that, in pre-URAA instances where between ten and ninety percent of sales of a model are below cost, we disregarded the individual below-cost sales in calculating foreign market value and we used the remaining contemporaneous above-cost sales of such models in our analysis, matching such sales in the same manner that we matched all HM sales. Where we did not have remaining contemporaneous above-cost sales of the most physically comparable model, we relied on CV as the basis for foreign market value. Otherwise, we would have made successive model matches and allowed the effects of the cost test to play a role in determining the comparability of merchandise, a criterion not found in the definition of such or similar merchandise at section 771(15) of the pre-URAA law.

Similarly, the definition of foreign like product at section 771(15) of the Tariff Act does not include the results of the cost test as a criterion for comparability. Therefore, when section 773(b) of the Tariff Act, as amended by the URAA, directs us to rely on CV when ''no sales made in the ordinary course of trade remain,'' we search our 90/60-day contemporaneity window to determine whether sales of the best model for comparison survive the cost test. We have a longstanding practice of considering sales within 90 days before and 60 days after the month of the U.S. sale to be acceptable as potential comparators (see Certain Small Business Telephone Systems and Subassemblies Thereof form Korea: Final Results of Antidumping Administrative Review, 57 FR 8300 (March 9, 1993); Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review, 61 FR 1332 (January 19, 1996); *AFBs III* at 39735). Consistent with this practice and section 773(b) of the Tariff Act, we have resorted directly to CV where we have disregarded all contemporaneous identical HM sales as below cost instead of determining whether

contemporaneous sales of a less-similar model would survive the cost test and remain available as comparators.

Comment 3: NSK–RHP argues that the Department should either adjust COP to exclude credit expenses or not deduct these expenses from home market prices it uses in the below-cost test. NSK–RHP asserts that, since the Department deducted credit expense from home market price, it must make the same deduction from the interest expense it added as part of the SG&A expenses to NSK–RHP's COP to avoid comparing a home market price net of credit expenses to a COP that includes this expense.

Torrington argues that the Department should neither adjust COP to exclude credit expense nor deduct these expenses from the home market prices it uses in the below-cost test. Torrington suggests that it is not proper to deduct imputed credit expenses from COP unless the COP included an amount for imputed credit expenses. Torrington claims that NSK–RHP fails to demonstrate that the Department included these expenses in its COP calculations. Also, Torrington contends, the record does not indicate that the COP that NSK-RHP reported included an amount for the imputed credit expenses. Torrington states that the Department should therefore not adjust its methodology.

Department's Position: We agree with NSK-RHP that we should not deduct credit expenses from home market prices we used in the below-cost test. We do not adjust for imputed expenses in the COP analysis. For the final results, we have corrected our calculations and have not adjusted the HM prices for credit expenses before applying the below-cost test. In accordance with section 773(b)(3)(B) of the Tariff Act, which requires that we base COP on actual costs, we have not included imputed costs, such as the imputed credit expense at issue, in calculating NSK-RHP's COP. We have included an interest expense in deriving COP based on actual expenses. Because we include actual interest expenses in deriving the COP, it is inappropriate to reduce home market prices that we compare to COP in the below-cost test by the amount of any imputed expenses.

B. Research and Development.

Comment 1: Torrington asserts that the Department must apply facts available to SNR's R&D costs due to the lack of more precise information from the respondent. Torrington alleges that SNR reported R&D as ''general expenses'' in its response and did not assign R&D on a model-specific basis although SNR's Annual Report suggests that it incurred product-specific and/or product-line R&D. Torrington contends that because SNR did not provide R&D on a model-specific basis, the Department should apply, as facts available, the highest R&D costs by any other respondent, which will ensure that none of SNR's bearing models has understated R&D.

SNR responds that Torrington provides no support for its suggestion that the Department use facts available to restate R&D costs. SNR argues that it treated R&D as a general expense because the expenses are of a general nature and the company's records do not segregate these expenses by product or product line. SNR contends that the general references in its Annual Report do not suggest that SNR segregates R&D expenses by product or product line. Moreover, SNR contends that Torrington did not provide any specific facts to illustrate that SNR has records to separate R&D expenses on a product-line basis.

Department's Position: We disagree with Torrington that SNR's Annual Report's references to certain products indicates that the company keeps track of R&D expenses on a product-specific basis. Neither the record nor our verification has provided us with any basis for concluding that SNR's R&D expenses are recorded on a product-specific basis. Furthermore, at verification, we did not find that SNR's R&D allocation methodology was unreasonable, given SNR's record-keeping practices. Accordingly, for the final results, we have accepted SNR's reported R&D costs as general expenses.

Comment 2: Torrington suggests that the Department should ensure that SKF Germany has allocated the R&D expenses of ERC (the SKF group's basic R&D operation) properly to German merchandise. Torrington argues that it is not clear that SKF Germany's allocation is a rational allocation, *i.e.*, that SKF Germany's ownership share is proportional to the R&D benefit it receives. Torrington notes that the parent company, AB SKF, holds an ownership interest in ERC, which Torrington contends could dilute the proportion of expenses attributed to the producing entities such as SKF Germany. In addition, Torrington claims that the allocation does not account for differences among several classes or kinds of products. Torrington suggests that, as facts available, the Department should allocate the total R&D expense of ERC to each SKF company, thus ensuring that R&D is not understated for any given country.

SKF Germany responds that, because the R&D expenses are allocated based on ownership of the producing companies, no disproportionate amount could have been allocated to the producing company not under review, SKF Sverige AB, as Torrington suggests.

Department's Position: We agree with SKF Germany. The CIT has upheld our use of expenses recorded in a company's financial statements when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See *Laclede Steel Co.* v. *United States,* Slip Op. 94–160 at 22 (CIT 1994). In this review, we are satisfied that SKF Germany allocated ERC expenses properly and Torrington provides no evidence to the contrary, so we have accepted SKF Germany's methodology, as we have in prior reviews. As SKF Germany indicated in its May 24, 1996 pre-preliminary comments, it did not allocate any ERC expenses to the parent company, AB SKF, but only to the producing companies based on their proportionate ownership shares in ERC. We have no reason to believe that this allocation methodology is unreasonable.

C. Profit for Constructed Value.

Comment 1: Torrington contends that the Department improperly included home market sales that failed the below-cost test, as set forth in section 773(b) of the Tariff Act, in the calculation of profit for CV. Torrington states that the Department calculated CV profit pursuant to the ''preferred'' methodology as provided at section 773(e)(2)(A) of the Tariff Act, which requires that the sales used to calculate profit must be made in the ordinary course of trade. Torrington claims that sales that fail the below-cost test are outside the ordinary course of trade, as defined in section 771(15) of the Tariff Act and, therefore, must be excluded from the CV-profit calculation.

Torrington states that applying the statute in this manner is the only way to implement the compromise made in the URAA legislation, whereby the statutory minima for profit and SG&A were eliminated subject to the understanding that the Department would generally not include below-cost sales in the CV-profit calculation. Torrington contends further that this failure to disregard sales that failed the below-cost test runs contrary to sections 2.2.1 (ordinary course of trade) and 2.2.2 (profit for CV) of the Uruguay Round Antidumping Agreement.

SKF, NSK, SNR, FAG, and NTN respond that the Department properly included sales that failed the below-cost test in the CV-profit calculation because this calculation was not made under the authority of section 773(e)(2)(A), but was instead made pursuant to the

''alternative'' profit methodologies provided at section 773(e)(2)(B). These latter methodologies do not require that CV profit be based on sales made in the ordinary course of trade (alternatives (B)(i) and (B)(iii)).

SKF and NSK state that section 773(e)(2)(A) is inappropriate in this case because this section bases the CV profit calculation on sales of the ''foreign like product,'' which do not exist when NV is based on CV. SKF argues that, where CV is used because there are no appropriate identical or family matches, there would be no sales of ''a foreign like product'' to calculate a profit amount, and notes that the URAA's specific use of ''a foreign like product'' and the SAA's use of the words ''particular merchandise'' make clear that the first method for the calculation of CV profit requires reliance on a narrow universe of products. SKF and NSK state that the most appropriate methodology is that established in section 773(e)(2)(B)(i), which requires the use of company-specific data regarding the same general category of merchandise. SKF adds that this provision does not require that such sales be made in the ordinary course of trade.

SNR and FAG state that section 773(e)(2)(A) is inappropriate because this provision requires that CV profit be based on the ''actual amounts'' of home market profits realized by respondents, which is not possible in this case due to sampled home market databases. SNR and FAG assert that sampled sales do not provide complete actual profits and cannot be guaranteed as representative of actual profits. SNR and FAG contend that sections 773(e)(2)(B) (i) and (ii) are inappropriate for the same reason and recommend the calculation of profit under section 773(e)(2)(B)(iii) (any other reasonable method), which does not require that CV profit be based on sales made in the ordinary course of trade. NTN agrees with these respondents that profit amounts in this case could reasonably be based on the ''alternative'' profit methodologies established at section 773(e)(2)(B) of the Tariff Act.

INA, FAG, NTN, and NMB/Pelmec contend further that, even if the Department calculates CV profit pursuant to a provision that requires the use of sales made in the ordinary course of trade (*e.g.*, section 773(e)(2)(A)), sales that fail the below-cost test are not necessarily outside the ordinary course of trade. INA and FAG note that the section 771(15) definition of ''ordinary course of trade'' states that the Department shall consider such sales to be outside the ordinary course of trade, not that the Department shall conclude that such sales are in fact outside the ordinary course of trade. FAG and INA note further that the SAA (at 839) provides that the Department *may* disregard such sales in calculating CV profit using the section 773(e)(2)(A) methodology, not that it *shall* disregard such sales. INA suggests that the sales of AFBs that fail the below-cost test are not outside the ordinary course of trade, as the Department has consistently found that producers regularly sell AFBs below cost as well as above cost in their home markets. INA notes further that it is rational for firms to sell at prices below fully allocated costs, provided that they are above marginal costs. INA contends that including sales at one end of the spectrum while excluding sales at the other end of the spectrum (*i.e.*, sales transactions with abnormally high profits) would result in irrational and unrepresentative profit figures, which would be contrary to the objective set forth in the SAA.

SKF and NTN argue that, if the Department disregards sales that failed the below-cost test in the calculation of profit for CV, it should make certain adjustments to the calculation in order to derive a non-distortive profit rate. SKF requests that the Department include such sales in the denominator of the calculation and assign a profit rate of zero to such sales in the numerator. SKF argues that, by doing so, the Department would ensure that it is using a methodology that results in a numerator that reflects the ''actual amounts [of profit] * * * realized'' by foreign producers on sales ''in the ordinary course of trade.'' In other words, SKF suggests that the Department set profit for disregarded sales to zero while retaining the full costs of those sales in the calculation. NTN requests that the Department exclude sales that earned abnormally high profits from the calculation, asserting that these sales are also outside the ordinary course of trade.

Department's Position: We agree with Torrington that we should not include sales that failed the below-cost test in the calculation of profit for CV, because these sales fall outside the ordinary course of trade. As we stated in the preliminary results of review, we have calculated CV profit using the profit methodology as stated in section 773(e)(2)(A) of the Tariff Act. This provision requires that profit be based on sales made in the ordinary course of trade which, in turn, do not include sales that we disregarded as a result of the below-cost test. *See* section 771(15) of the Tariff Act. The fact that our preliminary margin calculations did not reflect our decision to disregard such sales in the CV-profit calculation was a ministerial error on our part.

We disagree with SKF and NSK that we do not have any ''foreign like products'' for use in calculating CV profit, and that we should therefore calculate profit using one of the alternative profit calculations contained at section 773(e)(2)(B). Respondents' definition of the term ''foreign like product'' is overly narrow with respect to its use in the CV-profit provisions. In applying the ''preferred'' method for calculating profit (as well as SG&A) under section 773(e)(2)(A), the use of aggregate data that encompasses all foreign like products under consideration for NV represents a reasonable interpretation of the statute and results in a practical measure of profit that we can apply consistently in each case. By contrast, an interpretation of section 773(e)(2)(A) that would result in a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping proceedings without generating more accurate results. It would also make the statutorily preferred CV-profit methodology inapplicable to most cases involving CV.

We also disagree with SNR and FAG that we must base our CV profit calculation on ''any other reasonable method,'' as provided in section 773(e)(2)(B)(iii), due to a lack of ''actual data'' regarding profit amounts realized by respondents. Although the home market sales and cost data that we use in calculating CV profit was provided on a sampled basis, this does not render such data inappropriate or ''not actual'' for purposes of this calculation. Pursuant to the statutory authority provided at section 777A of the Tariff Act, we routinely use data in our analysis that has been reported on a sampled basis, due to the large number of reviews that we must conduct as well as the large number of individual transactions involved therein, particularly in these AFBs reviews. Sampled data is, nonetheless, actual data regarding the sales, costs, and profits involved in sales made during the POR. In fact, we are permitted to use sampled data only when such samples are statistically valid. Further, an interpretation that sampled data is not actual data could render alternative CV-profit methodologies, including the preferred methodology provided at section 773(e)(2)(A), inappropriate in any case involving sampled home market reporting. As the statute does not

explicitly provide for such an automatic elimination of these profit methodologies in such cases, it is not reasonable to read such an interpretation into it.

We disagree with INA, FAG, NTN, and NMB/Pelmec that, in calculating CV profit pursuant to the preferred methodology, we should nonetheless consider that sales that failed the below-cost test are not outside the ordinary course of trade in this case. Contrary to respondents' assertions, the statutory definition of ''ordinary course of trade'' explicitly provides that sales that are disregarded under section 773(b)(1) of the Tariff Act are automatically considered to be outside the ordinary course of trade. See section 771(15) of the Tariff Act. Respondents are ascribing a discretionary meaning to the term ''consider'' that does not exist in the context of this provision.

Finally, we disagree with SKF that, in using section 773(e)(2)(A), we should retain the full costs of disregarded sales while setting those sales' profits to zero. Because these sales are not in the ordinary course of trade, the use of partial information from the sales would distort the profit rate for sales in the ordinary course of trade. We disagree with NTN that we should consider sales that earned allegedly abnormally high profits as outside the ordinary course of trade for the reasons provided in the *Samples, Prototypes, and Ordinary Course of Trade* section of these final results.

Comment 2: Torrington argues that the Department should presume that individual below-cost sales of models for which below-cost sales comprised between zero and twenty percent of total sales are outside the ordinary course of trade, and should exclude them from its CV-profit calculations. Torrington submits that these below-cost sales are outside the ordinary course of trade unless respondents make a definitive showing to the contrary, such as for obsolete or end-of-year merchandise, and states that no such demonstrations were made in this review.

Respondents disagree with Torrington's suggestion that individual below-cost sales of models that passed the below-cost test, but for which certain transactions were identified as below cost, should be eliminated from the CV-profit calculation. Respondents contend that section 771(15) identifies only below-cost sales that have been disregarded under section 773(b)(1) as outside the ordinary course of trade. Respondents assert that the Department cannot presume that all below-cost sales are outside ordinary course of trade.

Department's Position: We disagree with Torrington that individual below-cost sales of models that passed the cost test, but for which certain transactions were identified as below cost, should be excluded from the calculation of CV profit. We agree with SKF that these sales do not meet the criteria of section 771(15) as being outside the ordinary course of trade.

In calculating CV profit, the automatic exclusion of all below-cost sales would be contrary to the statute. Although we have included only sales made in the ordinary course of trade for the reasons stated in our response to Comment 1, above, the definition of ordinary course of trade provides that only those below-cost sales that are ''disregarded under section 773(b)(1)'' of the Tariff Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales of the foreign like product are below cost does not automatically trigger their exclusion. Instead, such sales must have been disregarded under the cost test before we will exclude these sales from the calculation of CV profit.

Comment 3: FAG Italy and FAG Germany assert that the Department's methodology for calculating CV profit in the preliminary results was incorrect for three reasons. The FAG companies first contend that the Department must calculate CV profit based on home market sales of merchandise having equivalent commercial value to matching U.S. sales. FAG claims that reported home market bearings that are equivalent in commercial value to comparable U.S. bearings are those having an equivalent actual profit, and any home market sales with rates of profitability greater than the weighted-average rate of profitability of reported U.S. sales should be disregarded as outside the ordinary course of trade. FAG also contends that, in accordance with section 771(16), CV profit must be manufacturer-specific, claiming that this requires separate CV-profit calculations for each bearing type manufactured by respondents or purchased by respondents from an unrelated supplier. Finally, FAG argues that the Department must calculate CV profit based on the entire selling experiences and pricing patterns of the company throughout the review period rather than on only those sales reported in the home market database (citing *AFBs IV* at 10959).

Torrington responds that the Department should not revise its methodology for calculating CV profit as FAG suggests. Torrington argues that none of the statutory provisions respondents cite provide that the Department must base CV profit on home market sales of merchandise having equivalent commercial value to matching U.S. sales. Torrington contends further that FAG has failed to demonstrate that home market sales with rates of profitability greater than the weighted-average rate of profitability of reported U.S. sales are outside the ordinary course of trade. Torrington asserts that neither the statute nor the SAA impose such a ''profitability cap.'' Torrington also disagrees with FAG's contention that the Department must calculate CV profit for each bearing type manufactured by respondents or purchased by respondents from unrelated suppliers, arguing that the statute respondents cite does not support the companies'' position. Regarding FAG's final argument that the Department should calculate CV profit based on the entire selling experiences and pricing patterns of the company throughout the review period, Torrington contends that the Department's approach of using a sample of the entire selling experience and pricing patterns (*i.e.*, the home market sales database) is appropriate and in accordance with the statutory authority to use sampling techniques.

Department's Position: We agree with Torrington. First, there is no statutory provision or SAA reference requiring a determination of equivalent commercial value in the calculation of profit for CV. To the contrary, the imposition of a CV-profit ''cap'' based on profits realized on U.S. sales is at odds with the statutory requirement that we calculate CV using home market SG&A and profit figures for comparison with U.S. sales. Second, we disagree with FAG that we are required to calculated manufacturer-specific CV-profit rates as it suggests. Pursuant to section 773(3)(2)(A) of the Tariff Act, we calculated profit for the specific exporter, *i.e.*, FAG, being examined. Therefore, we have computed profit based on all sales of the foreign like product occurring in the ordinary course of trade. With respect to FAG's argument that we should base CV profit on the company's entire POR selling experience, and not on sampled home market sales of the foreign like product, as noted in our response to Comment 1, we calculated CV profit using the HM database because the applicable CV-profit provision (section 773(e)(2)(A)) requires that we calculate profit based on the actual profit amounts realized on sales of the foreign like product in the ordinary course of trade.

Comment 4: Asahi contends that the Department's calculation of profit for CV is incorrect. Asahi states that, if the Department had applied the arm's-

length test with an adjustment to prices for differences in level of trade, the Department would not have eliminated certain sales to affiliated parties from the profit calculation. Asahi contends that, to calculate profit correctly, the Department must use all sales Asahi reported that are at arm's length as determined by an arm's-length test that includes an adjustment for differences in levels of trade.

Department's Position: We disagree with Asahi. For the reasons specified in our response to the comment in section 9, we are not revising the arm's-length test as suggested by Asahi and, therefore, the universe of sales used in the calculation of profit for CV remains the same.

D. Affiliated-Party Inputs. Comment 1: NSK argues that the Department should use the transfer price paid by NSK to affiliated suppliers for parts instead of the affiliated suppliers' COP data. NSK argues that the Department has no authority to request COP data from affiliated suppliers for any inputs. NSK contends that the finding of below-cost sales in prior reviews does not provide a reasonable basis to infer that NSK's suppliers are transferring inputs to NSK at prices below the cost of production. NSK asserts that there is a burden on the petitioner to come forward with some evidence that input dumping is occurring before the Department can collect, or use, supplier's cost information, and NSK comments that the petitioner has never alleged and the Department has not substantiated that there were reasonable grounds to believe or suspect that the prices at which NSK purchased major inputs from affiliated suppliers were less than their costs of production before the Department requested the cost data. NSK also argues that the fact that the Department found below-cost sales in prior reviews suggests that NSK is paying prices at or above market prices for inputs and, accordingly, has higher costs.

Torrington responds that the Department's request for, and use of, COP data for parts purchased from affiliated suppliers was proper and in accordance with law. Torrington asserts that the statute does not impose the burden upon petitioner to submit evidence that transfer prices for parts purchased from affiliated suppliers were made at prices less than their COP. Torrington contends that, because affiliated-party transfers are a suspect category under the law and because the foreign manufacturers and their subsidiaries have access to the best information for purposes of analyzing transfer prices, it has been the Department's practice to require respondents to submit evidence concerning affiliated-party inputs since enactment of section 773(e)(3) (now section 773(f)(3)). Torrington also contends that the Department has rejected this argument in prior reviews and that the CAFC has upheld the Department in this practice, citing *NSK III* at 6.

Department's Position: We disagree with NSK. Section 773(f)(2) of the Tariff Act, which refers to both minor and major inputs, states that, with regard to calculating COP and CV:

> ''[a] transaction * * * between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.''

We do not interpret this language to impose any prohibitions or limitation to the Department's authority to request COP data on inputs from affiliated suppliers. Further, the CIT, in *NSK I,* held that ''section 1677b(e)(3) [which corresponds to section 773(f)(3) in the current law] does not limit Commerce's authority to request COP data pursuant to section 1677b(e)(2) [which corresponds to section 773(f)(2) in the current law]'' (*NSK I* at 669).

We generally use the transfer price of inputs purchased from an affiliated supplier in determining COP and CV, provided that the transaction occurred at an arm's-length price. In determining whether a transaction occurred at an arm's-length price, we generally compare the transfer price between the affiliated parties to the price of similar merchandise between two unaffiliated parties. If transactions of similar merchandise between two unaffiliated parties are not available, we may use the affiliated supplier's cost of production for that input as the information available as to what the amount would have been if the transaction had occurred between unaffiliated parties.

In the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.

We cannot assume that, because we found below-cost sales in prior reviews, NSK is paying prices at or above market prices for inputs, as NSK asserts. Further, the statute does not impose any burden on either the petitioner or the Department to demonstrate that major inputs were purchased at below-cost transfer prices, so long as we have other reasonable grounds to believe or suspect that a respondent purchased major inputs at below-cost transfer prices. Such grounds exist when we also have reasonable grounds to believe or suspect that a respondent's sales of subject merchandise in the home market are or may be occurring at below-cost prices.

With regard to NSK's situation, we note that we made an error in our preliminary results. NSK submitted market prices as well as transfer prices for those inputs which it also purchased from unaffiliated suppliers. On the basis of our review of this evidence, we have concluded that the transfer prices were generally not made at arm's length. Therefore, for the final results, we used the market price reported for all inputs, unless the market price was below the transfer price. For major inputs, if both the market price and transfer price were below cost, we used the cost of production of the input. For minor inputs, we used the cost of production as a surrogate for market price only where market prices did not exist. Where NSK reported market prices from more than one unaffiliated supplier, we used the weighted-average price of the unaffiliated suppliers' prices as the market price.

Comment 2: NSK argues that, in the case of a certain affiliated supplier, the Department should determine that transfer prices of parts NSK purchased from this supplier fairly reflect market value and use those prices instead of the COP of those parts, even if it does not make such a determination with regard to other affiliated suppliers. NSK argues that affiliation *per se* does not require the rejection of transaction prices between affiliated parties and that, even if the Department cannot be sure whether the amount reflected in the transfer price fairly reflects market value, it retains the discretion to accept the transfer price and, further, that the statute does not prescribe nor prohibit the use of specific methods to determine whether a transaction price fairly reflects market value. NSK contends that the situation of the affiliated supplier in question is unique and requests that the Department recognize that the nature of the affiliation does not provide a basis for price manipulation or for the affiliated supplier to favor NSK in any way.

Torrington argues that the Department's reliance on price and cost

for analyzing arm's-length transactions was proper. Torrington argues that, if it were true that there was no possibility for price manipulation between the affiliated supplier and NSK, then NSK's purchase price for inputs from the supplier would always be above cost and NSK would have no basis for objecting to the use of those costs. Torrington also argues that there is nothing in the statute which requires the Department to consider factors other than price or cost in determining whether affiliated-supplier inputs reflect fair market value. Torrington claims that the Department has rejected a similar argument made by NSK in a prior review and that evidence on the record supports the Department's determination of arm's-length transactions between affiliated parties on the basis of price and cost.

Department's Position: We disagree with NSK. Whether the possibility of price manipulation theoretically exists has no bearing on our determining whether a sale is made at an arm's-length price. Although NSK submitted certain evidence, in addition to the price information we requested, in support of its contention that the prices were arm's length, we have determined that the prices were not made at arm's length solely on the basis of the price information NSK submitted.

Comment 3: NSK contends that certain parts for which the Department required NSK to submit affiliated suppliers' COP instead of the transfer price are not major inputs. NSK argues that the statute provides for the Department to obtain and use COP information only for major inputs purchased from affiliated suppliers and that major inputs are defined in the questionnaire as ''an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs incurred to produce one unit of the merchandise under review.'' NSK argues that the parts in question do not account for a significant percentage of the cost of the bearings in which they are used, and that the Department therefore has no statutory authority to request or use the COP data for those parts.

Torrington notes that the parts to which NSK refers are major inputs because they represent significant percentages of the cost of the bearings in which they are used. Torrington also notes that the Department has specifically identified one of the parts as a major input in prior reviews.

Department's Position: We disagree with NSK that one of the part types to which NSK refers is not a major input, but we agree that the other part type is a minor input. However, because of the proprietary nature of the issue, we have discussed our rationale on our treatment of these parts in the analysis memorandum for these final results of review. See NSK Ltd. Final Analysis Memorandum, dated December 17, 1996.

We disagree with NSK's contention that the statute restricts our use of COP information to major inputs. As noted above, section 773(f)(2) places no limitation on the data we may collect to determine the fair price of major or minor inputs.

Comment 4: Torrington argues that the Department should use NSK-RHP's transfer prices if those prices are higher than the COP of the input in question. Torrington recommends that the Department examine each input and determine whether instances exist where transfer prices are below cost and, if they are, apply the higher value. Torrington states that, in response to its pre-preliminary comments, NSK-RHP asserted that Exhibit S–11 to its supplemental questionnaire response demonstrates that the transfer prices for the major inputs exceed the cost of producing the relevant inputs in almost every case. Torrington requests, therefore, that the Department use the higher of transfer prices or production costs for the value of affiliated-party major inputs.

NSK-RHP asserts that, although the Department failed to establish a reasonable basis under section 773(f)(3) of the Tariff Act by which to request data about the cost of major inputs respondent purchased from affiliated parties, NSK-RHP placed this data on the record. NSK-RHP contends that, if the Department examines this data, it will see that transfer prices for the major inputs exceed the costs for producing the relevant inputs in almost every case. Further, for those limited cases in which transfer prices do not exceed costs, NSK-RHP asserts that the Department found correctly that it was unnecessary to substitute the cost data for the transfer prices. NSK-RHP concludes that, if the Department decides to ignore the restrictions on its authority to request cost data set by section 773(f)(3) of the Tariff Act, it will find evidence on record nevertheless that fully supports NSK-RHP's decision to use, where relevant, the transfer prices for major inputs it purchased from affiliated parties.

Department's Position: We disagree with NSK-RHP's contention that we did not establish, under section 773(f)(3) of the Tariff Act, a reasonable basis to request cost data from affiliated suppliers. As explained in our response to comment 1 of this sub-section, if we have reason to believe or suspect that the price paid to an affiliated party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the affiliated supplier's COP for that input, we may use the actual COP as the value for that input. In this case, because we have reasonable grounds to believe or suspect that NSK's HM sales may be occurring at below-cost prices, we have reasonable grounds to believe or suspect that it purchased major inputs at below-cost transfer prices. Therefore, for these final results, we have used the higher of transfer prices or COP for the value of affiliated-party major inputs.

Comment 5: Torrington contends that INA refused to provide COP and transfer price information regarding major affiliated inputs as the Department requested in its supplemental questionnaire. Torrington asserts that, instead, INA calculated COP and CV on the basis of actual cost without regard to internal transfer prices. Torrington argues that INA's calculation inhibits the Department from applying INA's situation to section 773(f)(3) of the Tariff Act, which requires the Department to use the highest value among transfer price, cost of production or, in certain situations, alternative information. Torrington states that the Department should restate all reported values of affiliated-party major inputs in accordance with the manner in which INA calculated internal transfers of finished parts and goods, as indicated in its supplemental COP/CV response. Torrington also states that, if the Department is unable to identify the major inputs, it should, in accordance with *Federal-Mogul V* at 219, restate all material costs, which would ensure that no material costs are understated.

INA rebuts Torrington's view that the methodology for reporting all inputs produced by the home market manufacturing entity, INA-FRG, and used in the calculation of COP is improper. INA states that INA-FRG, as a whole, provides the necessary functions for the development, manufacture, and sale of the subject merchandise. INA states that it reported the activities of INA-FRG on a consolidated basis which the Department has approved in all prior reviews of these orders. Further, INA contends that, since INA-FRG is the producer of subject merchandise,

internal transfers between the entities which comprise INA-FRG are irrelevant. In addition, INA argues that the Department has not requested any changes in the reporting methodology of INA-FRG and such a change would not make sense because the INA-FRG entities are intertwined and entirely interdependent in the production and selling of subject merchandise.

INA also contends that the manner in which it reported its cost-accounting system is fully consistent with the Department's questionnaire instructions. Further, INA states that its reported cost-accounting system is organized for the complete business, INA-FRG, and not for the individual entities which comprise INA-FRG. Thus, INA states, the inter-entity transfers are consolidated. INA also states that in computing COP and CV, the methodology INA-FRG used is both current and reflects actual cost accurately. Further, INA argues, it does not have a cost-accounting system that eliminates inter-entity transfers, particularly for the voluminous number of articles reported. INA states that INA-FRG has no system in place to re-establish the data on transfers or otherwise trace the requested data for the thousands of models involved and also states that it would not be practicable to complete such a massive task in the time constraints of an administrative review. Thus, INA states that it was not unwilling to provide the information the Department requested, rather, it was not able to provide such requested information.

Department Position: We agree with Torrington that INA-FRG failed to provide us with internal transfer prices of major inputs from within the affiliated entities that comprise INA-FRG. Although INA-FRG responded to our questionnaire on a consolidated basis, INA-FRG is comprised of several separate, corporate entities that engage in activities related to the production and sale of subject merchandise (*see* Memo from Analyst to File: Verification of Home Market Sales Information Submitted by INA Walzlager Schaeffler KG, at 1 and 2, June 28, 1996). Each of the entities has its own accounting system and, thus, its own method by which it accounts for purchases of inputs from suppliers and, in particular, affiliated parties. Further, each of the entities is affiliated in accordance with section 771(33)(F) of the Tariff Act. Therefore, in accordance with section 773(f)(3), we requested that INA-FRG submit the per-unit transfer price it charged for the major input by the affiliated party so that we could determine the value of the input compared with its COP. While INA-FRG maintains that it has reported cost information on a consolidated basis in this and in all previous reviews, we maintain that our request for transfer-price information is in accordance with the section 773(f) requirement that we analyze such information to determine the appropriate value for major inputs.

We requested that INA-FRG provide this transfer-price information in both our original and supplemental questionnaires. In its response to our requests for such information, INA-FRG stated that it calculated COP and CV in this review on the basis of actual cost without regard to transfer prices. However, given the separateness of the entities and the fact that each of the entities has its own accounting system, we maintain our position that, in accordance with the statute and INA-FRG's own accounting systems, INA-FRG should have provided us with the transfer prices at issue. Given INA-FRG's failure to provide us with this requested information, we are restating the material costs of INA-FRG's cost of manufacturing as facts available, in accordance with section 776(a)(2)(A) of the Tariff Act.

In its response, INA-FRG stated that it added fifteen percent to its standard manufacturing costs in order to value internal transfers of finished parts and finished goods. For each entity of which INA-FRG is comprised, we calculated the percentage of SG&A plus net interest to cost of goods sold. For the entity with the lowest percentage of SG&A plus net interest to cost of goods sold, we calculated the difference between the fifteen percent and the resulting percentage of SG&A plus net interest to cost of goods sold. As facts available, we increased INA-FRG's reported cost of materials by this percentage difference. Based on INA-FRG's response, we are unable to distinguish between transactions that represent sales of finished parts and goods from those which are unfinished parts and goods. We have, therefore, applied this calculation to all reported material costs.

E. Inventory Write-downs and Write-offs. Comment 1: Torrington argues that the Department should adjust NSK's reported COP and CV so as to include both inventory write-offs and write-downs. Torrington, citing *AFBs III* at 39756, contends that it is the Department's practice to consider write-offs and write-downs as constituent parts of the cost of production.

NSK argues that it reported inventory write-offs and write-downs in accordance with Japanese GAAP and that it reported write-offs and write-downs in the same manner as in prior reviews of these orders. NSK also argues that, even if the Department agrees with Torrington, it should still decline to adjust NSK's reported G&A factor because the amount of the write-offs is *de minimis* under 19 CFR 353.59(a).

Department's Position: We agree with Torrington. We regard NSK's inventory write-offs and write-downs as part of the fully-absorbed cost of goods sold which should be included in the calculation of cost of production. See *AFBs III* at 39756. Therefore, we have included both inventory write-offs and write-downs in NSK's reported COP.

Comment 2: Torrington argues that the Department should adjust FAG Italy's and FAG Germany's reported costs to include inventory write-downs. Citing Canned Pineapple Fruit from Thailand, 60 FR 29553, 29571 (June 5, 1995), Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 57 FR 4960, 4973 (February 11, 1992), and Mechanical Transfer Presses from Japan, 55 FR 335, 347 (January 4, 1990), Torrington contends that the write-downs are costs for antidumping purposes.

FAG Italy and FAG Germany suggest that Torrington has confused inventory write-downs with inventory write-offs. The respondents explain that they included inventory write-offs in the reported G&A expenses, but that they excluded write-downs on the basis that they are contingent reserves provided for at the end of the accounting year to account for the possibility that they may not eventually sell some merchandise for full value. FAG Italy and FAG Germany argue that their write-downs are not actual costs and only become actual reportable events for antidumping purposes when they sell the bearing for less than its inventory value. Respondents state that the realized loss on the resale is a revenue issue and not a cost issue. FAG Italy and FAG Germany contend that to increase their costs by the contingent reserve for write-downs and also use the lower resale value as part of their per-unit price would constitute double-counting and that the Department has recognized this in all prior reviews of these orders. FAG Italy and FAG Germany contend that the cases cited by Torrington are not dispositive, given the facts in this case. FAG Italy and FAG Germany note that there is no indication whether the write-downs referred to were contingent or realized and contend that it is possible that the cases involved write-offs as opposed to write-downs.

Department's Position: We agree with FAG Italy and FAG Germany that the cases Torrington cites are inapposite,

given the facts of this case. We reviewed the record and determined that the inventory write-downs these respondents reported are not actual costs but are a provisional reduction-in-inventory value in anticipation of a lower resale value. FAG Italy's and FAG Germany's inventory write-downs are, as it appears from the record, not a cost but a potential loss of revenue that is ultimately reflected in the sales price. FAG Italy's and FAG Germany's write-downs, then, are not realized expenses but simply a contingent reduction in how much revenue the companies expect to make from the sale of the merchandise. Since these particular inventory write-downs are not a realized expense, and are not reflected in their accounting of costs of goods in inventory, we have not included them in the calculation of COP and CV for FAG Italy and FAG Germany.

F. Interest Expense Offset. Comment: Torrington argues that the Department should adjust NSK's reported financial expenses for COP and CV by disallowing NSK's interest income offset. Torrington contends that the Department requires respondents to demonstrate that interest income is related to the production of subject merchandise before allowing an offset to interest expense. Torrington cites Erasable Programmable Read Only Memories (EPROMS) from Japan, 51 FR 39684 (1986), *AFBs IV* at 10925–26, Tapered Roller Bearings from Japan, 59 FR 56035, 56045 (1994), and Tapered Roller Bearings from Japan, 58 FR 64720, 64728 (1994), in support of this contention. Torrington argues that NSK did not substantiate that its reported interest income is related to the production of subject merchandise and that the Department adjusted NSK's financing expense in *AFBs IV* because NSK failed to make such a demonstration in that review.

NSK argues that the Department's standards for allowing an offset for interest income have changed since the issuance of the cases Torrington cites. Citing Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 61 FR 13815, 13819 (March 28, 1996), NSK contends that the Department has expanded its view of what constitutes an appropriate offset to interest expense, including interest earned on short-term deposits, advance payments to suppliers and late payments. NSK claims that its interest-income offset consists of these types of income and, therefore, the Department should not make any adjustment to its reported interest expense.

Department's Position: We disagree with Torrington. We are satisfied from information on the record that NSK's business records do not report separately the short-and long-term nature of the interest income earned by the company and its subsidiaries. NSK's alternative calculation of its income offset reasonably reflects the short-term interest income related to production activities and the investment of working capital. Therefore, we have allowed NSK's offset to interest expense for interest income.

G. Other Issues. Comment 1: Torrington contends that INA failed to provide relevant cost information in its supplemental questionnaire response, such as the reconciliation of standard and actual cost factors, as well as an itemization of the reported variable and fixed overhead costs reported for subject merchandise. Torrington argues that, in light of INA's failure to provide this information, the Department should explain why it remains satisfied with INA's cost-reporting methodology. Otherwise, Torrington contends, the Department should adjust INA's reported data by appropriate facts available.

Department's Position: We disagree with Torrington. INA-FRG provided detailed responses to our supplemental cost questionnaire concerning INA's standard and actual cost-accounting system and its standard cost-revision practice. We are satisfied by INA's explanation and, therefore, we believe that INA-FRG has provided the necessary cost information for us to use in our final results.

Comment 2: Torrington argues that the Department should revise NSK's reported COP and CV by adding an amount for idle-asset depreciation. Torrington asserts that NSK did not report the depreciation of idle assets in its COM. Although Japanese GAAP does not require companies to calculate such depreciation, Torrington contends that it is the Department's practice to adjust respondents' cost data if depreciation expense of idle assets is not reported as an element of production cost. Moreover, Torrington asserts, the CAFC upheld this practice in *NTN III*. Torrington argues that, as facts available, the Department should add the highest amount of depreciation of idle assets reported by any other respondent to NSK's COP and CV.

NSK contends that it did include in its COM all costs associated with the depreciation of idle assets and cites its questionnaire response in support of this contention.

Department's Position: We agree with NSK. It is evident from NSK's response to our cost questionnaire that it included an amount for idle-asset depreciation in its COM. Therefore, we do not need to modify NSK's response with regard to idle-asset depreciation.

Comment 3: Torrington argues that the Department should revise NSK's reported COP and CV by including losses and gains on the disposal of fixed assets. Torrington asserts that the Department considers such losses as a normal cost of production. Torrington suggests that, because NSK did not specifically identify the amount of expense associated with the disposal of fixed assets in its non-operating expenses, the Department should assign a reasonable portion of NSK's ''miscellaneous loss'' to expenses incurred in disposal of fixed assets as facts available.

NSK argues that its gains and losses as a result of the disposal of fixed assets are not related to production but are non-operating expenses and extraordinary gain. NSK argues that such gains and losses should not be included in its COP data.

Department's Position: We regard gains and losses as a result of the disposal of fixed assets as a normal cost of production. See *AFBs III* at 39756. We reviewed NSK's response and concluded that such gains or losses, in NSK's case, are related to its production operations. Since we have no reason to believe that these gains or losses on the sales of fixed assets do not relate to the general production activity of NSK as a whole, we included the net amount as a general expense. We have not done as Torrington suggests, however, because NSK did specifically report the total amount of gains and losses associated with the disposal of fixed assets in its non-operating expenses in its response to our cost questionnaire.

Comment 4: Torrington contends that FAG Germany did not provide variance rates it actually applied to the 1995 standard costs for all models produced in 1994 and 1995 and did not provide explanations where variances differ substantially between 1994 and 1995 production, even though the Department specifically requested this information. Torrington notes that FAG Germany alleged that it would be impractical to provide variances on a model-specific basis and that the relationship of particular models and variances was more appropriately reviewed in the context of verification. Torrington contends that model-specific variance rates are important to test the reasonableness of FAG Germany's standard costs, and that allowing FAG Germany to selectively disregard requests for information adversely

affects the credibility of the Department's investigative process. Torrington argues that, in light of this failure, the Department should apply adverse facts available by selecting the highest reported variance and recalculate reported costs accordingly.

FAG Germany argues that it does not calculate variances in its cost-accounting system on a model-specific basis but on a cost-center area-specific basis. FAG Germany contends that all bearings and components whose sales and costs were reported were produced in one of the cost-center areas listed in the supplemental response and that it calculates variance ratios for each cost-center area once per year at year-end. FAG Germany contends that it provided the precise formulae it used in the variance calculation and a sample calculation in order to clarify its methodology. Finally, FAG Germany states that the Department has verified FAG Germany's standard costs and cost-submission methodology in prior reviews and the Department has always accepted the information.

Department's Position: We agree with FAG Germany. Although we requested model-specific information, FAG Germany does not maintain variance records on a model-specific basis but rather on a cost center-specific basis. We reviewed FAG Germany's response and conclude that reporting such information, in FAG Germany's case, on a cost-center basis is reasonable because: (1) That is the basis on which it maintain its records, and (2) the variance ratios do not change for specific models within a cost-center area in FAG Germany's cost-accounting system. We reviewed FAG Germany's original response in light of its supplemental response and found no evidence that FAG Germany had misrepresented the actual costs of subject merchandise in its response.

Comment 5: Torrington argues that the Department should satisfy itself that FAG Germany's supplemental explanations of how it determined and distributed variances is reasonable, and that, if the Department finds the evidence submitted by FAG Germany to be inadequate, the Department should reject it.

Department's Position: We have examined FAG Germany's original response and its supplemental response, and we have concluded that FAG Germany's reporting methodology reasonably captured the actual costs incurred in the production of subject merchandise in its response.

Comment 6: Torrington contends that FAG Germany did not adequately describe how it determined the COP and CV costs for DKFL, the subsidiary that entered bankruptcy proceedings in July 1993. Torrington comments that, in its supplemental response, FAG Germany claimed that it had based its reported costs for the models involved on an average of 1993 DKFL costs and POR FAG Germany costs and that, because there is no current DKFL production, FAG Germany had weighted the average based on the relative sales quantities. Torrington claims that, in a later submission, FAG Germany asserted that it did not weight-average costs. Torrington argues that, in light of this contradictory record, the Department should resort to facts available for all models, not just sales, which involved DKFL production.

FAG Germany contends that it fully explained its cost-calculation methodologies in its response and its supplemental response. FAG Germany claims that it weight-averaged COM data for identical products made by both DKFL and FAG Germany in all preceding review periods when DKFL was operating. FAG Germany also states that, in those instances where DKFL and FAG Germany made identical merchandise in different periods (that is, when FAG Germany actually produced the identical merchandise in a POR after DKFL's bankruptcy), it was impossible for FAG Germany to calculate a weighted-average cost of manufacture for DKFL and FAG Germany bearings. FAG Germany contends that any attempt to calculate a weighted-average production cost for DKFL would have resulted in a distorted cost of manufacture based on different production periods.

Department's Position: We agree with FAG Germany. We reviewed the record and found no inconsistencies in FAG Germany's reporting of the cost of bearings produced by DKFL. Although FAG Germany used two different methodologies for calculating DKFL costs, one of the methodologies was an alternate to the other methodology that was only used when the original methodology (*i.e.*, weight-averaging) was inappropriate because the bearings were produced during different periods. We find, therefore, that FAG Germany's reporting methodology for DKFL costs is appropriate in the context of this review.

Comment 7: NSK and INA argue that the Department should deduct imputed credit expenses from CV-derived home market prices, as it has in previous practice. NSK contends that failure to deduct the imputed expense distorts margins based on CV comparisons and argues further that the statute and regulations call for an adjustment for differences in circumstances of sale, which include imputed credit expenses. Respondent notes that the Department made an adjustment for imputed credit expenses for CEP in all instances and NV when based on home market price. According to NSK and INA, the failure to make such an adjustment when NV is based on CV results in an unfair comparison between CEP and NV when the Department calculates NV using CV. NSK contends that the Department's apparent intention to interpret section 773(e)(2)(A) of the Tariff Act as allowing only a respondent's actual SG&A expenses in the calculation of CV, citing Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38187 (July 23, 1996), misconstrues the law. NSK contends that, while the Department did not explain its rationale in the preliminary results, it appears that it did not make the deductions on the basis of the language of the URAA, which states that CV is now to be calculated using respondent's actual SG&A expenses. NSK argues that this provision was meant to overrule the prior statutory authority to use a minimum SG&A expense, but notes that, under prior law, if a respondent's actual SG&A expenses exceeded the minimum, the Department always used respondent's actual expenses and still deducted imputed expenses. NSK notes that the Department's proposed regulations (61 FR 7346) state that ''the Department's practice with respect to adjustments for direct selling expenses and assumptions of expenses remains unchanged.''

Torrington argues that the Department should deduct imputed credit expenses from NV based on CV only when it is apparent that such an expense is included in the SG&A expenses reported by a respondent. Absent such a showing, the imputed expense is not an element of the actual amounts required by section 773(e) of the Tariff Act. Without the inclusion of the imputed expense in the build-up of SG&A, Torrington contends there is no basis for making a deduction, since doing so would understate CV.

Department's Position: We agree with NSK and INA. Under the URAA, for both COP and CV, the statute provides that SG&A be based on actual amounts incurred by the exporter for production and sale of the foreign like product (*see* sections 773(b) and (e) of the Tariff Act). After calculating CV in accordance with the statute, we have, in essence, a NV. Consistent with section 773(a)(8) of the Tariff Act, adjustments to NV are appropriate when CV is the basis for NV. The Department uses imputed

credit expenses to measure the effect of specific respondent selling practices in the United States and the comparison market. Therefore, for these final results, we have deducted imputed credit expenses as a COS adjustment from CV in the calculation of NV.

7. Further Manufacturing

Comment: Torrington comments that the Department excused many respondents from reporting U.S. further-processing information and that the Department determined dumping margins for the affected sales on the basis of the weighted-average dumping margins found on sales of identical or other subject merchandise sold to unaffiliated customers. Torrington argues that, under the statute, this method is proper only if (i) there is a sufficient quantity of non-value-added sales to provide a reasonable basis for comparison, and (ii) use of such sales is appropriate. Torrington argues further that the Department failed to articulate standards for determining whether quantities were sufficient or how the method was appropriate based on the facts of this record. Torrington asserts that the Department should either articulate and justify its standards for excusing reporting of such information or re-open the record and require full further-manufacturing reporting. Torrington proposes the following standards: (i) that no more than 10 percent of all U.S. sales, by quantity of the particular model in question, involve U.S. value added, and (ii) that there be adequate facts supporting a finding that no reason exists for the Department to believe that the value-added sales somehow involve larger dumping margins than the proxy transactions. Torrington concludes that it would not be appropriate for the Department to use any methodology that would dilute dumping margins.

FAG, NMB/Pelmec, and SNR contend that requiring a respondent to report further-manufacturing cost data pursuant to the Department's questionnaire after that respondent has demonstrated that the amount of value added in the United States exceeds substantially the cost of the imported merchandise defeats the clear purpose and design of the statutory waiver in section 772(e) of the Tariff Act. Citing the SAA, FAG argues that section 772(e) of the Tariff Act was intended to reduce reporting burdens on respondents and to reduce analysis and processing burdens on the Department.

The NTN companies argue that, in demanding the reopening of the further-processing reporting, Torrington is trying to invalidate the statute's special rule for further-manufactured merchandise by grafting extra statutory requirements to a provision meant to simplify, not complicate, the review process.

Koyo argues that Torrington can point to no error in the Department's excusing many of the respondents from full reporting of further-processing data and that the Department applied its discretion precisely as anticipated by Congress. Koyo also contends that the Department articulated its standard in the proposed regulations and that the intent of section 772(e) of the Tariff Act is to reduce the burden on both respondents and the Department. Koyo argues further that Torrington's proposed methodology ignores the rationale underlying the statutory amendment that the simplified reporting methodologies were to be used in cases in which the value added substantially exceeds the value of the imported merchandise, and adds that the number of sales involved does not affect whether the value added in those transactions is or is not ''substantial.'' Koyo also contends that Torrington's suggestion that the calculation should be model-specific defeats the purpose of section 772(e) of the Tariff Act.

SKF argues that, even if the Department agrees with Torrington that its selection of proxy transactions was somehow flawed, the next logical and statutorily mandated step is not a full response to the cost-of-further-manufacturing section of the questionnaire, but rather to select another method to derive surrogate information. SKF also argues that, in SKF's case, it is clear that there is a sufficient quantity of non-further-manufactured sales to provide a reasonable basis for comparison. Finally, SKF contends that Torrington has presented no evidence or argument that the Department's practice was inappropriate and that doing as Torrington suggests would defeat the purpose of section 772(e) of the Tariff Act.

Finally, the FAG companies assert that requiring the Department to gather and analyze complete further-processing information after respondents have satisfied the requirement that value added exceeds substantially the value of the imported subject merchandise completely defeats the clear purpose and design of the statutory waiver subsection.

Department's Position: Section 772(e) of the statute allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is identified in the Tariff Act as the ''special rule''). The statute further provides that, where there is a sufficient quantity of sales of identical subject merchandise or other subject merchandise sold to unaffiliated persons and the use of such sales is appropriate, the Department shall use the prices of such sales to determine the CEP of the further-processed subject merchandise. If there is not a sufficient quantity of sales of identical or other subject merchandise, or if the use of such sales is inappropriate, the Department may determine the CEP of the further-processed subject merchandise on any other reasonable basis.

We disagree with Torrington's argument that the test to determine whether the U.S. value added exceeds substantially the value of the imported merchandise should be done on a model-by-model basis. The statute does not require application of the ''special rule'' on a model-specific basis. Moreover, application on a model-specific basis would be inconsistent with the purpose of the ''special rule'' as discussed in the SAA:

> * * * for purposes of estimating whether the value added in the United States is likely to substantially exceed the value of the imported product, it is the Administration's intent that Commerce not be required to perform a precise calculation of the value added. Requiring such a precise calculation would defeat the purpose of the new rule of saving Commerce the considerable effort of measuring precisely the U.S. value added.

SAA at 826.

A model-by-model analysis and determination to apply the special rule would substantially undermine the intent of the provision, which is to relieve the Department of the burden of a further-manufacturing analysis. Therefore, for these reviews, we estimated the ratio of value added to the final sales price on an aggregate class-or-kind basis; that is, we calculated the value added to imported subject merchandise in relationship to the sales price to the first unaffiliated customer for that imported subject merchandise.

We disagree that we should be required, at this time, to articulate a standard for determining whether quantities of identical or other subject merchandise are sufficient to provide a reasonable basis for comparison. We have had limited opportunity to apply the ''special rule'' and we are reluctant to articulate a standard which might have applicability beyond these reviews without the benefit of further experience. For purposes of these

reviews, however, the Department has found that each of the respondents to which the ''special rule'' was applied had a sufficient quantity of non-further-processed sales to provide a reasonable basis of comparison. In particular, the non-further-processed sales constituted at least 21 percent of the respondent's total quantity of sales of subject merchandise and a simple average of 55 percent of all excused respondents'' total quantity of sales of subject merchandise. In the context of these reviews, we determine that these percentages provide a sufficient basis for comparison, particularly because the above percentages understate the amount of non-further-processed merchandise. Specifically, the above calculations equate bearing parts, rolling elements, cages, rings, etc. (which are usually further manufactured in the United States by the respondents excused from providing further-processing data) with complete bearings (which are not usually further manufactured in the United States by the same respondents). Based on the entered value of entries, we find that non-further-processed merchandise constituted at least 71 percent of the respondent's total sales of all subject merchandise and a simple average of 89 percent of all excused respondents'' sales of subject merchandise. This further confirms that we had an adequate quantity of non-further-processed sales for our comparison.

In order to provide an appropriate basis for comparison, the Department need not find that the non-further-processed sales were dumped at the same rate as the further-processed sales. To impose such a requirement would necessitate the Department calculating the actual dumping margins on the further-processed merchandise, defeating the purpose of the ''special rule.'' Moreover, Torrington has pointed to no information on the record which suggests that dumping margins on the further-processed merchandise differ significantly from the weighted-average margins of the non-further-processed merchandise. Therefore, we conclude that excusing certain respondents from providing further-manufacturing data was consistent with the intent of the special rule and our calculations are not distorted by our decision not to conduct a further-manufacturing analysis.

8. Packing and Movement Expenses

Comment 1: FAG Italy contends that the Department unlawfully reduced CEP for expenses incident to transporting merchandise from the country of origin (Italy) to Germany for ultimate distribution to the United States. FAG Italy notes that, pursuant to section 772(c)(2)(A) of the Tariff Act, the Department has the authority to reduce CEP by any additional costs, charges or expenses incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. FAG Italy contends that, in accordance with this statutory provision, Germany is the ''exporting country'' of the reviewed sales and, therefore, the Department does not have the authority to adjust CEP for costs incident to bringing the merchandise from the factory in Italy to the warehouse in Germany.

Torrington contends that the Department properly reduced CEP by all costs incident to bringing the merchandise from the country of origin to Germany. Torrington contends that, with respect to the FAG Italy-produced bearings, Italy remained the exporting country regardless of whether the bearings were physically in Italy, Germany, or the United States. Torrington asks that the Department disregard the alleged differences, suggested by FAG Italy, between the statutory terms ''exporting country'' and the ''country of origin.''

Department Position: We disagree with FAG Italy that Germany is the ''exporting country'' of the reviewed sales, and for the final results we have adjusted CEP for costs incident to bringing merchandise from its factory in Italy to the warehouse in Germany. For calculating CEP in our review of FAG Italy's subject merchandise, Germany is the intermediary country and not the exporting country. Since FAG Italy is the producer and exporter of subject merchandise, Italy is both the ''country of origin'' and the ''exporting country.''

Section 771(28) of the Tariff Act defines ''exporter or producer'' to include both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of the merchandise. Since FAG Italy is both the exporter of the subject merchandise and the producer of the same subject merchandise, we have deducted from CEP all costs incident to transporting the merchandise from FAG Italy's factory in Italy to the company's warehouse in the United States.

Comment 2: Torrington argues that the Department has allowed Koyo to report aggregated air- and ocean-freight expenses. Torrington contends that the Department should require Koyo to report air-freight expenses on a model- or customer-specific basis or apply expense data obtained at verification as facts available.

Koyo responds that the Department has repeatedly rejected Torrington's arguments on this issue in previous reviews. According to Koyo, the Department's verification report for this review supports its contention that, although it tracks its costs of air freight, Koyo is unable to tie individual air shipments to particular sales to unrelated customers in the United States.

Department's Position: We agree with Koyo. The manner in which Koyo records these expenses in its accounting system, and the reporting of these expenses, has not changed from the 1993/94 review. As in the 1993/94 review, we determine that Koyo is not able to provide air-freight on a transaction-specific basis. At the U.S. sales verification we verified Koyo's air- and ocean-freight expense data successfully and found that the use of aggregated expense data in the allocations was not unreasonably distortive. Therefore, we have accepted Koyo's reporting of these movement expenses for the final results.

Comment 3: Torrington asserts that the Department must be satisfied that SKF France reported HM packing costs properly before using these expenses to adjust NV in the final results. Torrington notes that SKF France based its reporting on standard costs from its cost and financial accounting system. Torrington claims that it is not clear whether SKF France's standard-cost system yields sufficiently precise results for direct reporting of packing expense on a model-by-model basis. Thus, Torrington maintains the reporting of these expenses might not be acceptable in accordance with *Torrington VI* (at 1050–1051), in which the CAFC ruled that companies must report direct expenses accurately and not allocate them broadly across sales. Torrington suggests that, if the Department is not satisfied with SKF France's reporting of HM packing expenses, it should use as facts available the packing expenses of another producer.

SKF France contends that Torrington's concern about the expenses being broadly allocated is without basis and notes that the Department has accepted the same reporting methodology in all prior AFB reviews. In addition, SKF France claims that Torrington is misreading *Torrington VI*. SKF France contends that the CAFC did not prohibit companies from allocating direct expenses broadly across sales, but instead held that, when companies allocate direct expenses, the expenses

must not lose their direct nature, *i.e.*, the Department should not treat them as indirect selling expenses.

Department's Position: We agree with SKF France. In our supplemental questionnaire we requested SKF France to provide a worksheet listing, for all packing materials, the average cost of each material and how much of each material it used. In response, SKF France explained that it could not provide the information in the manner requested since it is not available in its accounting records. SKF France explained that its packing-expense methodology relies on costs recorded in the company's cost-accounting and financial-accounting systems and that it allocates this information to the reported bearings. SKF France reported packing costs in a manner consistent with how it records the expenses in its accounting system. Moreover, we have no reason to believe that the reporting methodology is distortive of SKF France's actual experience, and we note that Torrington has not provided evidence indicating otherwise. This is the same methodology that SKF France used in each prior completed review, and we see no reason to reject it now; this reporting methodology is consistent with SKF France's accounting and record-keeping systems and leads to an accurate representation of the company's packing cost. Therefore, for the final results we used the company's HM packing costs to adjust NV.

Comment 4: Torrington claims that the Department should reject NTN's HM pre-sale and post-sale transportation expenses because NTN did not adequately describe the adjustments in its response. Torrington maintains that respondents are obligated to support all claims for adjustments in great detail and that, since NTN has not done this, the Department should deny the adjustments. NTN disagrees with Torrington and requests that the Department accept its movement expenses for the final results.

Department's Position: We disagree with Torrington. We examined NTN's movement expenses at the HM verification and, during this process, the respondent provided us with a complete description of the data and allocation methodology it used to report the adjustments and we found no discrepancies. See the August 14, 1996, HM verification report for NTN. Furthermore, we determined that the reporting of the adjustments is accurate, given NTN's financial records, and is not unreasonably distortive. Therefore, we have accepted NTN's HM movement expenses for the final results.

9. Affiliated Parties

Comment: Asahi contends that the Department incorrectly performed the arm's-length test as it did not take into account differences in levels of trade. Asahi points out that it provided information on price differences between levels of trade in its questionnaire response and that the Department verified this data.

Department's Position: We disagree with Asahi. The arm's-length test compares, at the same level of trade, the price of foreign like products sold to affiliated parties to the price of the same products sold to unaffiliated parties. See Certain Flat-Rolled Carbon Steel Products from Canada, 58 FR 37099 (July 9, 1993), and Certain Corrosion-Resistant Carbon Steel Flat Products from Germany, 60 FR 65264 (December 19, 1995). We did not use Asahi's sales to a certain affiliated party in the calculation of NV because there were no unaffiliated party sales at the same level of trade for making such comparisons and, therefore, we were unable to analyze whether prices to this affiliated party were at arm's length.

A level-of-trade adjustment is based on differences in prices at two home market levels of trade. Even if we were to consider a level-of-trade adjustment as part of the arm's-length test, basing the adjustment on price differences where one side of the analysis is based solely on untested affiliated-party sales would defeat the purpose of the arm's-length test. In such a case, the level-of-trade adjustment would include not only differences in prices associated with the sales at different levels of trade, but would also include the amount of any difference in prices associated with the party's affiliated status. Therefore, we have not made a level-of-trade adjustment in order to conduct an arm's-length test on the affiliated-party sales.

10. Samples, Prototypes, and Ordinary Course of Trade

We do not exclude HM or U.S. sales from our review solely on the basis of their designation as ''samples'' or ''prototypes,'' but we do exclude such transactions if they meet certain criteria. With respect to HM sales, we may exclude sales designated as samples or prototypes from our analysis pursuant to section 773(a)(1) of the Tariff Act where we determine that those sales were not made in the ordinary course of trade, as defined by section 771(15). With respect to U.S. sales, there is no parallel ''ordinary course of trade'' provision allowing for the exclusion of sample or prototype sales from the U.S. database. See *Floral Trade Council of Davis, Cal.* v. *United States*, 775 F. Supp. 1492, 1503 n.18 (CIT 1991). Except in the case of sampling, we will only exclude U.S. sales from our review in unusual situations, *i.e.*, where those sales are unrepresentative and extremely distortive. See, *e.g.*, *Chang Tieh Indus. Co.* v. *United States*, 840 F. Supp. 141, 145–46 (CIT 1993) (exclusion of sales may be necessary to prevent fraud on the Department's proceedings). See also *AFBs II* at 28395 and *AFBs III* at 39744, 39775.

We acknowledge that we may exclude small quantities of U.S. sales in investigations; however, we do not follow the same policy in reviews. This is because, under the statute, the Department is required in an administrative review to calculate an amount of duties to be assessed on all entries of subject merchandise and not merely to establish a cash deposit rate.

The CIT recently upheld our treatment of samples and prototypes in *FAG III*. In that case, the court recognized the limitations on our authority to exclude U.S. sales in an administrative review. The CIT upheld our procedural requirements for establishing whether a sale is a true sample, which requires the respondents to establish that: (1) Ownership of the merchandise has not changed hands, or (2) the sample was returned to the respondent or destroyed in the testing process. *Id.* at 11, citing Granular Polytetrafluoroethylene Resin from Japan, 58 FR 50343, 50345 (September 27, 1993). Therefore, the fact that merchandise is sold at a very low price or even priced at zero is not sufficient to establish that the sale is a sample. We require additional evidence that sales are true samples before we will exclude them from the home market or U.S. sales database.

Comment 1: SKF Germany and SKF Italy argue that the Department has the discretion to exclude sample sales from both the U.S. and HM databases and should do so for the final results. These SKF companies assert that they have demonstrated that their reported sample sales in both the U.S. market and the HM are samples and, therefore, they should be excluded.

Torrington argues that the Department should deny SKF Germany's and SKF Italy's requests to exclude their sample and prototype sales from the U.S. or HM databases. Torrington notes that the Department properly did not exclude such sales in its preliminary results of review.

Department's Position: We agree with Torrington. As we noted above, merely designating a sale as a ''sample'' does not entitle a respondent to exclusion of that sale from the database. The respondent must provide evidence to

prove its claim that the designated sales are actually sample sales. Further, the sales must meet the criteria discussed above in order to merit exclusion as U.S. sample sales, and must demonstrate that HM ''sample'' sales are outside the ordinary course of trade. In this instance, SKF Germany and SKF Italy failed to provide any evidence to support their sample-sale claims. Therefore, we have continued to review and calculate margins on the basis of SKF Germany's and SKF Italy's sample sales.

Comment 2: NSK and NSK-RHP argue that the Department should exclude from the U.S. sales database free samples given away in the United States. Respondents contend that the Department must apply the ordinary meaning of ''sale'' to the antidumping law, which involves not only the transfer of ownership, but also the payment, or promise, of consideration. Respondents claim that they provided extensive documentation to support their claim that samples provided at no charge did not constitute sales.

Respondents also contend that the act of providing free samples with the expectation that respondents might eventually become one of the customer's suppliers is not sufficient to constitute legal consideration. Finally, respondents argue that excluding free samples does not create a loophole in the antidumping law. Citing *Torrington IV* at 1039, respondents argue that the Department asserted that, for purposes of calculating antidumping duties, the Department reviews sales, not entries. Respondents contend that the Department violates its duty to determine dumping margins as accurately as possible when it fails to recognize the normal business practice of giving away free samples as a promotional expense and instead calculates dumping margins as if the free samples constituted sales.

Torrington responds that the Department properly included respondent's free samples, or zero-priced sales, in the U.S. sales database and should continue to do so for the final results. Torrington argues that the statute directs the Department to review each entry of the subject merchandise, citing section 751(a) of the Tariff Act. Torrington asserts that to exclude free samples given away in the United States would create a loophole whereby respondents could eliminate dumping margins by raising prices on their merchandise and then providing free samples or gifts in consideration for the sales. Torrington states that the Department has previously rejected respondents' arguments and that this rejection has been upheld by the CIT, citing *NSK III* at 6–7.

Department's Position: We disagree with respondents. Respondents failed to demonstrate either that ownership of the merchandise has not changed hands or that the sample was returned to the respondents or destroyed in a testing process (*see* discussion at the beginning of this section). Therefore, we have continued to review and calculate margins on the basis of respondents' claimed samples. With regard to respondents' argument that the ''samples'' are not true ''sales,'' we note that we cannot accept a sample-sales claim simply on the basis of designation. Unless respondent demonstrates that a transaction meets our criteria for consideration of a sample, we treat claimed sample transactions with no price as zero-priced sales. Furthermore, as noted above, were we to accept respondents' argument that the alleged samples are not actually sales *per se*, we would be allowing a loophole that respondents could use to mask dumping.

Comment 3: FAG Italy requests that the Department exclude sample/prototype transactions from the U.S. sales database when calculating the antidumping margin. FAG Italy argues that the Department has consistently held that where merchandise is not sold within the meaning of section 772 of the Tariff Act, the transaction is not a sale for antidumping purposes. FAG Italy notes that section 772 defines CEP sales as the price at which merchandise is sold or agreed to be sold in the United States and claims that, since all sample transactions were zero-priced, these transactions cannot be considered CEP sales, despite the Department's treatment of them as such in the preliminary results. In conclusion, FAG Italy refers to the Department's description of sales outside the ordinary course of trade in the SAA and contends that, under the new law, the Department has the discretion to treat zero-priced sample transactions as outside the ordinary course of trade.

Torrington contends that the Department should treat FAG Italy's alleged U.S. sample sales as sales for the margin analysis. Torrington notes that the Department has determined in the past that there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review, citing *AFBs I* at 31713, *AFBs II* at 28394–95, *AFBs III* at 39776, and *AFBs IV* at 10947.

Torrington also notes that, in past reviews, the Department only excluded sample transactions where there was no transfer of ownership between the exporter and the U.S. purchaser. FAG Italy, Torrington contends, neither demonstrated nor claimed that it retained ownership of any sample bearings.

Department's Position: We agree with Torrington that we should include FAG Italy's U.S. sample transactions in our analysis. Except under the limited circumstances discussed at the beginning of this section, there is no statutory basis for excluding U.S. sales from review. Since FAG Italy failed to demonstrate either of the two criteria required for the exclusion of sample transactions from the U.S. sales database, we included these transactions in the U.S. sales database we used to calculate margins for the final results. Moreover, as discussed above, although we have the discretion to set aside home market sales that are outside the ordinary course of trade, this statutory criterion does not apply to U.S. sales.

Comment 4: NTN claims that the Department should exclude home market sales outside the ordinary course of trade, which it defines as sample sales and sales with abnormally high profits. NTN argues further that the SAA lists sales made at aberrational prices as a category of sales not in the ordinary course of trade. NTN contends that both the SAA and the proposed regulations classify these sales as sales outside the ordinary course of trade which the Department should disregard for the purposes of calculating NV in order to avoid unrepresentative results.

Torrington argues that NTN has failed to meet its burden of demonstrating that the sales in question were outside the ordinary course of trade. Furthermore, Torrington states that, given the lack of evidence on the record, NTN's argument that the Department should have excluded sales with ''abnormally high profits'' from the home market database is irrelevant. In conclusion,Torrington asserts that, given the evidence of record, NTN did not meet its burden of demonstrating that such sales were outside the ordinary course of trade.

Department's Position: We disagree with NTN. We have determined that NTN's characterization of its reported data is not substantiated by the administrative record. NTN's sales information merely identifies certain sales as home market sample sales and other sales with ''abnormally high profits'' as not in the ordinary course of trade. NTN examined only quantity and frequency of sales in determining which sales to report as outside the ordinary course of trade. NTN's supplemental questionnaire response provided no additional information; it simply identified the sales as having been made

outside the ordinary course of trade. As stated above, the fact that a respondent identifies sales as sample and prototype sales does not necessarily render such sales outside the ordinary course of trade. Verification of the designation of certain sales as samples merely proves that respondent identified sales recorded as samples in its own records. Such evidence does not indicate that such sales were made outside the ordinary course of trade for purposes of calculating NV in these reviews. In addition, the Department noted at the home market verification of NTN's data that the firm was unable to substantiate that all sales coded as samples were sample sales. Accordingly, we have included NTN's sample sales in the calculation of NV.

Comment 5: Koyo argues that the Department matched U.S. sales of one model to a home market model which it sold outside the normal course of trade and which also does not meet the criteria of a foreign like product as defined by the antidumping statute. Koyo first states that the HM model is produced to unusual product specifications. Second, Koyo argues, the HM bearing was sold aberrational prices. Furthermore, Koyo argues that the HM model is not a foreign like product because it is not identical in physical characteristics and is not like the U.S. model being compared to it because of a different end-use.

Torrington argues that Koyo did not provide data to support its claim and that the Department should reject Koyo's claim.

Department's Position: We disagree with Koyo. In spite of Koyo's arguments, this model and the respective bearing family meet the matching criteria as outlined in the Department's questionnaire. Also, the difference-of-merchandise adjustment for the family to which we matched the U.S. model does not exceed plus or minus 20 percent of the U.S. model's COM. The Department has long held that U.S. and home market models are similar where the difference between the U.S. and home market models' variable COMs is less than 20 percent of the U.S. model's COM. *See* Policy Bulletin 93/1, September 1, 1993. Koyo has not demonstrated how the model's costs can meet our 20-percent test yet be so dissimilar. Moreover, sales of models at high prices is insufficient to establish a sale outside the ordinary course of trade. See Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 64720 (December 9, 1993).

11. Export Price and Constructed Export Price Methodology

Comment 1: Torrington states that, in a radical departure from old-law practice, the Department failed to make deductions when calculating CEP for export selling expenses which respondents incurred in the home market in selling subject merchandise to the United States. Torrington states that the Department also did not consistently deduct inventory carrying costs respondents incurred in the home market on U.S. sales when calculating CEP. Torrington notes that, under the pre-URAA statute, the Department deducted all selling expenses incurred in exporting to the United States. Torrington argues that the new law is not intended to change the Department's practice with respect to the calculation of export price or constructed export price and that the SAA at 824 and 828 and the Senate Report (S. Rep. No. 103–412, 103d Cong., 2d Sess. 65 (1994)) provide for the deduction of selling expenses which are assumed by the seller on behalf of the buyer.

The FAG companies, INA, Koyo, NMB/Pelmec, NSK, NSK/RHP, NTN, the SKF companies, and SNR all argue that the Department was correct in not deducting the export selling expenses in question from CEP. A number of respondents cite the SAA at 823 which indicates that the Department will deduct only those expenses associated with economic activities occurring in the United States. The FAG companies, INA, the SKF companies, and SNR note that the assumed-expense language in the Senate Report and the SAA that Torrington cites is limited to selling expenses assumed by the seller on behalf of the buyer, not the selling expenses in question which the foreign manufacturer incurred in selling to its affiliated U.S. importer.

Department's Position: We agree with respondents. It is clear from the SAA that under the new statute we should deduct only expenses associated with economic activities in the United States from CEP. The SAA also indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' See SAA at 823. Therefore, we have only deducted expenses associated with commercial activities in the United States. Our proposed regulations reflect this logic at 351.402(b) (''(t)he Secretary will make adjustments to constructed export price under 772(d) for expenses associated with commercial activities in the United States, no matter where incurred').

Torrington's citation of statements in the SAA to support the proposition that the new law is not intended to change our practice in this regard is misplaced. Torrington cites various provisions of the SAA which state that our practice with respect to ''assumptions'' would not change. The SAA explains that ''assumptions'' are selling expenses of the purchaser for which the seller in the home market agrees to pay. *See* SAA at 824. Thus, if the home market producer agrees to pay for the affiliated importer's cost of advertising in the U.S. market, the Department would deduct such an expense as an ''assumption.'' The issue of assumptions is unrelated to the issue of selling expenses incurred in the home market in selling to the affiliated importer. Such expenses are not incurred ''on behalf of the buyer'' (i.e., the affiliated importer); rather, the exporter incurs such expenses on its own behalf, and for its own benefit, in order to complete the sale to the affiliated importer.

Therefore, because the selling expenses Torrington cites were not specifically related to commercial activity in the United States, we did not deduct them from CEP.

Comment 2: NSK and Koyo argue that the Department deducted the cost of carrying inventory in the HM from CEP incorrectly for the preliminary results of these reviews. Both firms argue that HM inventory carrying costs reflect costs associated with economic activity occurring in the home market, not in the United States. NSK also argues that the CEP calculation is intended to construct an export price and that inventory carrying costs are not deducted in export price calculations.

Torrington contends that the Department's deduction of HM inventory carrying costs from CEP was proper. Torrington argues that carrying inventory is a selling activity involved in selling to the affiliated U.S. importer and is one of the expenses the Department must deduct in arriving at an appropriate ex-factory price.

Department's Position: We agree with Koyo and NSK. We regard the inventory carrying costs the respondents incurred in the home market, which are incurred prior to the sale, transfer, or shipment of the merchandise to the U.S. affiliate, as an expense incurred on behalf of the sale to the U.S. affiliate. As described in response to Comment 1 above, we do not consider this to reflect a commercial activity in the United States. Therefore, we have not deducted domestic inventory carrying costs from CEP for the final results.

Comment 3: SKF France and SKF Germany claim that, because their imputed inventory carrying costs, which they incurred in the country of exportation or which were associated with the transit time between Europe and the United States, relate to periods before the subject merchandise arrived in the United States, the Department cannot consider them to represent selling, distribution, and further-manufacturing activities in the United States, as required by 772(d)(3) of the Tariff Act. SKF France and Germany also cite the SAA at 824 to support their position that the Department must derive the profit it deducts in determining CEP from selling, distribution, and further-manufacturing activities in the United States. In addition, SKF France and SKF Germany claim that these imputed expenses are not deductible under sections 772(d) (1) and (2) of the Tariff Act since these imputed expenses are not incurred in the United States.

Torrington contends that SKF France's and SKF Germany's position is in conflict with the statute (section 772(d)(3)) and the SAA at 154. Torrington argues that the Tariff Act makes clear that all expenses are properly part of the CEP-profit allocation and that the SAA provides that 772(d)(3) of the Tariff Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling, distribution, and further-manufacturing activities in the United States. Torrington claims that the SAA does not limit the CEP-profit adjustment to expenses incurred in the United States.

Department's Position: We agree with SKF France and SKF Germany in part. For the reasons indicated in our response to comment 1 above, we have deducted from CEP only expenses associated with economic activities in the United States. The inventory carrying costs at issue are not associated with such activities. We disagree, however, that the geographical location is necessarily determinative. Thus, as discussed in our proposed regulations at 7331, we will deduct an expense associated with economic activities in the United States no matter where it is paid.

Comment 4: Torrington contends that the Department should make a deduction to CEP for certain selling expenses that FAG Italy incurred in selling merchandise to the United States. Torrington identifies costs which FAG OEM und Handel AG (FAG OH), a subsidiary of FAG Italy's parent company, incurred in Germany to support the sale of bearings to the United States. Torrington asserts that the deduction of these costs is appropriate because these costs consist of expenses for maintaining an electronic data interface with the U.S. affiliate, expediting and handling functions in connection with the U.S. affiliate's orders, and printing costs associated with the publication of catalogs and technical data material in English.

FAG Italy contends that the Department properly excluded HM export selling expenses and HM inventory carrying costs from the pool of CEP deductions in accordance with Section 772(d) of the Tariff Act.

Department's Position: We disagree with Torrington in part. Based on the record, we determined that the expenses in question are not deductible from CEP under section 772(d) of the Tariff Act. However, the record suggests that one of the three expenses Torrington identifies, *i.e.*, printing costs associated with the publication of catalogs and technical materials in English, is a direct advertising cost that FAG OH assumed on behalf of FAG Italy's U.S. affiliate for sales to its unaffiliated customers in the United States. The SAA, at 828, requires that the Department make a COS adjustment (rather than a CEP adjustment) for ''assumptions of expenses incurred in the foreign country on sales to the affiliated importer.'' Thus, we have determined that it is proper to add this expense to NV as a COS adjustment under section 773(a)(6)(C)(iii) of the Tariff Act (*see* 7331 of our proposed regulations).

Regarding the other two expenses Torrington identifies, we have determined from the description on the record that they are not associated with economic activity in the United States nor are they direct selling expenses within the meaning of section 773(a)(6)(C)(iii) of the Tariff Act. However, FAG Italy did not provide sufficient information to permit us to isolate them from the sum of all three expenses. Therefore, as facts available, we included the total amount FAG Italy reported for these three expenses in our COS adjustment.

Comment 5: NTN disagrees with the Department's calculation of a profit deduction from CEP based on each class or kind of merchandise without regard to level of trade. NTN argues that, since selling expenses differed by level of trade and had an effect on prices, this difference does not entirely account for the different prices at the different levels of trade. NTN asserts that the statute expresses a preference for the profit calculation to be done as specifically as possible with respect to sales in the appropriate markets of the subject merchandise or the narrowest category of merchandise which includes the subject merchandise. Therefore, NTN argues the Department should calculate CEP profit on a level-of-trade basis which would result in more accurate margins since it would better account for price differences at the various levels of trade.

Torrington argues that the statute specifies that the Department is to calculate CEP profit on all sales of subject merchandise without regard to level of trade.

Department's Position: Neither the statute nor the SAA require us to calculate CEP profit on bases more specific than the subject merchandise as a whole. Indeed, while we cannot at this time rule out the possibility that the facts of a particular case may require division of CEP profit, the statute and SAA, by referring to ''the'' profit, ''total actual profit,'' and ''total expenses'' imply that we should prefer calculating a single profit figure. NTN's suggested approach would also add a layer of complexity to an already complicated exercise with no guarantee that the result will provide any increase in accuracy. We need not undertake such a calculation (see *Daewoo Electronics* v. *International Union,* 6 F.3d 1511, 1518–19 (CAFC 1993)). Finally, subdivision of the CEP-profit calculation would be more susceptible to manipulation. Congress has specifically warned us to be wary of such manipulation of the profit allocation (see S. Rep. 103–412, 103d Cong., 2d Sess at 66–67).

Comment 6: Torrington argues that the Department should deduct from CEP any credit provided by the foreign seller to its U.S. subsidiary. Torrington asserts that credit is always a direct expense and that this is an expense that the seller pays on behalf of the buyer in CEP transactions.

NSK and NSK/RHP assert that imputed costs for home market activities cannot lawfully be deducted from CEP. Koyo argues that deducting expenses it incurred not in selling to the unaffiliated customer in the United States, but rather in its transactions with its U.S. affiliate, is contrary to the statute. Koyo argues further that to accept Torrington's argument would be to double-count the inventory carrying cost of the merchandise. The FAG companies argue that there is no statutory authority to deduct export credit expenses incurred in the home market from CEP. The SKF companies note that such a credit expense, if calculated, could never constitute a direct selling expense, as it is totally

unrelated to the sale to the first unrelated customer.

Department's Position: We do not consider credit expenses incurred between a foreign producer and its U.S. affiliate to be expenses associated with economic activities in the United States (see our responses to Comments 1 and 2). Therefore, we have not deducted them from CEP.

Comment 7: Torrington asserts that CEP profit is understated where the Department excused particular respondents from answering the further-manufacturing section of the questionnaire, because the Department did not deduct profits on U.S. value-added operations when calculating CEP. While Torrington acknowledges that section 772(e) of the Tariff Act allows the Department to consider non-U.S.-value-added sales in determining CEPs for value-added sales, Torrington argues that the statute merely provides that the Department may use other transactions if it determines such use is appropriate. Torrington asserts that this does not authorize the Department to disregard the value-added profit. Torrington argues further that the specific language of 772(d)(3) of the Tariff Act does not yield to the general methodology allowed in section 772(e). When one reads the provisions, in *pari materia,* Torrington claims that it is clear that sales used as proxies must be adjusted for value-added profit in order to implement the intention of the statute. Torrington concludes that the Department must calculate appropriate profit amounts on the basis of ratios of U.S. value added to total cost of production of the bearing in question and deduct that amount in its final calculations. If the appropriate data are not on the record, then Torrington concludes that the Department must apply adverse facts available.

Koyo argues that the Department is not disregarding profit on further-processed merchandise but is actually assuming that the profit percentage earned (like the expenses incurred) on further-processed merchandise was consistent with that earned (or incurred) on non-further-processed merchandise. Moreover, Koyo asserts, there is no evidence in the record to suggest that this is an unreasonable assumption, and there is no question that the Department has ample authority under section 772(e) to support its decision to apply the margins calculated on non-further-processed sales to further-processed sales.

The SKF companies argue that Torrington is attempting to have the Department eviscerate 772(e) by suggesting a CEP-profit deduction that would ''back-door'' the Department into requiring respondents to report full cost data pertaining to all sales of further-manufactured merchandise. The SKF companies also argue that Torrington's interpretation of the law is incorrect and that nothing in section 772(d)(3) requires profit to be deducted for sales subject to the simplified reporting provisions of 772(e). SKF asserts that the opposite is true in that 772(d)(3), by referencing (d)(2), plainly exempts sales eligible for simplified reporting from the CEP profit deduction. The SKF companies explain that the statute requires that CEP be reduced by, *inter alia,* ''the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) [(the special rule for simplified reporting)] * * *'' (citing section 772(d)(2) of the Tariff Act).

The FAG companies argue that to adopt Torrington's in *pari materia* reading of the statute would render 772 (e) completely meaningless. The FAG companies assert that waiving full further-processing reporting of sales and costs while, at the same time, requiring full further-processing reporting so that a value-added profit could be calculated would render the waiver subsection entirely meaningless and re-encumber the Department with burdens Congress explicitly intended to alleviate.

NSK and NSK/RHP argue that further-processing information is irrelevant to CEP-profit calculations in that the Department is not establishing NV and CEP for further-processed merchandise which has had substantial value added in the United States.

Department's Position: Section 772(e) of the statute allows us to determine the CEP of further-processed subject merchandise in a manner that does not require the calculation and subtraction of U.S. value added if the U.S. value added is likely to exceed substantially the value of the imported merchandise (this procedure is also referred to in the statute as the ''special rule''). In implementing this special rule for certain respondents, we determined that it was appropriate to use an alternative method to calculate CEP for the transactions involving substantial value-added in the United States (in such situations we determined dumping margins for the sales in question on the basis of weighted-average dumping margins found on sales of identical or other subject merchandise sold to unaffiliated customers). Our waiving of the full reporting requirements of the further-processing section of our questionnaire was, in effect, a decision not to base CEP on any data relating to these transactions, including expense and profit data. By using the sales of other subject merchandise sold in the United States as a proxy or surrogate for the further-processed transactions, we were making an assumption that the expense and profit percentages incurred on the non-further-processed transactions were representative of the expense and profit percentages incurred on further-processed transactions. In other words, while a greater absolute amount of expenses may be incurred in further processing, and a commensurately greater profit earned, there is no reason to believe that when the expenses and profits are deducted, there is any difference between the value of further-processed and non-further-processed merchandise. There is no evidence that the value of imported merchandise varies depending on whether it will be further-processed or not. Therefore, there is no record evidence suggesting that our assumption was erroneous and that profits for the transactions in question were understated.

Furthermore, we disagree with Torrington's interpretation of the statute. The SAA in discussing the special rule at 826 indicates that the purpose of the new rule is to save the Department the considerable effort of measuring the U.S. value added precisely. Requiring the Department to gather and analyze this data for the purpose of a profit calculation for these transactions would defeat the purpose of this provision.

Comment 8: FAG Italy and FAG Germany argue that the CEP selling expense total to which the Department applied the CEP-profit ratio improperly includes credit expense. Respondents maintain that the Department's calculation excludes credit expenses from the numerator and denominator of the CEP-profit ratio, but that the U.S. selling expense to which the Department applied this ratio includes credit expenses. Respondents contend that this improperly skews the calculation of total CEP profit. FAG Germany suggests that the Department correct this error by excluding credit from the U.S. selling expenses or by including credit expenses in the denominator of the CEP-profit ratio.

Torrington agrees in part with respondents. Torrington requests that the Department include credit expenses in the denominator of the CEP-profit ratio rather than exclude them from the U.S. selling expense.

Department's Position: We disagree with respondents and Torrington. Sections 772(f)(1) and 772(f)(2)(D) of the Tariff Act state that the per-unit profit

amount shall be an amount determined by multiplying the total actual profit by the applicable percentage (ratio of total U.S. expenses to total expenses) and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In accordance with the statute, we base the calculation of the total actual profit used in calculating the per-unit profit amount for CEP sales on actual revenues and expenses recognized by the company. In calculating the per-unit cost of the U.S. sales, we have included net interest expense. Therefore, we do not need to include imputed interest expenses in the ''total actual profit'' calculation since we have already accounted for actual interest in computing this amount under section 772(f)(1).

When we allocated a portion of the actual profit to each CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expense allocation factor. This methodology is consistent with section 772(f)(1) of the statute which defines ''total United States Expense'' as the total expenses described under section 772(d)(1) and (2). Such expenses include both imputed credit and inventory carrying costs. See Certain Stainless Wire Rods from France, 61 FR 47874, 47882 (September 11, 1996).

12. Programming

FAG Germany, FAG Italy, INA, Koyo, NSK, NSK/RHP, NTN Japan, NTN Germany, SKF Italy, SKF Germany, SKF France, SNR France, and Torrington commented on alleged errors in the Department's computer programs. Where all parties and the Department agreed with a programming-error allegation, we made the necessary changes to correct the error. Our final results analysis memoranda describe the programming errors and any changes we made to correct the problems. The following comments address allegations of programming-errors that are in dispute.

Comment 1: FAG Italy and FAG Germany claim that, in calculating the net unit price it used as NV, the Department neglected to deduct HM credit expenses. FAG Italy requests that in the calculation of net unit price for the final results the Department include credit expenses in the pool of direct selling expenses that it deducts from the HM unit price and, ultimately, from NV.

Torrington agrees that the Department should adjust FAG Germany's and FAG Italy's NV for credit expenses. However, Torrington contends that the Department should not treat FAG Italy's credit expenses as direct because the credit periods the company used to calculate the adjustment were not transaction-specific. Torrington maintains that, if the Department makes the adjustments FAG Germany and FAG Italy request, it must exclude credit expenses from the calculation of ISEs to avoid double-counting.

Department's Position: We calculate net unit price in two sections of our analysis. For the preliminary results, we neglected to deduct HM credit expenses from the net unit prices we used to determine whether respondents'' sales to related parties were at arm's-length prices. This was a clerical error, and we have made this deduction for the final results. However, when we calculated net unit price for NV purposes in the preliminary results we did deduct credit expenses; therefore, changing the NV as respondents request is not necessary.

We disagree with Torrington that we should not treat FAG Italy's HM credit expenses as a direct expense. FAG Italy's calculation of a customer-specific average credit period instead of a transaction-specific credit period is reasonable given that, as confirmed by the Department at verification, the latter information is not available in FAG Italy's accounting records. Through verification we found that FAG Italy's credit-period calculation methodology is not unreasonably distortive. Regarding Torrington's suggestion that we exclude credit expenses from FAG Germany's and FAG Italy's calculations of ISEs to avoid double-counting, we checked our calculations to ensure that we did not include credit expenses in the calculation of ISEs.

Comment 2: FAG Italy, FAG Germany, and NSK maintain that the Department made a clerical error by not including manufacturer codes when sorting and defining the U.S. and HM sales and cost databases. Respondents contend that the Department must include the manufacturer codes in order to calculate NV in accordance with the statutory definition of foreign like product. In support, respondents cite section 773(a)(1)(B)(i) of the Tariff Act, the reference for NV, and section 771(16) of the Tariff Act, the statutory definition of foreign like product.

Regarding FAG Italy, Torrington claims that the Department's analysis is in accordance with the statute and, therefore, there is no clerical error. In support of this argument, Torrington notes that FAG Italy reported that it has a single manufacturing plant. Torrington claims that FAG Italy has neither argued nor demonstrated that unaffiliated manufacturers produced the subject merchandise, a situation that would require the consideration of manufacturer codes in the calculations. Torrington states that it cannot determine from FAG Germany's response whether it reported products manufactured by other producers.

Department's Position: We agree with respondents and have considered manufacturer codes when establishing U.S. and HM sales and cost databases for use in our analysis. Not using manufacturer codes in the preliminary analysis was an inadvertent error. Thus, for the final results we have calculated NV in accordance with section 773(a)(1)(B)(i) of the Tariff Act and the statutory definition of foreign like product (see section 771(16) of the Tariff Act).

We disagree with Torrington's contention that we should not change the analysis for FAG Italy because the company reported having a single manufacturing plant. While FAG Italy reported having a single manufacturing plant, the company also reported that it purchased some bearings from unaffiliated manufacturers which it sold to the United States. Therefore, we included the manufacturer codes in our analysis.

Comment 3: FAG Germany argues that the Department's decision to rely on CV when the model the Department selected as most comparable fails the cost test leads to inaccurate and distorted results. FAG Germany argues that the Department should correct this clerical error for the final results so that NV is based on a family match when sales of an identical match are disregarded as below cost rather than CV.

Torrington supports FAG Germany's suggested revision.

Department's Position: We disagree with the revision FAG Germany and Torrington suggest. For the reasons described in response to comment 2 of section 6.A. above, our reliance on CV when the model we selected as most comparable fails the cost test is a methodological decision and not a clerical error. Still, the parties are correct in suggesting that the mechanics of our concordance did not function properly. This was the result of an error in how we defined the U.S. and HM periods, and we have corrected it for the final results.

Comment 4: Koyo argues that the Department incorrectly used the COM of bearings produced in-house instead of the weighted-average COM based on both the quantities produced in-house and purchased in calculating COP and CV. Koyo explains that this results in no COM or CV values for purchased bearings in the COM calculations.

Torrington agrees with Koyo that the Department should not use the COM of bearings produced in-house for those particular models that Koyo only purchased and did not produce. However, Torrington argues that the use of a weighted-average COM, as Koyo suggests, is only appropriate where Koyo has purchased the bearing from an unaffiliated party. Torrington contends that, for purchases from affiliated suppliers, the Department should use the highest of either the reported transfer price or the COP of the affiliated supplier.

Department's Position: We agree with Koyo and have corrected this clerical error for these final results. Koyo explained in its cost questionnaire response that it has taken into consideration the difference between transfer price and COP of the affiliated-party inputs in the calculation of the weighted-average variable COM for COP purposes and weighted-average total COM for CV.

Comment 5: NTN Germany contends that the Department made a clerical error in the model-match portion of its preliminary analysis. NTN Germany asserts that this error resulted in the Department not matching sales at the same or closest level of trade.

Department's Position: We disagree with NTN Germany. The model-match portion of our analysis does not use level of trade as part of the criteria for selecting the best foreign like product because level of trade is not a criterion under section 771(16) of the Tariff Act. After selecting the most comparable product match according to the statute, we attempt to find contemporaneous sales of that product at the same level of trade, if possible. For a detailed explanation of our level-of-trade analysis, see the introduction to Section 5 above.

Comment 6: SNR contends that the Department's analysis double-counts HM quantity adjustments. Torrington concurs with SNR regarding this error.

Department Position: We disagree with SNR and Torrington. While we make an adjustment to HM quantities in two parts of our analysis, *i.e.*, once in connection with the arm's-length test and a second time in calculating NV, this does not result in double-counting because these portions of our analysis are independent of one another.

13. Duty Absorption and Reimbursement of Dumping Duties

Comment 1: Torrington argues that the Department should deduct dumping duties from CEP as part of ''all charges and expenses incident to bringing subject merchandise from the place of shipment in the exporting country to the place of delivery in the U.S.,'' citing section 772(c)(2)(A) of the Tariff Act. Petitioner asserts that, if the Department does not deduct these duties, the law does not have its remedial effect. Torrington maintains that dumping duties are ''special duties'' that are included in the definition of ''import duties'' in the contemplation of U.S. Customs law. Torrington believes that deducting dumping duties from CEP double-counts those duties only in situations where the importer does not absorb the duties on behalf of the unaffiliated buyer. Petitioner cites to regulations for adjustment to price in European Community law, which permit the deduction of dumping duties paid to an importer by any party associated with that importer. Petitioner also contends that deducting dumping duties is not prohibited by the CIT's decision in *Federal Mogul I* (at 856), since that decision dealt with the deduction of cash deposits, which are a reflection of past behavior rather than current behavior. Petitioner suggests that calculating a margin without regard to dumping duties and, if there is a positive margin, then making an additional deduction for the duties is consistent with the CIT's decision and section 772(c) of the Tariff Act.

Koyo and SNR argue that the Department lacks statutory authority to treat antidumping duties as a cost. Koyo refers to the SAA to underscore that the law regarding duty absorption ''is not intended to provide for the treatment of duties as a cost,'' citing the SAA at 885. Respondent contends that Torrington's method for treating duties as an expense would incumber respondents with an expense that bears no relation to their pricing policies during the POR as respondents would be unable to anticipate the rate at which entries would finally be liquidated. In addition, Koyo states that Torrington's suggestion is contrary to the remedial purpose of the law.

NTN and SKF point out that nothing in the URAA indicates a statutory change in the treatment of antidumping duties. SKF notes that section 772(c)(2)(A) refers to duties ''incident to bringing subject merchandise * * * to the place of delivery in the U.S.'' and opines that dumping duties do not fall under this definition since liability for the dumping duties arises from sales of the merchandise in the United States. INA counters that U.S. Customs practice is not germane to interpretation of the antidumping duty statute, citing *American NTN Bearing Mfg. Corp.* v. *United States*, 739 F. Supp. 1555, 1565 (CIT 1990). All five respondents refer to the Department's consistent practice in *AFBs I, AFBs II,* and *AFBS III* of not treating antidumping duties as a cost and note that the CIT has upheld the Department's policy, citing *Federal Mogul.*

Department's Position: We disagree with Torrington. The wording of section 772(c)(2)(A) did not change under the URAA. The Department has consistently interpreted the provision to mean that antidumping duties are not eligible for deduction from the price of the imported product in that they would result in double-counting (*AFBs IV* at 10900, 10907; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 61 FR 18547; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 60 FR 44009, 44010). Likewise, section 751(a)(4) does not require that duties ''absorbed'' by an importer be deducted from CEP, only that they be considered in a review of the likelihood of continuation of dumping. We maintain our position stated in *AFBs V*, at 66519, that we do not consider antidumping duties to be themselves a selling expense, similar to ordinary customs duties, movement expenses, or credit terms, which we should deduct from CEP as a selling cost.

Comment 2: Torrington believes that, if the Department declines to deduct dumping duties from CEP, it should apply the reimbursement regulation to merchandise with transfer prices below the COP whenever it finds dumping margins on that merchandise. Petitioner contends that below-cost transfer prices constitute an indirect transfer of funds relieving importers from having to raise resale prices to finance assessment of antidumping duties. Petitioner believes that the Department's decision in Color Television Receivers for Korea, 61 FR 4408, 4411 (February 6, 1996), that the reimbursement regulation applies in exporter's-sales price situations, sanctions the adoption of such a policy for CEP transactions under the new law. Petitioner also argues that, when Congress enacted the URAA, it approved the reimbursement regulation and expressed its wish that the concept be extended to reimbursements of countervailing duties.

Koyo counters that the Department's authority to deduct reimbursed duties is the same as the authority to deduct rebates or discounts, in that it applies to a sale to the first unaffiliated purchaser in the United States, not to the transfer from the exporter to the affiliated importer. Thus, Koyo interprets the reimbursement regulation as applying only to sales described in section 772 of the Tariff Act.

INA, SKF, and SNR contend that URAA did not change the substance or intent of the reimbursement regulation. Respondents believe that the Department's reliance on explicit and specific factual evidence that an affiliated importer has been directly reimbursed for dumping duties should be maintained. SNR states that Torrington's allegations of below-cost transfer prices do not establish a specific and direct link between transfer pricing and reimbursement.

Department's Position: We disagree with Torrington. Although we agree that reimbursement may be applicable in CEP situations, we also hold that there must be evidence that the parent has reimbursed its subsidiary for estimated deposits or assessed duties. See Color Television Receivers from the Republic of Korea, 61 FR 4408, 4410–11 (February 6, 1996), Brass Sheet and Strip from the Netherlands, 57 FR 9534, 9537 (March 19, 1992), Brass Sheet and Strip from Sweden, 57 FR 2706, 2708 (January 23, 1992), and Brass Sheet and Strip from Korea, 54 FR 33257, 33258 (August 14, 1989). In this case, Torrington has presented no evidence of reimbursement. The presence of both below-cost transfer prices and actual dumping margins do not, in and of themselves, constitute evidence that reimbursement is taking place. See *AFBs III* (39736), *AFBs IV* (10906–07), and *AFBs V* (66519).

14. Miscellaneous Issues

A. U.S. Sales Completeness. Comment: Torrington asserts that the Department should include all repair merchandise bearings SNR imported into the United States in the U.S. database. Torrington cites sections 751 and 753 of the Tariff Act, which state that all merchandise covered by an antidumping duty order must be appraised for antidumping duties, and asserts that there is no exception for repair merchandise. As support, Torrington cites to a scope ruling the Department issued in response to a request by Wafios Machinery Corporation, July 22, 1991. Torrington suggests that, if SNR cannot assign a price to those bearings, the Department should treat them as zero-priced sales and assess duties accordingly.

SNR states that the Department calculated margins for imported parts used in repair jobs properly. SNR asserts that it reported all U.S. sales of scope product as requested by the questionnaire. SNR does not disagree with the scope ruling Torrington cites, but contends that the ruling relates to the issue of whether bearings imported for use as spare-parts replacement bearings are subject to the antidumping order. SNR comments further that it did not sell the parts which were used to repair bearings sold by other manufacturers. Instead, SNR explains, it charged an inspection-and-repair fee. SNR states the Department could apply antidumping duties to these parts using SNR's weighted-average margin. However, SNR contends that it is not possible to calculate individual margins for these parts. SNR cites section 772(e) of the Tariff Act, which allows the Department to calculate margins using the weighted-average dumping margin on sales of complete bearings to assess dumping duties on importations such as repair parts.

Department's Position: We agree that, although these bearings are subject to the antidumping orders on AFBs, it is not possible to calculate export price or CEP because SNR does not sell the bearings themselves. Rather, SNR uses the bearings in the context of performing a service for which SNR charges a fee. It is not possible to discern, from this fee, an amount which would be appropriate to attribute to the sale of the bearings. Therefore, we will liquidate the entries of this merchandise at the weighted-average rate we have calculated for SNR's other sales.

B. Pre-Final Reviews. Comment: Asahi requests that, if the Department makes any methodological changes from the preliminary results other than those commented on in respondent's brief, the Department provide the company with an opportunity to comment on any such changes before issuance of the final results of review. In addition, Asahi requests disclosure of the Department's calculations before issuance of the final results so that it can review the Department's calculations for changes and comment on any clerical or ministerial errors.

Department's Position: As noted in previous reviews (see *AFBs III* (at 39786), *AFBs IV* (at 10957) and *AFBs V* at 66520), in the interest of issuing the final results in a timely manner, the Department cannot implement the steps Asahi requests. Since the current reviews are governed by statutory deadlines, Asahi's requests are now even less feasible than previously. Moreover, the regulations provide a procedure for correcting ministerial errors in the final results of review. *See* 19 CFR 353.28.

C. Certification of Conformance To Past Practice. Comment: Torrington argues that the Department should require respondents to affirm that their responses conform to prior Departmental determinations for reviews of these orders. Torrington states that the Department or domestic interests should not be responsible for detecting a respondent's unilateral departure from the Department's rulings in prior reviews. Torrington suggests, at a minimum, that respondents identify where they have continued to use any methodology that the Department rejected in a prior review, accompanied by a statement justifying the departure from established practice. Torrington proposes that, in such cases, the Department require respondents to supply data both in the format established by past practice and the manner that respondents hope will be acceptable to the Department despite the prior practice. Torrington suggests that, without such identification, the emergence of a consistent Departmental practice is dependent on the continued vigilance of the Department in analyzing responses and in the availability of funding for repeated verification. Torrington cites examples of respondents' unidentified use of reporting methodologies that do not conform to Department practice and which the Department has previously rejected.

INA argues that the Department should reject Torrington's proposal that respondents be required to state that their questionnaire responses conform to prior rulings. INA asserts that Torrington's proposal merely imposes an additional make-work burden upon respondents. INA states that respondents respond to the Department's questionnaire in accordance with the antidumping law, the Department's regulations, and the questionnaire instructions. INA also states that the statute and regulations do not contemplate anything else.

NSK says that it reports the information requested by the Department, and it is the Department, as the administering authority, which determines what to do with the reported information. NSK contends that Torrington's request that respondents certify compliance with past Department rulings must be rejected as needless information and an unwarranted intrusion by the petitioner into the administration of the antidumping law.

FAG Germany and FAG Italy contend that they have completely conformed to all prior applicable Departmental rulings and have never been accused or found to be deviating from applicable Departmental policy or precedent. FAG Germany and FAG Italy also assert that Torrington has not cited any examples underlying Torrington's allegations. FAG Germany and FAG Italy argue further that the Department has long

adhered to the proposition that each administrative review is a separate and distinct proceeding and that, while Department practice is helpful and instructive in succeeding reviews, it is not binding. Finally, FAG Germany and FAG Italy contend that Torrington's request would place a burden on respondents by making them recite the history of each adjustment permitted or rejected over all previous reviews. FAG Italy and FAG Germany state that such a burden would be overwhelming and unnecessary.

Department's Position: We disagree with Torrington that we should require that all respondents conform their submissions, their allocations, and their methodology to our most recent prior determinations and rulings. We also disagree with Torrington that respondents should identify where they have continued to use any methodology that we rejected in a prior review and justify the departure from established practice. Each administrative review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts. What transpired in previous reviews is not binding precedent in later reviews, and parties are entitled, at the risk of the Department's determining otherwise, to argue against a prior Department determination. As a practical matter, methodologies the Department accepts in one review are generally used by respondents in subsequent reviews and methodologies the Department rejects are not perpetuated in later reviews. The Department, however, may reconsider its position on an issue during the course of the proceeding in light of facts and arguments presented by the parties.

D. Country of Origin. Comment 1: Torrington claims that SKF Germany did not disclose its methodology for determining country of origin after the Department asked it in its supplemental questionnaire to do so. Torrington claims that SKF Germany asserted in its supplemental questionnaire response that its methodology had not changed over the past reviews, but that it did not indicate the product's essential characteristics for purposes of determining country of origin. In addition, Torrington contends that SKF Germany did not indicate what manufacturing steps convey origin, and SKF Germany did not indicate the methodology which it has consistently applied. Torrington argues further that SKF Germany does not describe how it arrived at its origin determination. Torrington asserts that if the company cannot clear up these questions the Department should conclude that it is unable to determine whether SKF Germany has reported all sales of German bearings in its HM and U.S. sales listings and apply facts available. Torrington suggests that an appropriate facts available solution would be to apply the highest margin found for any SKF company in this review.

SKF Germany contends that, as it stated in its questionnaire and supplemental questionnaire responses, it considers the complexity and extent of the manufacturing processes involved and the origin of each bearing's major components when identifying country of origin for its bearings. SKF Germany claims that the accurate determination of origin is important to the proper reporting of its sales in an administrative review and in order to comply with European and United States marking and other requirements. SKF Germany contends further that in multiple prior verifications the Department has confirmed the accuracy and completeness of SKF Germany's sales reporting. In addition, SKF Germany claims that, in this review, the Department also affirmed the accuracy of its sales reporting, including a description of the specific steps taken at verification to confirm SKF's origin determinations. SKF Germany contends that, as the Department verified, it reported sales of all German origin bearings.

Department's Position: We agree with SKF Germany. We are satisfied that SKF Germany reported all of its German-origin bearings and did not report sales of non-German origin bearings in this review. We verified, in this review, SKF Germany's methodology and were able to trace the procedure that SKF Germany uses in determining the country of origin for its bearings. We did not find any discrepancies in SKF Germany's reporting methodology in our examination of invoices, inventory records, and sales registers.

Comment 2: Torrington argues that the Department should confirm that NSK–RHP has determined the country of origin properly for all reported bearings. Torrington asserts that NSK–RHP did not answer fully a question that the Department asked in its supplemental questionnaire on the country of origin of bearings NSK–RHP sold in or to the U.S. market. Torrington contends that NSK–RHP did not clarify how it determines whether a bearing is a U.K.-produced (versus a Japanese-produced) bearing in its supplemental response. For these reasons, Torrington requests that Department consider applying facts available for these final results. Torrington also suggests that an appropriate facts-available solution would be to apply the highest margin found for any NSK–related company for this review period.

NSK–RHP argues that it only sold RHP-brand bearings in, or to, the United States during the POR. Further, NSK–RHP asserts that almost all of these bearings were produced at factories owned and controlled by RHP Bearings, Ltd. NSK–RHP maintains that the few remaining RHP-brand bearings manufactured by NSK Bearings Europe were sold in the United States during the sample weeks. NSK–RHP argues that NSK-brand bearings manufactured by NSK Bearings Europe were not sold in, or to, the United States during the review period. Moreover, NSK–RHP argues that it has already reported the degree to which affiliated companies provided raw materials or components either to RHP Bearings, NSK Bearings Europe, or both, during the POR. Therefore, NSK–RHP asserts, an examination of this material demonstrates that bearings manufactured in Japan were not reported as U.K. merchandise.

Department's Position: We disagree with Torrington. We addressed the question in our supplemental questionnaire in relation to NSK–RHP's further-manufactured sales. NSK–RHP reported these sales as being of U.K. origin. There is nothing on the record that suggests these sales are not of U.K. origin and Torrington has not provided any evidence to suggest otherwise. Furthermore, we have examined NSK–RHP's methodology for reporting its bearings and are satisfied that NSK–RHP properly determined the country of origin of all reported bearings.

[FR Doc. 97–923 Filed 1–14–97; 8:45 am]
BILLING CODE 3510–DS–P

[A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Germany: Amended Final Results of Antidumping Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On January 6, 1997, the Department of Commerce (The Department) issued the final results of administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan,

Singapore, and the United Kingdom, which has not yet been published in the Federal Register.

The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 27 manufacturers/exporters. The review period is May 1, 1994 through April 30, 1995. We are correcting a margin-rate error with respect to ball bearings from Germany manufactured/exported by FAG KGS.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1997, the Department of Commerce (The Department) issued the notice of final results of administrative review of the antidumping duty orders on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, which has not yet been published in the Federal Register. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 27 manufacturers/exporters. The review period is May 1, 1994 through April 30, 1995.

After issuance of our final results, we realized that we did not publish the correct margin we calculated for the final results with respect to ball bearings from Germany manufactured and exported by FAG.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (as amended) by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Amended Final Results of Review

We have determined the following weighted-average margin to exist for the period May 1, 1994 through April 30, 1995:

Country	Company	Class or kind	Rate
Germany	FAG	Ball Bearings	13.48%

A cash deposit of estimated antidumping duties based on the above margin shall be effective upon publication of this notice of amended final results of administrative review for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930 (as amended). This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 10, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–994 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 1996, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (61 FR 56515). This review covers Saha Thai Steel Pipe Company, SAF Steel Pipe Export Company, and Pacific Pipe Company.[1] The period of review (POR) is March 1, 1994 through February 28, 1995.

On October 31, 1996, counsel for the petitioning companies Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe (''petitioners'') filed timely allegations, pursuant to 19 CFR 353.28, of ministerial and clerical errors with regard to the final results in the 1994–95 administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. Petitioners'' allegations were limited to alleged errors in calculating the dumping margin for subject merchandise manufactured by Saha Thai. On November 20, 1996, Saha Thai also submitted timely allegations of clerical errors. Saha Thai did not comment on the allegations submitted by petitioners.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: James Rice or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–4037, respectively.

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. In addition, unless otherwise indicated,

[1] The Department has determined that Pacific Pipe Company had no U.S. sales during the period of review.

all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this administrative review are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Ministerial and Clerical Errors in the Final Results of Review

Petitioners alleged that the Department made four ministerial errors in the final results. First, petitioners contend that the Department inadvertently added indirect selling expenses to the calculation of export price. Second, petitioners contend that the Department failed to include a difference in merchandise adjustment in its calculation of FUPDOL. Third, petitioners argued that the Department failed to include direct selling expenses in the calculation of normal value for constructed value. For these three allegations, the Department agrees that these are ministerial errors, and we have amended our final results to correct these errors. Fourth, petitioners alleged that the Department failed to include straightening labor and overhead expenses for black pipe produced by Saha. The Department disagrees with petitioners'' assertion that this represents a ministerial error. As stated in the verification report, the straightening costs identified by petitioners relate to the straightening which is required following the deformation that occurs during the galvanization process. In the final results of administrative review, the Department calculated COP and CV for black pipe exclusive of these straightening costs because they are not incurred in the production of black pipe.

Respondents did not object to petitioners' ministerial allegations, but on November 20, 1996, alleged that a clerical error occurs in the Department's calculation of COP. Saha Thai alleges that the Department double counted its inventory carrying costs in calculating COP. The Department agrees that this is a clerical error, and in accordance with 19 CFR 353.28, we have amended the final results to correct this error.

Saha Thai also contends that the Department's model match program departed from prior practice in that the program searched only for what the Department considered best match rather than for subsequent next-best matches before resorting to CV. We disagree with respondents that this is a ministerial error. The issue of the model match program used in this review is a methodological issue. Consequently, it is inappropriate to change the model match program because of an alleged ministerial error. See 19 CFR 353.28(d). (For further information, see the Decision Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Acting Assistant Secretary for Import Administration, dated December 20, 1996, which is on file in the Central Records Unit, room B–099 of the main Commerce building.)

Amended Final Results of Review

Upon correction of the ministerial errors, we have determined that the following margin exists for the period indicated:

Manufacturer/ exporter	Time period	Margin (percent)
Saha Thai/ SAF	3/1/94–2/28/95	7.27

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain circular welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent for circular welded carbon steel pipes and tubes, the all others rate established in the LTFV investigations. See Final Determination and Antidumping Duty Order: Certain Welded Carbon Steel Pipes and Tubes from Thailand, (51 FR 8341, March 11, 1986).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: January 7, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–995 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

The College of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211,

U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–113. Applicant: The College of New Jersey, Trenton, NJ 08650. Instrument: Electron Microscope, Model H–7000–S. Manufacturer: Hitachi Instruments, Japan. Intended Use: See notice at 61 FR 59417, November 22, 1996. Order date: October 9, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–925 Filed 1–14–97; 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, D.C. 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, N.W., Washington, D.C.

Docket Number: 96–125. Applicant: Smithsonian Institution, National Zoological Park, 3800 Connecticut Avenue NW, Washington, DC 20005. Instrument: Biological Cryostage, Model BCS 196. Manufacturer: Linkam Scientific Instruments Ltd., United Kingdom. Intended Use: The instrument will be used to develop optimal sperm cryopreservation protocols in endangered species. It will be compatible with an existing videomicroscope, permitting both direct observation and video documentation of sperm visibility during the freeze-thaw process. Application accepted by Commissioner of Customs: November 26, 1996.

Docket Number: 96–126. Applicant: Cornell University, Purchasing Department, 55 Judd Falls Road, Ithaca, NY 14850. Instrument: IR Mass Spectrometer, Model Delta^{plus}. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for the high precision determination of stable isotopes of carbon, hydrogen, oxygen, nitrogen, and sulfur during studies of (1) water and CO^2 flux in environmental systems, (2) plant-water-atmosphere relationships and (3) artificially enriched carbon, trace gases, and isotopes in carbonates. Application accepted by Commissioner of Customs: November 26, 1996.

Docket Number: 96–127. Applicant: U. S. Geological Survey, Box 25046, MS 963, Denver Federal Center, Denver, CO 80225. Instrument: SIR Mass Spectrometer with Automated Sample Peripherals, Model Optima. Manufacturer: Micromass, United Kingdom. Intended Use: The instrument will be used during investigations to determine the stable isotope composition of the appropriate geological waters, rocks and minerals to further the understanding of the history of the earth's climate and wide range of geological and environmental processes. An additional use of the instrument will be to develop the capability of analyzing extremely small samples for stable isotope compositions using domestic manufactured lasers for microsampling. Application accepted by Commissioner of Customs: December 2, 1996.

Docket Number: 96–128. Applicant: Montana State University, Microbiology Department, 109 Lewis Hall, P.O. Box 17352, Bozeman, MT 59717–0352. Instrument: Real-time Microbial Analysis System, Model ChemScan. Manufacturer: Chemunex SA, France. Intended Use: The instrument will be used to count the numbers of bacteria in samples of water, wastewater, soil, sediment, food, beverage and other similar materials. In addition, the instrument will be used for graduate and undergraduate student research and training. Application accepted by Commissioner of Customs: December 2, 1996.

Docket Number: 96–130. Applicant: State University of New York, Research Foundation, Stony Brook, NY 11794. Instrument: Mass Spectrometer, Model Delta^{plus}. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for studies concerning the relative abundances of the isotopes carbon-12 to carbon-13, oxygen-18 to oxygen-16, hydrogen-1 to hydrogen-2, nitrogen-14 to nitrogen-15, and sulfur-34 to sulfur-36 in gas phase compounds, including atmospheric carbon monoxide, atmospheric methane, sulfur hexafluoride, molecular nitrogen, and molecular oxygen. In addition, the instrument will be used for hands on instruction of mass spectrometry and will be available to graduate students pursuing advanced degrees in the earth sciences. Application accepted by Commissioner of Customs: December 4, 1996.

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 97–924 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

University of Southern California; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–061R. Applicant: University of Southern California, Los Angeles, CA 90033. Instrument: 3–Dimensional Motion Analyser, Model Vicon System 370. Manufacturer: Oxford Metrics, Ltd., United Kingdom. Intended Use: See notice at 60 FR 40823, August 10, 1995.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) exact synchronization of position and force data used in inverse dynamic analysis and (2) a unique software suite permitting instant visualization of both normal and pathological states of motion. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–927 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

Yale University;Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–102. Applicant: Yale University, New Haven, CT 06520. Instrument: SIMS IVS Console. Manufacturer: Surrey Medical Imaging Systems Ltd., United Kingdom. Intended Use: See notice at 61 FR 55972, October 30, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated October 21, 1996, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–926 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 970109004–7004–01]

RIN 0625–ZA04

Amend Cooperative Program to Establish and Operate ''American Business Centers'' in the Newly Independent State of the Former Soviet Union

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Reference 58 FR 36941, July 9, 1993, the International Trade Administration (ITA) announces that it will accept competitive proposals from organizations currently managing one, or more, American Business Center(s) to continue operations at their respective site(s). Each organization currently working with ITA under a cooperative agreement may submit competitive proposals for up to $150,000 in additional Federal support to continue operations for up to an additional twelve months. Successful Applicants will be funded by amending existing cooperative agreements. The total amount of award funds available is $650,000.

DATES: Applications must be received no later than 4:30 pm, E.S.T., February 14, 1997. Applications received after that time will not be reviewed by ITA. Applications will not be accepted via e-mail or facsimile machine transmission.

ADDRESSES: Applications must be mailed or hand delivered to, and Application Kits may be obtained from, the U.S. Department of Commerce, Room 1235, HCHB, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Vivian Spathopoulos, Deputy Director, Russia/NIS Program Office, U.S. & Foreign Commercial Service, U.S. Department of Commerce, telephone: (202) 482–2902.

SUPPLEMENTARY INFORMATION: Proposals will be reviewed competitively against the following seven criteria: Quality of Work Plan, 30%; U.S. Trade and Investment Opportunities, 30%; Plan for Self-Sustainability, 10%; Success to Date, 15%; U.S. Small Business Utility, 5%; Qualifications of Applicant, 5%; and, Reasonableness of Cost, 5%. The application selection process will be the same as those published in the July 9, 1993 Federal Register notice referenced above. ITA reserves the right to reject any or all of the proposals.

This announcement extends the period of time during which an American Business Center (ABC) operator may receive Federal assistance from three (03) to four (04) years and postpones the end date of the program from September 30, 1997 to September 30, 1998. All other terms and conditions listed in the above referenced Federal Register notice remain in effect. All eligible Applicants will be sent an Application Kit via overnight mail or other priority mail.

Notwithstanding any other provision of law, no person is required to nor shall a person be subject to 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 OMB control number.

This action involves collections of information subject to the PRA and have been approved under control numbers 0348–0040, 0348–0043, 0348–0044, 0348–0046 and 0605–0001.

ITA will accept only those applications submitted by institutions currently administering one, or more, ABC(s) under the terms of this program. Incumbent operators may only apply to secure additional funding to continue operations at the site(s) where the Applicant already operates an ABC. Applicants must submit separate applications for each site.

Dated: January 7, 1997.

Lauri J. Fitz-Pegado,

Assistant Secretary and Director General, The Commercial Service.

[FR Doc. 97–1011 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–FP–P

National Institute of Standards and Technology

Notice of Public Meeting on the Fastener Quality Act

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of open meeting.

SUMMARY: NIST will hold an open meeting on February 4, 1997, to solicit industry views on the use of the statistical process control (SPC) in the manufacture of fasteners under the Fastener Quality Act (Public Law 101–592, as amended by Public Law 104–113) (The Act). The purposes of the meeting are to determine what impact, if any, the inspection, testing, and certification requirements of the Act and regulations may have on fastener manufacturers who use statistical process control and to identify ways in which the requirements of the Act and regulations might be met by SPC. Fastener manufacturers, Major End Users of fasteners (Automobile, Aerospace, Heavy Machinery, and others), representatives of Consensus Standards Bodies and Laboratory Accreditation Organizations, and academics with appropriate engineering expertise are invited to make presentations not exceeding 15 minutes each during the meeting.

DATES: The meeting will be held on February 4, 1997, from 9:00 a.m. until 5:00 p.m. Individuals and organizations wishing to present information orally during the meeting must contact NIST not later than January 24, 1997, to request time, not to exceed 15 minutes, on the program.

ADDRESSES: The meeting will take place in the Green Auditorium, Administration Building (Bldg. 101), at NIST in Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Individuals and organizations wishing to present information orally during the meeting should contact Mr. David

Edgerly, Deputy Director, Technology Services, NIST, telephone 301–975–4510, telefax 301–975–2183. All other questions should be directed to Dr. Subhas Malghan, Program Manager, Fastener Quality Act, Building 820, Room 306, National Institute of Standards and Technology, Gaithersburg, Maryland 20899; telephone 301–975–6101, telefax 301–975–2183.

SUPPLEMENTARY INFORMATION:

The agenda for the meeting is:

1. Welcome and opening remarks.
2. NIST overview of SPC issues raised by industry.
3. Statements by members of the public on the issues.
4. Discussion of potential solutions.
5. Next Steps (NIST).

Various industries, including automobiles, aerospace, and heavy machinery industries have established quality assurance programs as a means of assuring quality parts and materials from large networks of suppliers, and have invested considerable energy and expense in developing such systems. Companies supplying fasteners under quality assurance systems (such as QS9000), have also invested considerable energy and expense in putting quality systems in place and in getting registered to them as a condition of supplying fasteners to major end users. NIST has heard from some representatives of industry that the Fasteners Quality Act's reliance on lot control and final inspection of fasteners may be inconsistent with and may not meet the standards of modern mass production using statistical process control.

The proposed meeting is for the purpose of addressing these issues and to provide a forum for discussion of possible solutions under the Act and regulations. NIST would like to hear from a variety of sources including the aerospace, automobile and heavy machinery industries, fastener manufacturers who supply such industries on the use of statistical process control under quality assurance plans similar to QS9000, and interested academics. Also, because reliance upon existing consensus standards and specifications is a cornerstone of the Fastener Quality Act, representatives of consensus standards organizations are invited to discuss efforts underway to recognize statistical process control in fastener standards and specifications. Similarly, some fastener manufacturers rely on in-process measurements of critical fastener parameters by manufacturing personnel rather than upon final testing of such parameters by an accredited laboratory. Because SPC may implicate laboratory accreditations under the Act and regulations, laboratory accreditation bodies are also invited to present their views.

Dated: January 8, 1997.

Elaine Bunten-Mines,

Acting Associate Director.

[FR Doc. 97–942 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

NOAA Coastal Ocean Data Workshop

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of workshop.

SUMMARY: The National Oceanographic Data Center (NODC) of the National Environmental Satellite, Data, and Information Service (NESDIS) and the Coastal Services Center (CSC) of the National Ocean Service (NOS) in the National Oceanic and Atmospheric Administration (NOAA), and the University of Rhode Island Graduate School of Oceanography (GSO) are co-sponsoring a NOAA Coastal Ocean Data Workshop on March 11–13, 1997. The purpose of the workshop is to enhance NOAA's ability to meet the requirements of its customers in the coastal ocean community regarding data and information management; and to encourage formation of additional partnerships and joint ventures.

DATES: The workshop will take place on March 11–13, 1997. It will begin at 8:30 a.m. on the 11th, and end at 12 noon on the 13th.

ADDRESSES: The workshop will be held at J. Seward Johnson Marine Education and Conference Center at the Harbor Branch Oceanographic Institution in Fort Pierce, FL. Parties interested in participating in the workshop should contact Roz Cohen (NODC) at 301–713–3267 x146 by close of business on January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Roz Cohen (NODC) at 301–713–3267 x146.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to enhance NOAA's ability to meet the requirements of its customers in the coastal ocean community by:

—Providing a forum for individuals in the coastal ocean community to present their requirements regarding data and information management, product development, and synthesis;
—Increasing knowledge and awareness of NOAA's activities within the coastal ocean community in the areas of data and information management, synthesis, and product development;
—Providing additional opportunities for NOAA to form partnerships and joint ventures with its partners in the coastal ocean community; and
—Being responsive to the new Ocean Partnership Program.

The workshop will include about 80 participants from Federal, state, and local government agencies, academia, the private sector, and the general public. It will consist of a series of plenary and smaller working group sessions. The major areas addressed will be (1) identification of data required to address major regional and national coastal ocean issues and scientific research priorities; (2) identification of specific data management requirements: data types, levels of precision, national and international standards, levels of quality control metadata and documentation, formats, accessibility, timeliness, synthesis products, etc.; and (3) potential partnerships, joint ventures, and networking to implement the recommendations.

The National Oceanographic Data Center is one of several environmental data centers managed by the National Oceanic and Atmospheric Administration. The headquarters office of NODC is located in Silver Spring, MD. There are five field offices collocated with major government or private oceanographic laboratories in Woods Hole, MA; Miami, FL; La Jolla, CA; Seattle, WA, and Honolulu, Hawaii. NODC houses the world's largest collection of publicly available oceanographic data, including coastal ocean holdings. The primary mission of NODC is to ensure that oceanographic data collected at great cost are maintained in a permanent archive that is easily accessible to the world science community and to other users. NODC does not conduct any data collection programs of its own; it serves solely as a repository and dissemination facility for data collected by others. In this capacity, NODC acquires, processes, archives, analyzes, and disseminates global oceanographic data; and develops analytical and descriptive products to meet user requirements. NODC also operates World Data Center–A for Oceanography and the NOAA Library.

Each year the NODC responds to thousands of requests for oceanographic data and information from national and international customers in Federal, state, and local government agencies, the private sector, non-profit

organizations, academia, and the general public.

The National Oceanic and Atmospheric Administration Coastal Services Coastal Services Center is a coastal resource advisory center that draws on the expertise of NOAA and its partners to address critical coastal resource issues. Established in 1994, in Charlestown, South Carolina, the Center's mission is to identify, develop, and facilitate the use of technologies and information that support sustainable use and management of coastal resources. The Coastal Services Center bridges the gap between coastal scientists and resource managers by bringing Center staff, technologies, and outside partner expertise to bear on national problems related to coastal ecosystems and economies. The Center focuses primarily on issues of resource management, land use impacts, and habitat loss as well as coastal hazards and cumulative secondary impacts of coastal development. Clients of the Coastal Services Center include coastal resource managers, policy makers, scientists, environmental organizations, coastal and marine science educators, and private business people. The Center delivers information to the coastal resource community through advisory services, Internet World Wide Web service, information bases, summary reports, training workshops, short courses, conferences, seminars, fact sheets and publications.

The Graduate School of Oceanography of the University of Rhode Island is one of the largest and most widely known graduate schools of oceanography in the United States. It has joined with NOAA as a partner in establishing a national coastal data network because it has particular strengths in coastal oceanography and in distributed ocean data systems, has one of the largest marine science libraries in the world, and is the location of the Sea Grant Depository. The University has been a national Sea Grant College since 1971, and in 1989 it was designated a NOAA Center of Excellence in coastal marine science.

Dated: January 9, 1997.

Ronald L. Fauquet,

Deputy Director, National Oceanographic Data Center.

[FR Doc. 97–891 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 010797C]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Halibut Subsistence Committee will hold a meeting in Anchorage, AK.

DATES: The meeting will be held on January 22, 1997, beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the University of Alaska, Observer Training Center, 707 A Street, Room 205, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Halibut Subsistence Committee was appointed by the Council to review existing halibut regulations as they pertain to subsistence users and provide the Council with advice and direction on regulation of halibut subsistence fisheries. This first meeting will include discussions of:

1. Eligible users;
2. Eligible communities;
3. Qualifying gear; and
4. Minimum size of halibut.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 9, 1997.

Bruce Morehead,

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

[FR Doc. 97–1008 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010797B]

North Pacific Fishery Management Council; Committee Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Joint Committee of the Alaska Board of Fisheries and North Pacific Fishery Management Council (Council) will hold a meeting in Anchorage, AK.

DATES: The meeting will be held on January 19, 1997, beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the University of Alaska, Observer Training Center, 707 A Street, Room 205, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Joint Committee of the Alaska Board of Fisheries and the Council was appointed to develop a protocol for future groundfish management off Alaska. This meeting will include discussions of:

1. October 1996 Board action to develop a state water Pacific cod fishery in the Gulf of Alaska;
2. December 1996 Council discussion of Board action;
3. Other groundfish fisheries under joint management; and
4. Development of recommendations to the Board and Council for a protocol for joint review of future groundfish management proposals.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 9, 1997.

Bruce Morehead,

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

[FR Doc. 97–1009 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010797E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team will hold a public meeting.

DATES: The meeting will begin at 10:00 a.m. on January 21, 1997, and will continue from approximately 8:00 a.m. to 5:00 p.m. each day through January 24, 1997.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The meeting is a work session of the Salmon Technical Team to draft the 1997 stock status report, ''Preseason I: Stock abundance Analysis for 1996 Ocean Salmon Fisheries.'' The final report will be distributed to the public and reviewed by the Council at its March meeting in Portland, OR.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 9, 1997.

Bruce Morehead,

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

[FR Doc. 97–1006 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 010797D]

South Atlantic Fishery Management Council; Teleconference

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Scientific and Statistical Committee (Committee) and the ad hoc Bycatch Reduction Device (BRD) Advisory Panel (AP) via conference call. The Committee and AP will provide additional technical recommendations on the development of a BRD testing protocol. This protocol will specify minimum data requirements, outline a basic experimental design, and recommend a statistical technique for testing and analyzing new or modified BRDs.

DATES: The meeting will be held on January 27, 1997, at 2:00 p.m.

ADDRESSES: The following two listening locations will be provided to allow the public to hear the Committee and Advisory Panels' deliberations on the BRD testing protocol:

1. Charleston, SC—South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: (803) 571–4366.

2. St. Petersburg, FL—NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: (813) 570–4301.

Council address: South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan_buchanan@safmc.nmfs.gov

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by January 20, 1997.

Dated: January 9, 1997.

Bruce Morehead,

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

[FR Doc. 97–1007 Filed 1–14–97; 8:45 am]

BILLING CODE 3510–22–F

Final Certification for the Consolidation of 70 Weather Service Offices (WSOs)

ACTION: Notice.

SUMMARY: On January 2, 1997 the Under Secretary of Commerce for Oceans and Atmosphere approved and transmitted 70 consolidation certifications to Congress.

EFFECTIVE DATE: January 15, 1997.

ADDRESSES: Requests for copies of the final consolidation certification packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: The 70 consolidation certifications were comprised of three groups as described and listed below. The first group, consisting of 42 consolidations, were proposed and the 60-day public comment period commenced upon publication of three Federal Register notices between December 1995 and February 1996. There were no public comments received. The Modernization Transition Committee (MTC) considered and endorsed these 42 consolidation certifications at its April 24, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) Akron, OH
(2) Atlantic City, NJ
(3) Apalachicola, FL
(4) Baltimore, MD
(5) Bristol, TN
(6) Cape Hatteras, NC
(7) Columbus, OH
(8) Concord, NH
(9) Colorado Springs, CO
(10) Concordia, KS
(11) Dayton, OH
(12) Daytona Beach, FL
(13) Del Rio, TX
(14) Detroit, MI
(15) Grand Island, NE
(16) Harrisburg, PA
(17) Hartford, CT
(18) Havre, MT
(19) Helena, MT
(20) Kansas City, MO
(21) Knoxville, TN
(22) Lynchburg, VA
(23) Mansfield, OH
(24) Moline, IL
(25) New York City, NY
(26) Norfolk, VA
(27) Pensacola, FL
(28) Port Arthur, TX
(29) Portland, ME
(30) Providence, RI
(31) Raleigh, NC
(32) Richmond, VA
(33) Roanoke, VA
(34) Rockford, IL
(35) Toledo, OH
(36) Tupelo, MS
(37) Waco, TX
(38) West Palm Beach, FL
(39) Williamsport, PA
(40) Wilmington, DE
(41) Worcester, MA
(42) Youngstown, OH

The second group, consisting of 18 consolidations, were proposed and the 60-day public comment period commenced upon publication of two Federal Register notices in between March and April 1996. Two public comments were received; one with regard to WSO Bakersfield, CA and one with regard to WSO Indianapolis, IN. These comments and responses are set forth here for reference.

Comment: A comment from Sean Boyd, KSEE 24 Television, Fresno, California questioned the WSR–88D precipitation algorithm. He stated, ''Initially, I have concerns, which were unfounded, about the potential health hazards for those in close proximity to the WSR–88D. Those concerns have long been put to rest now. There is no question that the WSR–88D is the finest tool to date for the detection of severe weather, and for precipitation estimates. Regarding the former: severe weather in central California is rare; however the rules for such episodes are different

here than areas east of the Rockies, and the algorithms for the site in Hanford could probably use a little ''tweaking.'' Please don't ask me to be specific; I am not a mathematician. But from what I have learned about the device, having taken Les Lemon's short course, there are certain parameters that are, to an extent, adjustable. Regarding the latter: it seems precipitation estimates are very good, and we get excellent ground truth from our weather spotters, members of the Association of Central California Weather Observers, whose numbers are in the hundreds. Correct me if I'm wrong, but I have heard that there is occasional trouble at the Hanford site with the 88D not clicking into the precipitation mode, when there is precipitation reaching the ground here.''

Response: The precipitation algorithm has three modes of execution; Category 0—no precipitation within 124nm of the RDA; Category 1—significant precipitation within 124nm of the RDA; and Category 2—insignificant precipitation within 124nm of the RDA.

These modes are selected automatically by the software, but the selection can be adjusted through parameters. The criteria to determine which level is active at any given time is: (1) The real coverage of the echoes, and (2) the intensity of the echoes. Category 1 and 2 generate precipitation products; category 0 does not. San Joaquin Valley NWSO (Hanford WSR–88D site) had one occurrence, where through a combination of clutter suppression and precipitation category settings, precipitation products were not generated. This occurred as a light precipitation event moved into the area. San Joaquin Valley NWSO forecasters quickly diagnosed the problem, and it has not occurred again.

Comment: One comment was received from Jerry Salerno, Terre Haute Automated Flight Service Station (AFSS). His comment included the following comments received from four Specialists:

''*Specialist 1.* Has observed little change in the elimination of AP. Has noticed that, at times, the sensitivity of the WSR–88D seems to increase, thus showing strong precipitation echoes when only clouds or virga are present.

Specialist 2. Has noted improvement. Before the ''clean up'', echoes would be shown beyond an area of thunderstorms when SA's reported no precipitation in that area. Also noted at night and morning, frequent large circles of ''echoes'' around many radar sites simultaneously.

Specialist 3. On 5/15/96, prior to 1200Z through approximately 1300Z, large area of AP was observed in extreme southern Illinois and western Kentucky—more than 100 miles from the nearest precipitation.

Specialist 4. On 5/17/96 at 1800Z, ground clutter/AP was noted around LOT, IND, MPX, OHX, and MRX radar sites.''

Response: On June 10, Dave Tucek, WCM NWSFO Indianapolis, called the Terre Haute AFSS to discuss their radar concerns. Dave spoke with Cynthia Cole, Assistant Manager of Programs, Mark Carver, Training Specialist, and Jerry Salerno. Their position has not changed since original discussions during the Confirmation of Services process. They know that AP and ground clutter, which were not encoded in the ROB before the WSR–88D, are now encoded by the AUTOROB program and a potential source of erroneous interpretation by briefers. They are satisfied the NWS is working toward a solution, but want to see this non-precipitation data eliminated or reduced to a point it does not cause confusion for the briefers. The AFSS briefers were trained to recognize non-precipitation patterns through time-lapse monitoring, and by comparison of radar echoes to satellite data, lightning data and ground truth data. The AFSS briefers prefer not to use the AUTOROB anymore for verification because of the AP and ground clutter encoding. They are concerned they may mis-interpret ground clutter as a thunderstorm, or worse, a thunderstorm as ground clutter. Despite the improved filtering the NWS has incorporated this April through the use of Hourly Digital Precipitation, ground clutter still exists as shown by the AFSS example cases in May. Dave also spoke to Mike Edwards of Kavouris (which supplies the AFSS radar data) about their filtering methods on ground clutter. Kavouris does not filter single site radar data but does employ extensive filtering techniques in their Composite Radar Image. But still, despite filtering techniques employed by the NWS and by Kavouris, ground clutter still occurs and is a concern. And this is an issue for all radar sites, not just Indianapolis. The Terre Haute Flight Service did not feel a need for additional training from the Indianapolis NWSFO staff. They appreciated our offers for help but felt further solutions would require decisions and actions at national NWS and FAA levels. They again appreciate NWS' efforts but would still like ground clutter suppression improved further. Regarding the events in question that were listed in the Federal Register, NWS Indianapolis had no archive data available. Other NWS office's clutter suppression techniques and Kavouris' filter techniques and data display are not well known either. Despite these limitations, Dave was familiar with the problems the briefers experienced and provided the following comments to those cases. Specialist 1 had observed little change to the elimination of AP. At Indianapolis, we invoke different Clutter Suppression Regions based on the degree of AP occurring. This filtering reduces the amount of AP but typically does not eliminate it. Specialist 1 also commented on apparent sensitivity changes leading to strong precipitation echoes where only clouds or virga were present. This likely resulted from a radar site switching from Precipitation Mode to Clear Air Mode. Clouds and virga are often detected in Clear Air Mode but not in Precipitation Mode due to longer sampling times and greater sampling density. On a Kavouris composite, clouds and virga appear as weak echoes. On a Kavouris single site display, clouds and virga may be interpreted as strong precipitation echoes because the color scheme for weak echoes is similar to the composites colors for strong echoes. The briefers must recognize that a particular color may represent different intensities on composite data and single site data. Specialist 2 noted improvement because of the lack of echoes occurring behind an area of thunderstorms. This was likely coincidence that AP was not occurring behind the thunderstorms. Specialist 2 also noted frequent large circles of echoes around many radar sites during the night and morning. This is typical AP many radar sites display at these times of day. Moisture and temperature stratifications overnight yield atmospheric density discontinuities which lead to animalous beam refraction or AP. Unless clutter suppressions are invoked at each individual site, this AP signature will not disappear until atmospheric conditions change, which is usually late morning. Specialist 3 noted on 5/15/96 a large area of AP over southern Illinois and western Kentucky more than 100 miles from any rain. These locations are beyond our radars display range but are the typical AP patterns that occur at many sites for reasons mentioned in the above paragraph. Specialist 4 noted on 5/17/96 at 1800Z ground clutter/AP patterns occurring at LOT, IND, MPX, OHX, and MRX radar sites. I cannot attest to weather conditions at sites other than IND. This was a rather uncommon event. Anomalous Propagation does not normally occur in the early afternoon because layer stratification has been destroyed by convective mixing. In this case, Indianapolis' ground was very wet due to nearly one inch of rain on 5/15 and

nearly 5 inches of rain since May 1. A strong temperature inversion over Indiana at midday on the 17th likely resulted in strong moisture gradients leading to the AP experienced. In conclusion, the Terre Haute AFSS is satisfied with NWS efforts to improve radar data but still wants to see further improvement. In our opinion, the AFSS specialists can recognize AP and correctly distinguish precipitation and non-precipitation targets for pilots. We conclude the Indianapolis WSR–88D is meeting the needs of our customers.

The MTC considered these 18 consolidation certifications and the public comments received, and endorsed them at its June 27, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) WSO Allentown, PA
(2) WSO Atlanta, GA
(3) WSO Bakersfield, CA
(4) WSO Beckley, WV
(5) WSO Bridgeport, CT
(6) WSO Charleston, WV
(7) WSO Columbus, GA
(8) WSO Dubuque, IA
(9) WSO Elkins, WV
(10) WSO Huntington, WV
(11) WSO Indianapolis, IN
(12) WSO Las Vegas, NV
(13) WSO Lubbock, TX
(14) WSO Macon, GA
(15) WSO Minneapolis, MN
(16) WSO Portland, OR
(17) WSO Salem, OR
(18) WSO Wilkes-Barre, PA

The third group, consisting of 10 consolidations, were proposed and the 60-day public comment period commenced upon publication of a Federal Register notice in July 1996. There were no public comments received. The MTC considered and endorsed these 10 consolidation certifications at its September 19, 1996 meeting, concluding that these certifications would not result in any degradation of service.

(1) WSO Baton Rouge, LA
(2) WSO Columbia, MO
(3) WSO Des Moines, IA
(4) WSO Lansing, MI
(5) WSO Lexington, KY
(6) WSO Lincoln, NE
(7) WSO Louisville, KY
(8) WSO Montgomery, AL
(9) WSO Siox City, IA
(10) WSO St. Louis, MO

After considering any public comments received and the MTC endorsements, the Under Secretary of Commerce for Oceans and Atmosphere approved all 70 consolidation certifications and transmitted them to Congress on January 2, 1997. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is now completing the certification requirements by publishing the final consolidation certifications in the Federal Register.

Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97–892 Filed 1–14–97; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the ''Federal Advisory Committee Act,'' notice is hereby given that the Semiconductor Technology Council will hold its sixth meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster precompetitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c)(3) and (4), Title 5, U.S.C. There will be an open session from 1:30 p.m. to 2:00 p.m.

DATES: January 27, 1997.

ADDRESSES: Washington Room, Key Bridge Marriott, 1401 Lee Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Kaigham J. Gabriel, Director, DARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2252.

Dated: January 9, 1997.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 97–889 Filed 1–14–97; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Notification of Location and Hours of Operation for Armed Forces Discharge Review/Correction Board Reading Room

AGENCY: Army Review Board Agency.

ACTION: Notice.

SUMMARY: In compliance with DoD Directive 1332.28D1f, the Secretary of the Army hereby gives notice of the location, hours of operation and similar types of information regarding the Reading Room. The Reading Room is located in the Pentagon, Room 2E123. Effective February 15, 1997, the hours of operation are Thursday from 7:30 am to 4:00 pm.

FOR FURTHER INFORMATION CONTACT: CPT Bronté I. Flood, Army Review Board Agency, 1941 Jefferson Davis Highway, Crystal Mall #4, Room 204, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: Discharge Review Board (DRB) documents made available for public inspection and copying are located in the Reading Room. The documents are indexed in a usable and concise form so as to enable the public, and those who represent applicants, to isolate from all decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for which the DRB or the Secretary concerned granted or denied relief.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 97–916 Filed 1–14–97; 8:45 am]
BILLING CODE 3710–08–M

Corps of Engineers

Regulatory Guidance Letter 96–2

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public of the issuance of the U.S. Army Corps of Engineers (Corps) Regulatory Guidance Letter (RGL) regarding the joint U.S. Environmental Protection Agency (EPA) and Corps memorandum to the field clarifying the applicability of exemptions under Section 404(f) of the Clean Water Act to ''deep-ripping'' activities in wetlands.

DATES: Effective date December 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Cole, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0201 or Mr. Michael Boots, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency at (202) 260–2315.

SUPPLEMENTARY INFORMATION: Regulatory Guidance Letter 96–2 was issued on December 12, 1996. The memorandum

attached with RGL 96–2 was developed jointly between the Corps and EPA to provide written guidance for our field offices. EPA is responsible for determining and/or interpreting which activities are exempt under Section 404(f) of the Clean Water Act. Questions have been raised involving ''deep-ripping'' and related activities in wetlands, including whether discharges associated with these actions fall within the exemption found at Section 404(f)(1)(A). Furthermore, the question has been raised whether such activities falling under that exemption would be recaptured under Section 404(f)(2). The memorandum enclosed with RGL 96–2 clarifies this issue.

Dated: December 12, 1996.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

RGL 96–2, Date: 12 Dec. 1996, Expires: 31 December 2001

Subject: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands.

1. Enclosed is a memorandum to the field jointly signed by the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. The memorandum provides guidance clarifying when ''deep-ripping'' activities within wetlands require Department of the Army authorization.

2. This guidance expires 31 December 2001, unless sooner revised or rescinded.

For the Director of Civil Works.

Daniel R. Burns,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

12 Dec 1996.

Memorandum to the Field

Subject: Applicability of Exemptions under Section 404(f) to ''Deep-Ripping'' Activities in Wetlands.

Purpose: The purpose of this memorandum is to clarify the applicability of exemptions provided under Section 404(f) of the Clean Water Act (CWA) to discharges associated with ''deep-ripping'' and related activities in wetlands.[1]

Background

1. Section 404(f)(1) of the CWA exempts from the permit requirement certain discharges associated with normal farming, forestry, and ranching practices in waters of the United States, including wetlands. Discharges into waters subject to the Act associated with farming, forestry, and ranching practices identified under Section 404(f)(1) do not require a permit except as provided under Section 404(f)(2).

2. Section 404(f)(1) does not provide a total, automatic exemption for all activities related to agricultural, silvicultural, or ranching practices. Rather, Section 404(f)(1) exempts only those activities specifically identified in paragraphs (A) through (F), and ''other activities of essentially the same character as named'' [44 FR 34264]. For example, Section 404(f)(1)(A) lists discharges of dredged or fill material from ''normal farming, silvicultural, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.''

3. Section 404(f)(1)(A) is limited to activities that are part of an ''established (i.e., ongoing) farming, silviculture, or ranching operation.'' This ''established'' requirement is intended to reconcile the dual intent reflected in the legislative history that although Section 404 should not unnecessarily restrict farming, forestry, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.

4. EPA and Corps regulations [40 CFR 230 and 33 CFR 320] and preamble define in some detail the specific ''normal'' activities listed in Section 404(f)(1)(A). Three points may be useful in the current context:

a. As explained in the preamble to the 1979 proposed regulations, the words ''such as'' have been consistently interpreted as restricting the section ''to the activities named in the statute and other activities of essentially the same character as named,'' and ''preclude the extension of the exemption * * * to activities that are unlike those named.'' [44 FR 34264].

b. Plowing is specifically defined in the regulations not to include the redistribution of surface material in a manner which converts wetlands areas to uplands [See 40 CFR 233.35(a)(1)(iii)(D)].

c. Discharges associated with activities that establish an agricultural operation in wetlands where previously ranching had been conducted, represents a ''change in use'' within the meaning of Section 404(f)(2). Similarly, discharges that establish forestry practices in wetlands historically subject to agriculture also represent a change in use of the site [See 40 CFR 233.35(c)].

5. The statute includes a provision at Section 404(f)(2) that ''recaptures'' or reestablishes the permit requirement for those otherwise exempt discharges which:

a. convert an area of the waters of the U.S. to a new use, *and*

b. impair the flow or circulation of waters of the U.S. *or* reduce the reach of waters of the U.S.

Conversion of an area of waters of the U.S. to uplands triggers both provisions (a) and (b) above. Thus, at a minimum, any otherwise exempt discharge that results in the conversion of waters of the U.S. to upland is recaptured under Section 404(f)92) and requires a permit. It should be noted that in order to trigger the recapture provisions of Section 404(f)(2), the discharges themselves need not be the sole cause of the destruction of the wetland or other change in use or sole cause of the reduction or impairment of reach, flow, or circulation of waters of the U.S. Rather, the discharges need only be ''incidental to'' or ''part of'' an activity which is intended to or will forseeably bring about that result. Thus, in applying Section 404(f)(2), one must consider discharges in context, rather than isolation.

Issue

1. Questions have been raised involving ''deep-ripping'' and related activities in wetlands and whether discharges associated with these actions fall within the exemptions at Section 404(f)(1)(A). In addition, the issue has been raised whether, if such activities fall within the exemption, they would be recaptured under Section 404(f)(2).

2. ''Deep-ripping'' is defined as the mechanical manipulation of the soil to break up or pierce highly compacted, impermeable or slowly permeable subsurface soil layers, or other similar kinds of restrictive soil layers. These practices are typically used to break up these subsoil layers (e.g., impermeable soil layer, hardpan) as part of the initial preparation of the soil to establish an agricultural or silvicultural operation. Deep-ripping and related activities are also used in established farming operations to break up highly compacted soil. Although deep-ripping and related activities may be required more than once, the activity is typically not an annual practice. Deep-ripping and related activities are undertaken to improve site drainage and facilitate deep root growth, and often occur to depths greater than 16 inches and, in some cases, exceeding 4 feet below the surface. As such, it requires the use of

[1] As this guidance addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with experts at the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service.

heavy equipment, including bulldozers, equipped with ripper-blades, shanks, or chisels often several feet in length. Deep-ripping and related activities involve extending the blades to appropriate depths and dragging them through the soil to break up the restrictive layer.

3. Conversely, plowing is defined in EPA and Corps regulations [40 CFR 230 and 33 CFR 320] as ''all forms of primary tillage * * * used * * * for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops'' [40 CFR 232.3(d)(4)]. As a general matter, normal plowing activities involve the annual, or at least regular, preparation of soil prior to seeding or other planting activities. According to USDA, plowing generally involves the use of a blade, chisel, or series of blades, chisels, or discs, usually 8–10 inches in length, pulled behind a farm vehicle to prepare the soil for the planting of annual crops or to support an ongoing farming practice. Plowing is commonly used to break up the surface of the soil to maintain soil tilth and to facilitate infiltration throughout the upper root zone.

Discussion

1. Plowing in wetlands is exempt from regulation consistent with the following circumstances:

a. it is conducted as part of an ongoing, established agricultural, silvicultural, or ranching operation; and

b. the activity is consistent with the definition of plowing in EPA and Corps regulations [40 CFR 230 and 33 CFR 320]; and

c. the plowing is not incidental to an activity that results in the immediate or gradual conversion of wetlands to non-waters.

2. Deep-ripping and related activities are distinguishable from plowing and similar practices (e.g., discing, harrowing) with regard to the purposes and circumstances under which it is conducted, the nature of the equipment that is used, and its effect, including in particular the impacts to the hydrology of the site.

a. Deep-ripping and related activities are commonly conducted to depths exceeding 16 inches, and as deep as 6–8 feet below the soil surface to break restrictive soil layers and improve water drainage at sites that have not supported deeper rooting crops. Plowing depths, according to USDA, rarely exceed one foot into the soil and not deeper than 16 inches without the use of special equipment involving special circumstances. As such, deep-ripping and related activities typically involve the use of specialized equipment, including heavy mechanized equipment and bulldozers, equipped with elongated ripping blades, shanks, or chisels often several feet in length. Moreover, while plowing is generally associated with ongoing operations, deep-ripping and related activities are typically conducted to prepare a site for establishing crops not previously planted at the site. Although deep-ripping may have to be redone at regular intervals in some circumstances to maintain proper soil drainage, the activity is typically not an annual or routine practice.

b. Frequently, deep-ripping and related activities are conducted as a preliminary step for converting a ''natural'' system or for preparing rangeland for a new use such as farming or silviculture. In those instances, deep ripping and related activities are often required to break up naturally-occurring impermeable or slowly permeable subsurface soil layers to facilitate proper root growth. For example, for certain depressional wetlands types such as vernal pools, the silica-cemented hardpan (durapan) or other restrictive layer traps precipitation and seasonal runoff creating ponding and saturation conditions at the soil surface. The presence of these impermeable or slowly permeable subsoil layers is essential to support the hydrology of the system. Once these layers are disturbed by activities such as deep-ripping, the hydrology of the system is disturbed and the wetland is often destroyed.

c. In contrast, there are other circumstances where activities such as deep-ripping and related activities are a standard practice of an established on-going farming operation. For example, in parts of the Southeast, where there are deep soils having a high clay content, mechanized farming practices can lead to the compaction of the soil below the soil surface. It may be necessary to break up, on a regular although not annual basis, these restrictive layers in order to allow for normal root development and infiltration. Such activities may require special equipment and can sometimes occur to depths greater than 16 inches. However, because of particular physical conditions, including the presence of a water table at or near the surface for part of the growing season, the activity typically does not have the effect of impairing the hydrology of the system or otherwise altering the wetland characteristics of the site.

Conclusion

1. When deep-ripping and related activities are undertaken as part of an established, ongoing agricultural, silvicultural, or ranching operation, to break up compacted soil layers and where the hydrology of the site will not be altered such that it would result in conversion of waters of the U.S. to upland, such activities are exempt under Section 404(f)(1)(A).

2. Deep-ripping and related activities in wetlands are not part of a normal, ongoing activity, and therefore not exempt, when such practices are conducted in association with efforts to establish for the first time (or when a previously established operation was abandoned) an agricultural, silvicultural or ranching operation. In addition, deep-ripping and related activities are not exempt in circumstances where such practices would trigger the ''recapture'' provision of Section 404(f)(2):

(a) Deep-ripping to establish a farming operation at a site where a ranching or forestry operation was in place is a change in use of such a site. Deep-ripping and related activities that also have the effect of altering or removing the wetland hydrology of the site would trigger Section 404(f)(2) and such ripping would require a permit.

(b) Deep-ripping a site that has the effect of converting wetlands to non-waters would also trigger Section 404(f)(2) and such ripping would require a permit.

3. It is the agencies' experience that certain wetland types are particularly vulnerable to hydrological alteration as a result of deep-ripping and related activities. Depressional wetland systems such as prairie potholes, vernal pools and playas whose hydrology is critically dependent upon the presence of an impermeable or slowly permeable subsoil layer are particularly sensitive to disturbance or alteration of this subsoil layer. Based upon this experience, the agencies have concluded that, as a general matter, deep-ripping and similar practices, consistent with the descriptions above, conducted in prairie potholes, vernal pools, playas and similar depressional wetlands destroy the hydrological integrity of these wetlands. In these circumstances, deep-ripping in prairie potholes, vernal pools, and playas is recaptured under Section 404(f)(2) and requires a permit under the Clean Water Act.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds, U.S. Environmental Protection Agency.

Daniel R. Burns,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works U.S. Army Corps of Engineers.

[FR Doc. 97–915 Filed 1–14–97; 8:45 am]

BILLING CODE 3710–92–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below.

TIME AND DATE: 9:00 a.m., February 5, 1997.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will review, with Department of Energy staff, the status of DOE's Implementation Plan for Board Recommendation 95–2.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: January 13, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–1109 Filed 1–13–97; 2:37 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 17, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 9, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: List of Hearing Officers—Recordkeeping.

Frequency: On occasion.

Affected Public: State, local or Tribal Gov't SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,600.

Burden Hours: 1,600.

Abstract: Under Part B of the Individuals with Disabilities Education Act, each local educational agency receiving Part B funds must keep a list of persons who serve as hearing officers along with their qualifications. The list serves to provide interested parties of the background of hearing officers.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Applications for Competitive Review to Provide Financial Assistance to Increase Educational Opportunities for Alaska Natives.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 81.

Burden Hours: 1,620.

Abstract: The information is needed to determine the quality of proposed services to increase educational opportunities and address the academic needs of Alaska Natives. The Department will use the information to make grant awards.

[FR Doc. 97–905 Filed 1–14–97; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Informaton Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 14, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600

Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Chief Information Officer of the Office of the Chief Information Officer publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 9, 1997.

Arthur F. Chantker,

Acting Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Jacob K. Javits Fellowship Program.
Frequency: Annually.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 2,000.
Burden Hours: 10,000.
Abstract: These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Directory of Designated Low-Income Schools for Teacher Loan Cancellation Benefits.
Frequency: Annually.
Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 57.
Burden Hours: 570.
Abstract: Under the Federal Perkins and National Direct Student Loan Program, a borrower may have a portion of his/her loan canceled if they teach at a school that has been determined to have a high concentration of student from low-income families.

[FR Doc. 97–906 Filed 1–14–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Basic Energy Sciences Advisory Committee; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a two-year period beginning in January 1997. The Committee will provide advice to the Director of Energy Research on the basic energy sciences program.

The Secretary has determined that the renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory committee can be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, D.C. on January 8, 1997.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–937 Filed 1–14–97; 8:45 am]

BILLING CODE 6450–01–P

High Energy Physics Advisory Panel

Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101-6.l0l5(a)(l), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two-year period beginning in January 1997. The Panel will continue to provide advice to the Director of Energy Research on long-range planning and priorities in the national high energy physics program.

The Secretary of Energy has determined that renewal of the Panel is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Marsha Marsden at (301) 903–4140.

Issued in Washington, D.C. on January 8, 1997.

JoAnne Whitman

Deputy Advisory Committee Management Officer

[FR Doc. 97–936 Filed 1–14–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–184–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 9, 1997.

Take notice that on January 7, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–184–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new point of delivery to Columbia Gas of Ohio, Inc. (COH) in Muskingum County, Ohio and to reassign a portion of the Maximum Daily Delivery

Obligation (MDDOs) from an existing point of delivery to COH to the proposed point of delivery under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery for firm transportation service of 120 Dth/day for COH under Columbia's Rate Schedule SST. Columbia states that the quantities of natural gas to be provided through the new delivery point will be within Columbia's authorized level of services.

Columbia estimates the cost to construct the new point of delivery as $7,500 and states that COH will reimburse it 100% of the total actual cost of the proposed construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 15.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–913 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–176–000]

Columbia Gas Transmission Corporation; Notice of Application

January 10, 1997.

Take notice that on December 31, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–176–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon pipeline facilities in the Terra Alta Storage Field located in Preston County, West Virginia, and to construct and operate replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon 2.9 miles of various diameter segments of storage pipeline and appurtenances and to replace them with 2.6 miles of various diameter segments of pipeline and appurtenances. Columbia estimates the cost of the replacement at $2,394,700, with a net debit to accumulated provisions for depreciation for the abandoned facilities of $462,816. It is stated that the proposal is part of Columbia's ongoing program of upgrading its storage fields to ensure reliable operation of its pipeline system. It is asserted that the proposal will not affect the reservoir performance of the storage field or deliveries and that Columbia is not requesting authorization for any new or additional service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1997, 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 Natural Gas Act (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 Natural Gas Act 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 Columbia to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–930 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1663–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company Notice of Technical Conference and Potential Broadcast of Technical Conference

Issued January 8, 1997.

As previously announced in the Commission's order issued on December 18, 1996, *Pacific Gas and Electric Company, et al.,* 77 FERC ¶61,265 (1996), the Commission will convene a technical conference in the above captioned proceeding to be held on Friday, January 17, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The technical conference will commence at 9:30 a.m. and will be open to all interested persons. The Commissioners and Staff will participate in the technical conference, which will address options for mitigating the market power of Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company, who have jointly filed an application for authorization to sell power at market-based rates through a power exchange.

The Conference will consist of three panels, as outlined on the Attachment to this notice. In addition, all interested persons are invited to submit written comments addressing topics discussed at the technical conference. (There is no need to reiterate comments that already have been made in pleadings filed in these dockets.) Comments must be received on or before January 27, 1997. The comments should not be longer than 25 pages in length, double-spaced, on 8½″ x 11″ paper, with standard margins. Parties submitting comments must submit fourteen (14) written copies of their comments and also must submit two copies of the file on a computer diskette, one in Wordperfect 5.1 format, and one in a DOS file in the ASCII format (with 1″ margins and 10 characters per inch.). The two computer files should be labeled (—.WP and —.ASC) to avoid confusion. Comments must include a one-page executive summary and must be filed with the Office of the Secretary, Federal Energy

Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 and reference Docket No. ER96–1663–000. All written comments will be placed in the Commission's Public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. The Commission also will make all comments available to the public on its electronic bulletin board (EBB).

Broadcast of Technical Conference

If there is sufficient interest, the Capitol Connection will broadcast the technical conference on January 17, 1997, to interested persons. Persons interested in receiving the broadcast for a fee should contact Julia Morelli at the Capitol Connection (703–993–3100) no later than January 14, 1997.

In addition, National Narrowcast Network's Hearings-On-the Line service covers all Commission meetings live by telephone so that anyone can listen without special equipment. Call 202–966–2211 for details. Billing is based on time on-line.

FOR FURTHER INFORMATION CONTACT: David E. Mead, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1024.

Linwood A. Watson, Jr.,
Acting Secretary.

Attachment—Panels, WEPEX Market Power Conference, January 17, 1997

Panel 1: Structural Mitigation Options

A number of options have been proposed which alter the market structure or create incentives to reduce market power. Issues associated with these options include:

- Divestiture: are the current divestiture proposals adequate to mitigate market power so that the Commission can approve market-based rates?
- Consumer access: how much do retail competition and real-time pricing mitigate horizontal market power?
- Existing entry barriers (generation and transmission): what are they and how can they be remedied? Who has the authority to remove any such barriers?
- Call contracts: how do call contracts mitigate market power for energy, capacity and ancillary services? What are the details that should be included in the contracts? How should the call contract prices be determined? Which units should be subject to call contracts?
- Transmission constraints: how do transmission constraints affect market power? How do transmission rights mitigate market power?
- Bidding trusts: what is needed to mitigate market power? Should bidding trusts be made a permanent mitigation measure?

Panelists

Paul Joskow, Elizabeth and James Killian Professor of Economics and Management; Head, Department of Economics, Massachusetts Institute of Technology
Representative, Sacramento Municipal Utility District
Jan Smutney-Jones, Executive Director, Independent Energy Producers Association
Jim Macias, Vice President and General Manager, Transmission Business Pacific Gas & Electric Company
Representative, California Public Utilities Commission
Jeffrey D. Watkiss, Coalition for a Competitive Electric Market

Panel 2: Mitigation—Institutional

When structural options are unavailable or inappropriate, a number of other options are available which remove the incentive or ability of entities to exercise market power. These options could be applied to all market participants and serve to ensure that market power is mitigated or applied to individual entities if the exercise of market power is detected.

- Bidding rules: what are appropriate bidding rules? In competitive markets, generators would be expected to bid their running costs.
- Bidding incentives: what is the effect of the CTC (e.g., as a revenue cap for the California IOUs)?
- Ancillary services: how may ancillary services interact with other services to encourage market power? How should ancillary services be procured to create competition and mitigate market power?

Panelists

William Hieronymous, Putnam Hayes and Bartlett, on behalf of San Diego Gas and Electric Company
W. Kent Palmerton, Manager of Industry Restructuring Programs, Northern California Power Agency
John Jurewitz, Manager of Regulatory Policy, Southern California Edison Company
Barbara Barkovitch, California Large Energy Consumers Association, or Keith McRae, Attorney for California Manufacturers Association
Eric Woychik, Utility Consumers Action Network and Toward Utility Rate Normalization

Panel 3: Monitoring for Market Power

- Information: what is the effect of widely available information on the ability to detect market power? What information should be collected and how will market power be identified?
- How do the physical properties of the network change market power analysis?
- How should capacity availability and withholding be identified and examined?
- Who should be responsible for monitoring? What are the appropriate roles for the ISO and the PX? What should the Commission do to monitor market power?

Panelists

Larry Ruff, Managing Director, Putnam, Hayes and Bartlett (invited)
Michael Florio, Toward Utility Rate Normalization
Representative, California Energy Commission
Joe D. Pace, Pacific Gas & Electric Company
Representative, Electricity Consumers Resource Counsel

[FR Doc. 97–914 Filed 1–14–97; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP97–179–000]

Questar Pipeline Company; Notice of Application

January 9, 1997.

Take notice that on January 2, 1997 Questar Pipeline Company (Questar) 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–179–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon, by removal, the above ground Drunkard's Wash No. 1 Measuring and Regulating Station located in Carbon County, Utah that serves as a jurisdictional receipt point on Questar's interstate transmission system, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the Drunkard's Wash No. 1 measuring and regulating station consist of a 4-inch Daniel senior meter run, a 3-inch Rockwell valve, telemetry and appurtenances housed in a 4-foot by 6-foot skid mounted meter building. Questar explains that the Drunkard's Wash No. 1 station was established as a temporary facility to receive natural gas volumes produced solely by River Gas Corporation (River Gas) into Questar's interstate transmission

system. Questar states that the Drunkard's Wash No. 1 station is no longer utilized as a receipt point, declaring that instead the natural gas produced by River Gas is now delivered at an alternate, larger capacity receipt point, known as the Drunkard's Wash No. 2 station, which is located approximately one mile south of the facility proposed to be abandoned.

Questar is not proposing to abandon any service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1997, 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 Natural Gas Act (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 Natural Gas Act 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 permission and approval for the proposed abandonment are 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 Questar to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–911 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–180–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

January 9, 1997.

Take notice that on January 2, 1997, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–180–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon an inactive delivery point historically used to provided service to Geokinetics under Questar Pipeline's blanket certificate issued in Docket No. CP82–491–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar Pipeline states that the delivery point is located in Uintah County, Utah and that the as-constructed Geokinetics delivery point consisted of skid-mounted measuring and regulating facilities, a heater/separator and associated piping. These facilities were temporarily moved to Questar Pipeline's Vernal, Utah storage yard for safe keeping when Geokinetics went out of business. Questar Pipeline believes that the inactive delivery point should be formally abandoned since Geokinetics has been out of business for more than 10 years. Questar Pipeline states that Geokinetics was the only customer served at this location.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as a application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–912 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–175–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 9, 1997.

Take notice that on December 30, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Bismark, North Dakota 58501 filed in Docket No. CP97–175–000 a request pursuant to Sections 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval and permission to abandon a farm tap located in Dawson County, Montana, under the blanket certificate issued in Docket Nos. CP82–487–000, *et al.,* pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin asserts that Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, has extended its distribution system to serve the load previously served through the tap which Williston now proposes to abandon. Williston Basin also asserts that removal of the tap will eliminate the possibility of ice damage to the tap's riser from the flooding of a nearby river.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–910 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2926–000]

Wisconsin Power & Light Company; Notice of Filing

January 10, 1997.

Take notice that on November 22, 1996, Wisconsin Power & Light

Company amended its previous filing in this docket by submitting unbundled rate information.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–939 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5276–041]

Niagara Mohawk Power Corporation and Northern Electric Power Company, LP; Notice of Availability of Environmental Assessment

January 10, 1997.

An environmental assessment (EA) is available for public review. The EA was prepared for an application to amend the license for the Hudson Falls Hydroelectric Project. The application would allow the Niagara Mohawk Power Corporation and Northern Electric Power Company, LP (licensees) to install temporary 2-foot-high wooden flashboards on the Hudson Falls Dam. The New York State Department of Environmental Conservation (NYDEC) requests the flashboards to facilitate an ongoing PCB investigation and remediation program at the General Electric Company's Hudson Falls manufacturing facility located on the opposite side of the river from the project. The NYDEC indicated the temporary flashboards would help to prevent high river flows from entering the work area below the dam and increase the safety of working conditions in the river channel during the PCB remediation program. The duration of the PCB remediation program may be long-term, requiring up to 10 years to complete.

Flashboards are currently installed on a portion of the dam to divert water during construction of the hydroelectric facility. The prosed action would allow for the completion of flashboards across the entire length of the dam from May 1 through November 30, as necessary, to protect workers and equipment during conduct of the PCB investigation and remediation program.

The EA, written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission, concludes the approval of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–931 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Surrender of Exemption

January 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Surrender of Exemption

b. Project No.: 5572–006

c. Date Filed: December 12, 1996

d. Applicant: Joseph Hydro Company, Inc.

e. Name of Project: Canal Creek Hydroelectric Project

f. Location: On Big Sheep Creek, within Wallowa-Whitman National Forest near Joseph in Wallowa County, Oregon, Little Sheet Creek, and Wallowa Valley Improvement District Canal.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791 (a)–825 (r).

h. Contact: Mr. Norman E. Kamp, 111 Broadway, Suite 133, Box 205, Boise, Idaho 83702 (208) 338–5173

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671

j. Comment Date: January 31, 1997

k. Description of the Proposed Action: The exemptee requests to surrender its exemption for the existing project.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–907 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Surrender of Exemption

January 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Surrender of Exemption.

b. *Project No*: 5573–006.

c. *Date Filed*: December 12, 1996.

d. *Applicant*: Joseph Hydro Company, Inc.

e. *Name of Project*: Upper Little Sheep Creek, Hydroelectric Project.

f. *Location*: On Big Sheep and Little Creeks, within Wallowa-Whitman National Forest near Joseph in Wallowa County, Oregon.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Contact*: Mr. Norman E. Kamp, 111 Broadway, Suite 133, Box 205, Boise, Idaho 83702, (208) 338–5173.

i. *FERC Contact*: Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date*: January 31, 1997.

k. *Description of the Proposed Action*: The exemptee requests to surrender its exemption for the existing project.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–908 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Surrender of Exemption

January 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 6621–006.

c. *Date Filed:* December 12, 1996.

d. *Applicant:* Joseph Hydro Company, Inc.

e. *Name of Project:* Ferguson Ridge, Hydroelectric Project.

f. *Location:* On Big Sheep Creek near Joseph in Wallowa County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Contact:* Mr. Norman E. Kamp, 111 Broadway, Suite 133, Box 205, Boise, Idaho 83702, (208) 338–5173.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* January 31, 1997.

k. *Description of the Proposed Action:* The exemptee requests to surrender its exemption for the existing project.

1. This notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–909 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11494–001, Kentucky]

Hydro Matrix Partnership Ltd.; Notice of Surrender of Preliminary Permit

January 10, 1997.

Take notice that the Hydro Matrix Partnership Ltd., permittee for the Newburgh Project No. 11494, located on the Ohio River in Henderson County, Kentucky, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 13, 1994, and would have expired on November 30, 1997. The permittee states that the project would be economically infeasible.

The permittee filed the request on December 30, 1996, and the preliminary permit for Project No. 11494 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–932 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11540–001, South Carolina]

Joyner Enterprises Association; Notice of Surrender of Preliminary Permit

January 10, 1997.

Take notice that the Joyner Enterprises Association, permittee for the Berry Shoals Project No. 11540, located on the South Tyger River in Spartanburg County, South Carolina, has requested that its preliminary permit be terminated. The preliminary permit was issued on February 7, 1996, and would have expired on January 31, 1999. The permittee states that the project would be economically infeasible.

The permittee filed the request on December 17, 1996, and the preliminary permit for Project No. 11540 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–933 Filed 1–14–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5676–5]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer Confidential Business Information (CBI) to its contractor, Industrial Economics, Inc. and its subcontractors: DPRA, Inc.; ICF, Inc.; Northbridge Environmental Management Consultants; Research Triangle Institute; Tetra Tech, Inc.; Booz, Allen & Hamilton, Inc.; Eastern Research Group; Energy and Environmental Research Corporation; Kerr & Associates, Inc.; Ross & Associates Environmental Consulting, Ltd.; SocioTechnical Research Application, Inc.; Tellus Institute and Versar, Inc. that has been or will be submitted to EPA under Section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than January 27, 1997.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as ''Transfer of Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W6–0061, Industrial Economics, Inc., and its subcontractors, will assist the Office of Solid Waste, Economics, Methods, and Risk Assessment Division, by providing technical support for: Methodology Development/Cross-Cutting Scoping Studies; Innovative Benefits Assessment; Economic Impacts; Industry Profiles; Screening and Prioritization; Environmental Indicators and Goals. EPA has determined that Industrial Economics, Inc., and its subcontractors, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Specifically, Industrial Economics, Inc. and its subcontractors, need access to the CBI that EPA collects, under the authority of Section 3007 of RCRA, in Industry Studies Surveys and other studies of industries involved with waste management.

In accordance with 40 CFR 2.305(h), EPA has determined that Industrial Economics, Inc., and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing their review of materials submitted, Industrial Economics, Inc., and its subcontractors, will return all CBI to EPA.

EPA will authorize Industrial Economics, Inc., and its subcontractors, for access to CBI under the conditions and terms in EPA's ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' Prior to transferring CBI to Industrial Economics, Inc., and its subcontractors, EPA will review and approve their security plans and Industrial Economics, Inc., and its subcontractors, will sign non-disclosure agreements.

Dated: December 17, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–979 Filed 1–14–97; 8:45 am]

BILLING CODE 6560–50–P

[PF–686; FRL–5580–3]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of pesticide petitions proposing to increase and decrease tolerances for ethephon in or on cottonseed, meat and milk, and proposes establishing new tolerances for cotton gin trash and poultry. The summary was prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket number [PF–686], must be received on or before, February 14, 1997.

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 be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–686]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comments 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip V. Errico, Acting Product Manager (PM 22), Rm., 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA., 703–305–5540, e-mail: errico.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) 1H5603 (originally published in the Federal Register of April 3, 1991, (56 FR 13641)), and 6F4743 from Rhone-Poulenc AG Company, P.O. Box 12014, Research Triangle Park, NC 27709 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by increasing the established tolerances for residues of the plant growth regulator, ethephon, (2-chloroethyl phosphonic acid, in or on the raw agricultural commodities (RACs) cottonseed from 4.0 parts per million (ppm) to 6.0 ppm; meat by-products (except kidney) of cattle, goats, hogs, horses, and sheep from 0.1 to 0.2 ppm; by decreasing established tolerances for ethephon in or on RACs milk from 0.1 ppm to 0.01 ppm, fat of cattle, goats, hogs, horses, and sheep from 0.1 ppm to 0.02 ppm; and by establishing tolerances for ethephon in or on cotton gin byproducts to 180 ppm; kidney of cattle, goats, hogs, horses, and sheep at 1.0 ppm; eggs at 0.002 ppm; poultry meat at 0.01 ppm; poultry liver at 0.05 ppm; poultry fat at 0.02 ppm; and poultry meat byproducts (except liver at 0.01 ppm. The proposed analytical method is analysis for ethylene release.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as recently amended by the Food Quality Protection Act, Rhone-Poulenc AG Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Rhone-Poulenc AG Company and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. Petition Summary

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residue in plants is adequately understood based on tomato, cantaloupe, apple, fig, pineapple, tobacco, grape, walnut, filbert, cherry, tangerine and lemon metabolism data. Ethephon degrades to ethylene phosphate and chloride. Data indicate that proximal and distal translocation of ethephon to fruits may occur following application to leaves. The residue of concern in plants is ethephon.

2. *Analytical method*. Adequate methods for purposes of enforcement of ethephon tolerances in plant commodities, ruminant tissues, and milk are available. The Amchem-Plant Method (PAM, Vol. II, Method I) is the recommended method for enforcement purposes for plant commodities and processed products other than wheat and barley straw. The Amchem-Cereal Method (forwarded to FDA for inclusion in the PAM, Vol. II, Method I) is the recommended method for enforcement purposes for wheat and barley straw. The Union Carbide-Animal Method (forwarded to FDA for inclusion in the PAM, Vol. II, Method III) is the recommended method for enforcement purposes for milk and animal tissues. These methods employ diazomethane as a methylating agent. A new plant and animal method has been submitted for enforcement purposes that does not employ diazomethane. The method principally involves the decomposition of ethephon to ethylene to determine the residues of ethephon. An independent lab validation of this method is in review at EPA.

3. *Magnitude of residues*. Residue studies have been conducted to support ethephon registrations on: cotton, apples, cherries, tomatoes, wheat, barley, peppers, grapes, tobacco, walnuts, almonds, blackberries, cantaloupe, pineapple, sugarcane and macadamia nuts. In addition, IR–4 is conducting work to support new uses on blueberries, coffee, cranberries, figs and guavas. All residue data requirements cited in the ethephon RED have been submitted to EPA. As a result of this work, increased tolerances have been proposed for cottonseed (6 ppm, PP 6F4743) and cotton gin by-products (180 ppm, amendment to PP 1H5603). As part of the reregistration process, the following tolerances will be revoked: cucumbers, filberts, lemons, pineapple forage and fodder, pumpkins, tangerines, tangerine hybrids and sugarcane molasses. The tolerances for residues of ethephon in or on food and feed commodities are currently based in terms of ethephon *per se*. Processing studies have been conducted on apples, barley, cottonseeds, grapes, pineapples, tomatoes, and wheat and are deemed adequate to determine the extent to which residues of ethephon concentrate in food/feed items upon processing of the raw agricultural commodity. Data indicate that ethephon residues concentrate in apple juice, dried apple pomace, barley hulls, cottonseed meal, grape juice, raisins, raisin waste, dried grape pomace, pineapple bran and pulp, dried tomato pomace, wheat bran, wheat shorts and germ and red dog. Available apple processing data indicate that residues of ethephon do not concentrate in wet apple pomace. Therefore, a feed additive tolerance on apple pomace is not required. Available tomato processing data indicate that residues of ethephon do not concentrate in tomato paste and, therefore, no tolerance is needed. Pineapple processing data indicate that residues of ethephon concentrate in dried pineapple bran (5.3X; no longer a processed commodity) and wet pulp (1.2X), but do not concentrate in juice, syrup, and slices. No feed additive tolerance for residues of ethephon in processed pineapple is required. As a result of a recent cow feeding study, new animal tolerances have been proposed. The following tolerances have been proposed for cattle, goat, horses, and sheep: meat - 0.02 ppm; meat byproducts (except kidney) - 0.20 ppm; kidney - 1.0 ppm; fat 0.02 ppm, and milk (cow and goat) - 0.01 ppm. Following a hen feeding study, new tolerances were proposed for poultry: poultry meat - 0.01 ppm; poultry meat byproducts (except liver) - 0.01 ppm; poultry fat - 0.02 ppm; poultry liver - 0.05 ppm; and eggs - 0.002 ppm.

B. Toxicology Profile

1. *Acute toxicity--Ethephon technical.* A complete battery of acute toxicity studies for ethephon technical was completed. The acute oral toxicity study resulted in a LD_{50} of 1,600 mg/kg for both sexes. The acute dermal toxicity in rabbits resulted in an LD_{50} in either sex of greater than 5000 mg/kg. The acute inhalation study in rats resulted in a LC_{50} of 4.52 mg/l. Ethephon was corrosive to the skin of rabbits in the primary dermal irritation study. Therefore, the primary eye irritation study in rabbits was not required. The dermal sensitization study in guinea pigs indicated that ethephon is not a sensitizer. Based on the results of the dermal irritation study, and the anticipated results in an eye irritation study, ethephon technical is placed in toxicity Category I.

Conclusion: Based on the acute toxicity data cited above it is concluded that ethephon technical does not pose any acute dietary risks.

2. *Genotoxicity--Ethephon technical.* The potential for genetic toxicity of ethephon was evaluated in several assays. The compound was found to be mutagenic in strain TA–1535 with and without S9 activation in the Ames assay. In the *in vitro* chromosomal aberrations study with Chinese hamster ovary cells, ethephon was negative. Ethephon was tested for unscheduled DNA synthesis in the rat hepatocyte system and was found to be negative. The weight of evidence suggests that this material is non-genotoxic.

Conclusions: Based on the data cited above, the weight of evidence indicates that ethephon technical does not pose a risk of mutagenicity or genotoxicity.

3. *Reproductive and developmental toxicity.* Ethephon has been tested for reproductive toxicity in rats and developmental toxicity in both rats and rabbits (two studies in each species). The results of these studies are summarized below:

a. In a two generation reproduction study, 28 Sprague-Dawley rats per sex per dose were administered 0, 300, 3,000, or 30,000 ppm (0,15, 150, or 1,500 mg/kg/day) of ethephon in the diet. For the offspring, a NOEL of 15 mg/kg/day and a LOEL of 150 mg/kg/day was established based on decreased body weight gain in the females at 150 mg/kg/day and in both sexes at 1,500 mg/kg/day. No effects were observed on fertility, gestation, mating, organ weights, or histopathology in any generation.

b. In rats, ethephon was administered by gavage at doses of 0, 20, 600, or 1,800 mg/kg for gestation days 6 through 15. At 1,800 mg/kg/day, 14 of the 24 treated female rats died. No toxic effects were observed at lower doses. The NOEL for maternal and developmental toxicity was 600 mg/kg/day. In a second study, rats were dosed by gavage at 0, 125, 250, or 500 mg/kg/day on days 6 through 15 of gestation. No toxic effects were observed at any dose. The NOEL for maternal and developmental toxicity was 500 mg/kg/day.

c. In rabbits, ethephon was administered by gavage at doses of 0, 50, 100, and 250 mg/kg for gestation days 6 through 19. The number of does with live fetuses were 10, 12, 8, and 5, respectively. Resorptions were increased at 100 mg/kg/day and statistically significantly increased at 250 mg/kg/day. At 250 mg/kg/day, does were depressed, ataxic, showed an increase of clinical observations and gross pathology in the gut. The NOEL for maternal toxicity was 50 mg/kg/day and the NOEL for developmental toxicity was 50 mg/kg/day. In a second study, rabbits were dosed by gavage at 0, 62.5, 125, or 250 mg/kg/day on days 6 through 19 of gestation. Maternal morbidity, mortality, and clinical signs of toxicity were observed at 250 mg/kg/day. Fetal toxicity, consisting of decreased number of live fetuses per doe, increased early resorptions and post implantation loss was observed at 250 mg/kg/day. A NOEL for maternal and developmental toxicity of 125 mg/kg/day was observed.

Conclusions: Based on the two-generation reproduction study in rats, ethephon is not considered a reproductive toxicant and shows no evidence of endocrine effects. The data from the developmental toxicity studies on ethephon show no evidence of a potential for developmental effects (malformations or variations) at doses that are not maternally toxic. The NOEL for both maternal and developmental toxicity in rats was 500 mg/kg/day and for rabbits the NOEL for both maternal and developmental toxicity was 50 mg/kg/day, respectively.

4. *Subchronic toxicity.* The subchronic toxicity of ethephon has been studied in three human studies and a 21–day dermal study in rabbits. These studies are summarized below:

a. Male and female subjects received ethephon at doses of 0.17 and 0.33 mg/kg/day for 22 days. The daily doses were divided into 3 gelatin capsules. No adverse effects were noted in clinical observations, hematology, serum chemistry (including RBC ChE) and urinalysis. There was a significant decrease in plasma ChE for both treatment groups, although the effect at 0.17 mg/kg/day appeared to be very close to the threshold for significance.

b. Male and female subjects received ethephon at a dosage of 0.5 mg/kg/day for 16 days. The daily dose was divided into 3 gelatin capsules. No adverse effects were noted in clinical observations, hematology, serum chemistry (including RBC ChE) and urinalysis. There was a significant decrease in plasma cholinesterase.

c. Ethephon was administered to male and female subjects at a daily dose of 124 mg/day (1.8 mg/kg/day average for both sexes) divided up into 3 gelatin capsules for 28 days. Clinical signs of toxicity were observed and included diarrhea, urgency of bowel movements, urinary urgency and stomach cramps. No effects were noted with regard to hematology, urinalysis or serum chemistry including cholinesterase evaluations.

d. In a 21–day dermal study, 10 rabbits per sex per group were dosed dermally at 0, 25, 75, and 150 mg/kg/day, five days per week for three weeks. Skin effects were observed at all doses. Effects ranged from erythema and desquamation at the lowest dose to acanthosis and chronic inflammation at 150 mg/kg/day. No systemic treatment-related effects were observed on body weight, food consumption, organ weight or histopathology. The systemic NOEL was greater than 150 mg/kg/day.

Conclusions: Based on the results of the 3 studies in humans, a LOEL of 1.8 mg/kg/day was established in the 28–day study. In the 22–day study, 0.17 mg/kg/day appeared to be very close to the threshold for significance. The systemic NOEL in the 21–day dermal study in rabbits was greater than 150 mg/kg/day.

5. *Chronic effects.* A 2 year chronic toxicity/oncogenicity study in rats, an 18 month mouse oncogenicity study, a 1–year study in dogs, and a 2–year chronic study in dogs were performed on ethephon technical. These studies are summarized below:

a. A combined chronic/oncogenicity study was performed on ethephon in Sprague-Dawley rats. Doses administered in the feed were 0, 300, 3,000, 10,000 or 30,000 ppm for 95 weeks to the males and 103 weeks for the females. The doses administered relative to body weight were 0, 13, 131, 446, or 1,416 mg/kg/day for males and 0, 16, 161, 543 or 1,794 mg/kg/day for females. Plasma and erythrocyte cholinesterase was inhibited at all doses (NOEL<300 ppm). Brain cholinesterase inhibition was not observed. A decrease in male body weight was observed at 10,000 ppm. At 30,000 ppm a body weight decrease was observed in both sexes. Additional effects at 30,000 ppm were thyroglossal duct cysts, kidney glomerulo-sclerosis and nephritis and biliary hyperplasia cholangiofibrosis. No carcinogenic effects were observed.

b. Male and female CD–1 mice were administered ethephon in the diet at 0, 100, 1,000, or 10,000 ppm (0, 15.5, 156, or 1,630 mg/kg/day) for 78 weeks. An additional dose level of 50,000 ppm was terminated at 12 weeks because of excessive morbidity and mortality. No evidence of treatment related tumors was observed. A NOEL of 15.5 mg/kg/day was determined for plasma cholinesterase inhibition. At 1,630 mg/kg/day male body weights were increased and female body weights decreased compared to controls.

c. Ethephon technical was administered in the feed at 0, 30, 300, and 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day) to male and female beagle dogs

for 2 years. Due to toxicity/morbidity, the high dose was reduced as follows: 75 mg/kg/day weeks 0–3; 50 mg/kg/day weeks 4–5; 25 mg/kg/day weeks 6–24; 37.5 mg/kg/day weeks 25–104. Plasma cholinesterase was inhibited at all doses (NOEL<0.75 mg/kg/day). A NOEL for erythrocyte cholinesterase inhibition of 0.75 mg/kg/day with a LOEL of 7.5 mg/kg/day was observed. Histopathology showed smooth muscle atrophy in the gut at 7.5 mg/kg/day with a NOEL of 0.75 mg/kg/day.

d. Ethephon was administered in the feed at doses of 0, 100, 300, 1,000 or 2,000 ppm (0, 2.7, 8.2, 28.5, or 52.1 mg/kg/day) to male and female beagle dogs for 52 weeks. A systemic NOEL of 1,000 ppm (28.5 mg/kg/day) was observed for decreased spleen weight, body weight, hemoglobin and hematocrit in males. The females showed a decreased spleen/body weight ratio for the same NOEL. Cholinesterase inhibition was not determined.

Conclusions: The NOEL in the chronic rat study was 131 mg/kg/day based on the decreased body weight gains in males. The NOEL in the most recent one-year dog study was determined to be 28.5 mg/kg/day based on body weight, organ weight effects and hematology effects. Ethephon has been tested in both rats and mice for oncogenic activity. No oncogenic effects were observed.

6. *Animal metabolism*.

Rat metabolism--Ethephon technical. The rat metabolism study consisted of a single intravenous dose group at 50 mg/kg, and single and multiple oral high dose groups at 50 and 1,000 mg/kg. The oral Cmax (maximum concentrations were reached at 1.3 and 1 hours for the 50 mg/kg dose and 1.9 and 2.5 hours for the 1,000 mg/kg dose in males and females, respectively. The t1/2 of the rapid excretion phase (A-phase) at the 50 mg/kg dose was 7 hours for both sexes and 4 and 9 hours at 1,000 mg/kg for the males and females, respectively. Oral and intravenous doses were rapidly excreted in the urine accounted for 48 to 71 percent of the administered radioactivity. Approximately 7 percent was excreted in the feces. Exhaled ethylene was 10–20 percent and CO_2 was less than 1 percent of the administered dose. The highest tissue concentrations were found in the blood, bone, liver, kidney and spleen with no significant differences between single and multiple dosing. No significant differences were observed in the excretion pattern with either sex or multiple dosing.

Goat metabolism--Ethephon technical. In a goat metabolism study, ethephon was incorporated into natural products (glutathione conjugates, protein, glycogen, and triglycerides) and expired as CO_2 and ethylene.

Hen metabolism--Ethephon technical. In a hen metabolism study, ethephon metabolism involved an initial removal of chlorine to form 2-hydroxyethanephosphonic acid followed by further metabolism which results in the release of ethylene and carbon dioxide as well as intermediates which can enter into fundamental biochemical pathways leading to the biosynthesis of proteins and lipids.

Conclusions: Ethephon technical is not metabolized to breakdown products that can be reasonably expected to present any chronic dietary risk.

7. *Metabolite toxicology*. Ethephon degrades to ethylene phosphate and chloride. Therefore, no significant toxicity is anticipated from these breakdown/metabolites.

8. *Neurotoxicity*. The acute neurotoxicity of ethephon has been studied. The study is summarized below:

Groups of 12 male and 12 female Sprague Dawley rats were treated once by gavage with ethephon at dose levels of 0, 500, 1,000, or 2,000 mg/kg in order to assess its potential acute neurotoxicity. The time for assessing peak behavioral effects was previously determined in another study to be approximately 6 hours post dosing. At 2,000 mg/kg, mortality (females only) and transitory effects including pupillary constriction, increased urination (males only), reduced food consumption and body weight, decreased body temperature (females only), and reduced motor activity. Mortality and reduced food consumption was also observed for the 1,000 mg/kg females, motor activity was decreased for the 1,000 mg/kg males and constricted pupils were noted for some animals in all the lower dosage groups. No neuropathological lesions were seen that were attributed to treatment with ethephon. The nature of the findings suggests that they were generally isolated pharmacological effects and not of neurotoxicological significance given their transitory nature and the lack of treatment related structural lesions in the nervous system.

Conclusions: The acute neurotoxicity study demonstrated transient findings that suggested isolated pharmacological effects and no NOEL was established based on the observation of transient constricts. Ethephon does not appear to pose any significant acute neurotoxicity.

C. Aggregate Exposure

1. *Dietary exposure.* a. *Food* - Ethephon is registered for use on the following food crops: cotton, apples, cherries, tomatoes, wheat, barley, peppers, grapes, tobacco, walnuts, almonds, blackberries, cantaloupe, pineapple, sugarcane and macadamia nuts. In addition, IR-4 is conducting work to support new uses on blueberries, coffee, cranberries, figs and guavas. Ethephon has several ornamental/non-food applications as well. All residue requirements cited in the ethephon RED have been submitted to EPA. As a result of this work, increased tolerances have been proposed for cottonseed (6 ppm, PP 6F4743) and cotton gin by-products (180 ppm, amendment to PP 1H5603). As part of the reregistration process, the following tolerances will be revoked: cucumbers, filberts, lemons, pineapple forage and fodder, pumpkins, tangerines, tangerine hybrids and sugarcane molasses. The tolerances for residues of ethephon in or on food and feed commodities are currently based in terms of ethephon per se. An enforcement method was submitted to EPA for determination of residues of ethephon in/on plant commodities and in milk, ruminant and poultry tissues. The ethephon RED lists the number of treated acres by crop for all major ethephon uses in the U.S.

b. *Drinking water* - Based on the available studies and the use pattern, Rhone-Poulenc does not anticipate residues of ethephon in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for ethephon under the Safe Drinking Water Act.

2. *Non-dietary*. The potential for non-occupational exposure to the general public is also insignificant since only approximately 800 lbs of ethephon technical is sold in the U.S. home and garden market annually. The residential lawn or garden uses anticipated for these products where the general population may be exposed via inhalation or dermal routes are negligible. The home and garden formulation that is sold in the U.S. contains only 3.9 percent ethephon which would further limit exposure.

D. Cumulative Effects

While ethephon is an inhibitor of ChE of the plasma and RBC, it has not demonstrated any ability to inhibit brain ChE in rats, mice, or dogs under condition of a chronic dietary dosing regimen. Furthermore, unlike classic organophosphate ChE inhibitors, ethephon did not induce symptoms of ChE inhibition, such as constriction of the pupils, salivation, lacrimation, diarrhea, urination, tremors, and convulsions under chronic feeding of

doses up to 30,000, 10,000, and 2,000 ppm in the rat, mouse, and dog, respectively. In the rat study, the plasma and RBC ChE were inhibited approximately 55 percent and 85 percent, respectively. In the mouse study, both peripheral ChEs were inhibited by approximately 70 percent. Although cholinesterase determinations were not performed in the 1 year dog study, in a 2 year dog study, plasma and RBC ChE were inhibited 60 percent and 70 percent, respectively. Despite these high degrees of inhibition of peripheral ChE, no clinical signs or symptoms consistent with ChE inhibition occurred in these studies. It is generally only under very extreme conditions such as high doses administered via oral gavage or under occlusive dermal dressing in rabbits in which signs that are consistent with ChE inhibition are observed. These clinical signs generally occur at doses that produce acute lethality. However, these signs may in fact be unrelated to CNS ChE inhibition and could be a non-specific reaction to the acidic and therefore highly irritant nature of ethephon.

Ethephon should not be regarded as a classical inhibitor of ChE such as the carbamates and organophosphates since it does not produce the typical nervous system effects of those compounds. The recently updated chronic data base adequately proves that very high dietary doses of ethephon do not inhibit brain ChE, that it does not produce the classical clinical signs of ChE inhibition, and that it does not produce life-shortening effects, despite moderate to severe lifetime inhibition of both plasma and RBC ChE. The inhibition of ChE by ethephon is only an indicator of exposure and is not a measure of its potential for inducing ChE-mediated toxicity.

In summary, Rhone-Poulenc concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no significant toxicity observed for ethephon. Even at high doses, ethephon does not act as a classical inhibitor of cholinesterase. Exposure, even at high doses, does not lead to brain cholinesterase inhibition. There is no reliable data to indicate that the effects noted would be cumulative with those of organophosphate or carbamate-type compounds. Therefore, Rhone-Poulenc has considered only the potential risks of ethephon in its exposure assessment.

E. Safety Determination

The EPA OPP/HED RfD Peer Review Committee determined that the reference dose (RfD) should be based on the 28–day study in humans. Using the LOEL of 1.8 mg/kg/day in this study and an uncertainty factor (UF) of 100 to account for intraspecies variability and the lack of a NOEL, an RfD of 0.018 mg/kg/day was established as the chronic dietary endpoint.

1. *U.S. population--General.* A chronic dietary risk assessment which included all proposed changes in ethephon tolerances was conducted on ethephon using two approaches: (1) a Tier 1 approach using tolerance-level residues for all foods included in the analysis, and (2) Monte Carlo simulations using tolerance-level residues for all foods adjusted for percent crop treated (Tier 3). Using the Tier 1 approach, MOEs at the 95th and 99th percentiles of exposure for the overall U.S. population were 25 and 9, respectively. Using Tier 3 procedures in which residues were adjusted for the percent of the crop treated, MOEs were 114 and 42, respectively. Acute exposure was also estimated for infants and children 1 to 6 years of age. In the Tier 1 analysis, the most highly exposed subgroup was infants. For this population, MOEs at the 95th and 99th percentiles of exposure were 7 and 4, respectively. Using the Tier 3 method MOEs were 56 and 12, respectively. Even under the conservative assumptions presented here, the more realistic estimates of dietary exposure (Tier 3 analyses) clearly demonstrate adequate MOEs up to the 99th percentile of exposure for all population groups analyzed.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of ethephon, the available developmental toxicity and reproductive toxicity studies and the potential for endocrine modulation by ethephon were considered. Developmental toxicity studies in two species indicate that ethephon is not a teratogen. The 2 generation reproduction study in rats demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development. Maternal and developmental NOELs and LOELS were comparable, indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore concluded that ethephon poses no additional risk for infants and children and no additional uncertainty factor is warranted. FFDCA section 408 provides that an additional safety factor for infants and children may be applied in the case of threshold effects. Since, as discussed in the previous section, the toxicology studies do not indicate that young animals are any more susceptible than adult animals and the fact that the proposed RfD calculated from the LOEL from the 28 day human study already incorporates an additional uncertainty factor, Rhone-Poulenc believes that an adequate margin of safety is therefore provided by the RfD established by EPA. Additionally, this LOEL is also 8X lower than the next lowest NOEL (2 generation reproduction study, NOEL=15 mg/kg/day) in the ethephon toxicology data base. Ethephon has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies.

Conclusion: A dietary Risk assessment was submitted to EPA in September, 1996 (MRID #44100203). An RfD of 0.018 mg/kg/day has been established by EPA based on the LOEL in the 28–day human study. Adequate MOEs exist for all populations including infants and children. No additional uncertainty factor for infants and children is warranted based on the completeness and reliability of the database, the demonstrated lack of increased risk to developing organisms, and the lack of endocrine-modulating effects.

F. International Tolerances

The Codex MRL for grapes is 10 mg/kg verses 2 ppm for U.S. tolerance. The tomato Codex MRL is 3 mg/kg verses 2 ppm for the U.S. tolerance. All other U.S. tolerances are identical to corresponding Codex MRLs.

II. Administrative Matters

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the document control number, [PF–686]. 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 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–686] 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 8:30 a.m. to 4 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 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: January 7, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–983 Filed 1–14–97; 8:45 am]
BILLING CODE 6560–50–F

[PF–687; FRL–5580–4]

W. Neudorff GmbH KG; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of a regulation for an exemption from the requirement for a tolerance for residues of copper octanoate when used in accordance with good agricultural practice as an active ingredient in pesticide formulations applied to growing crops. This notice includes a summary of the petition that was prepared by the petitioner, W. Neudorff GmbH KG (''Neudorff'').

DATES: Comments, identified by the docket number [PF–687], must be received on or before February 14, 1997.

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 be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–687]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comments 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Philip V. Errico, Acting Product Manager (22), Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, 703–305–5540, e-mail: errico.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6F4734) from W. Neudorff GmbH KG (''Neudorff''), c/o Walter G. Talarek, 1008 Riva Ridge Drive, Great Falls, VA 22066, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR Part 180 by establishing an exemption from the requirement for a tolerance for residues of the fungicide copper octanoate when used in accordance with good agricultural as an active ingredient in pesticide formulations applied to growing crops.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Neudorff included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Neudorff. EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

1. *Magnitude of the residue anticipated at the time of harvest and method used to determine the residue.* No residues are expected at the time of harvest on crops treated with copper octanoate, because rainwater readily washes copper octanoate off plants, and this chemical is biodegraded by water hydrolysis into its copper ion and fatty acid components, and then the fatty acids are further degraded by two carbon units at a time until they eventually degrade to water and CO2. In addition, the physio-chemical properties of soils naturally modify copper ion availability, and when soils are adjusted/limed to the pH required for normal crop production, the effect is to reduce copper availability to the crop. Furthermore, toxic copper levels in plants induce an imbalance with iron which causes plant dwarfing, stunted roots and decreased growth and yields, which effects appear before significant copper buildup occurs, and consequently acts as a warning which prevents excess application of copper compounds to food/feed crops. Last, even if residues were to remain on plants, the copper ion is a trace element, or micronutrient, essential for the growth and well being of higher plants and animals, including man. Therefore, the amount of this chemical proposed for application to plants is highly unlikely to cause harm to plants or animals or to leave excess residues on the plants.

2. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Neudorff has not proposed a new analytical method, because copper levels harmful to plants and animals are highly unlikely to occur when its copper octanoate product is applied according to label instructions. However, should EPA require such a method, because copper octanoate is a copper salt of a fatty acid, Neudorff would propose the use of the same analytical method submitted by registrants of products containing other copper salts of fatty acids.

B. Toxicological Profile

1. *Acute toxicity.* Result of studies conducted on a concentrate product containing copper octanoate and for which Neudorff has applied for registration indicate that this chemical has low acute toxicities.

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity.* There is adequate information available from literature sources to characterize the toxicity of the copper ion. The available literature shows that copper is ubiquitous in nature and is a necessary nutritional element for both animals and plants. It is one of 26 elements found essential to life. The copper ion is present in the adult human body at levels of 80–150 mg. Oral ingestion of excessive amounts of the copper ion from pesticidal uses is unlikely; copper compounds are irritating to the gastric mucosa and emesis usually occurs promptly, thereby reducing the amount of copper ion available for absorption into the human body. Moreover, copper is a trace element essential for the growth and well being of man. However, man is protected from excess copper ion in the body by an effective homeostatic mechanism which integrates absorption, retention and excretion to stabilize the copper ion burden in the body. Only a small percentage of copper ingested is absorbed, and most of the absorbed copper is excreted. In view of the facts that the copper ion occurs naturally in most foods and the metabolism of copper is well understood, there is no reason to expect that long-term exposure to copper ion in the diet is likely to pose the risks of chronic or sub-chronic adverse effects.

C. Aggregate Exposure

1. *Dietary exposure.* a. *Food.* There is no known evidence of sub-chronic or chronic adverse health effects from dietary exposure to the copper ion, except in the case of massive intake disrupting the natural homeostatic mechanism controlling body level of copper.

b. *Drinking water.* As a copper salt of a fatty acid, copper octanoate can be washed off growing plants by rain and during processing of crops by water. However, as stated previously, copper octanoate is biodegraded first by water hydrolysis into the copper ion and fatty acid components, and then the fatty acids are further degraded by two carbon units at a time until they eventually degrade to water and CO_2. But, even if the chemical were to wash off plants and the copper ion were to get into a public drinking water source, EPA has promulgated Safe Drinking Water Act standards for copper which would be protective of pubic health.

2. *Non-dietary exposure.* The only non-dietary exposure expected is that to applicators. However, the protective measures prescribed by the product's label are expected to be adequate to minimize exposure and protect applicators of the chemical.

D. Cumulative Effects

No cumulative adverse effects are expected from long-term exposure to this chemical.

E. Safety Determination

1. *U.S. population.* The metabolism of copper in man and growing plants is well understood and documented in the available literature. The use of copper octanoate as a pesticide would have essentially the same results in terms of contribution of copper ion to growing crops as the use of copper sulfate and the Group II copper compounds that have already been granted exemptions from tolerance by EPA. Further, there is adequate information to show that there is no toxicological concern raised by the contribution of the copper ion to growing crops which is likely to result from application of pesticides containing copper, and consequently no tolerances should be required for the use of copper octanoate.

2. *Infants and children.* Because the fetus and newborn have elevated copper levels (Sternlieb, 1980), and since homeostatic mechanisms are not fully developed at birth (Underwood, 1977), the newborn represents a risk group that may not be able to cope with excess copper exposure. However, the fetus does not have a ''abnormal burden'' of copper; it needs a store of copper from which it will start fulfilling its requirements as a newborn (USEPA, 1987). Data show that in small children ingestion of approximately 10 mg Cμ/10 kg child/day from contaminated milk can cause severe liver disorders (Tanner et al, 1983). EPA theorizes that ''given that 1 mg/kg bw is an upper limit of exposure, it is conceivable that, for instance, 20 percent of this level (2 mg/child/day) could result in less severe, though still significant, liver damage. This intake is well within the normal adult recommended nutritional level, indicting that children may be more susceptible systematically to copper than adults. The main action my be the intestinal mucosa, especially in infants with preexisting GI tract disturbances.'' (USEPA, 1987).

F. Existing Tolerances

1. *Existing tolerances or tolerance exemptions.* EPA has not established a tolerance or an exemption from the requirement for a tolerance for this chemical. However, EPA has promulgated a tolerance exemption for a group of similar copper-based chemicals, *i. e.*, Bordeaux mixture, copper acetate, basic copper carbonate (malachite), copper hydroxide, copper-lime mixtures, copper linoleate, copper oleate copper oxychloride, copper sulfate basic, copper sulfate monohydrate, copper sulfate pentahydrate, copper-zinc chromate, cupric oxide, and cuprous oxide (two of these chemicals are copper salts of fatty acids), when they are applied to growing crops in accordance with good agricultural practice. See 40 CFR 180.1001(b)(1). In addition, EPA has promulgated a tolerance exemption for copper residues in meat, milk, poultry, eggs, fish, and irrigated crops when they result from the use of certain copper compounds, *i. e.*, copper sulfate, basic copper carbonate, copper triethanolamine, copper monoethanolamine, and cuprous oxide, at certain sites. See 40 CFR 180.1021. The common basis for EPA's tolerance exemptions for the compounds in these two classes of copper compounds appears to be the fact that the copper ion is the entity responsible for their fungicidal action, and there is adequate data on the copper ion upon which EPA can make judgments about its potential for causing unreasonable adverse effects on the environment.

2. *International tolerances.* No maximum residue level has been established for this substance by the Codex Alimentarius Commission.

II. Administrative Matters

Interested persons are invited to submit comments on the this notice of filing. Comments must bear a notation indicating the document control number, [PF–687]. 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 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket number [PF–687] 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 8:30 a.m. to 4 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 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: January 7, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–985 Filed 1–14–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5677–3]

CERCLA 104 (c)(9) Capacity Assurance Planning: National Capacity Assessment Report

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires States to assure that adequate capacity exists to manage hazardous wastes generated in their State for 20 years before EPA can provide any Superfund Remedial Action Trust funds to the State. Under a program the Agency has implemented to help States fulfill this statutory mandate, States submit Capacity Assurance Plans (CAPs) as the basis for their assurance. On May 1, 1994, States submitted CAPs to EPA pursuant to the May 1993 *Guidance for Capacity Assurance Planning,* OSWER Directive 9010.02. On November 3, 1994, the Agency made available for comment a draft of the *National Capacity Assessment Report,* in which the Agency made a proposed determination that there existed adequate national capacity, and which presented the Agency's analysis of State data. Based on the information contained in the CAPs, internal Agency studies, and comments received on the draft *Assessment Report,* the Agency is today finalizing the determination that there exists adequate national capacity in all CAP management categories. Therefore, as with the proposed determination, all States continue to be eligible to receive Superfund Trust funds.

The Agency will continue to collect and evaluate additional data to ensure that the requirements of CERCLA 104 (c)(9) are satisfied. At this time, the Agency does not anticipate the need to conduct another CAP for the next few years. The *National Capacity Assessment Report,* which describes the entire CAP process, is available for public review in the RCRA Docket. The information collection activities that occurred for the Capacity Assurance Planning process were approved by the Office of Management and Budget (OMB) under OMB Control Number 2050–0099.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. Docket number F–94–CAGA–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must 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 cost $.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

For information on specific aspects of the Report, contact Robert Burchard, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8450.

SUPPLEMENTARY INFORMATION: For a paper copy of the *National Capacity Assessment Report,* please contact the National Technical Information Service (NTIS) at 1–703–487–4650. The document number is PB95–209672 (EPA530–R–95–016). The *Report* is also available in electronic format on the Internet. Follow these instructions to access the report: WWW: http://www.epa.gov/epaoswer; Gopher: gopher.epa.gov; Dial-up: (919) 558–0335.

If you are using the gopher or direct dialup method, once you are connected to the EPA Public Access Server, look for this report in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Subtitle C—Hazardous Waste/Treatment, Storage, and Disposal Facilities (TSDFs).

FTP: ftp.epa.gov.

Login: anonymous.

Password: Your Internet address.

Files are located in /pub/gopher/OSWRCRA.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 97–976 Filed 1–14–97; 8:45 am]

BILLING CODE 6560–50–P

[OPPT–59357A; FRL–5582–9]

Certain Chemical; Test Marketing Exemption Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a document publsished in the Federal Register of December 26, 1996, which contained an incorrect e-mail address for written comments and an incorrect FRL number for test marketing exemption (TME)–97–3. As a result of the incorrect e-mail address, EPA is extending the comment period.

DATES: This notice became effective on December 19, 1996. Written comments will now be received until January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, DC 20460, (202) 260–2279; jones.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 26, 1996, (61 FR 68039), in FR Doc. 96–32794, on page 68039, in the first column, make the following corrections:

1. In the heading, correct FRL–5581–7 to read FRL–5581–5.

2. Under the caption ''ADDRESSES'', in the second paragraph, correct the e-mail address in line 4 to read oppt.ncic@epamail.epa.gov.

Dated: January 3, 1997.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 97–984 Filed 1–14–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

January 7, 1997.

SUMMARY: The Federal Communications Commission, 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.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before March 17, 1997. 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.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.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 Number: 3060–0602.

Title: Section 76.917 Notification of certification withdrawals.

Type of Review: Extension of existing collection.

Respondents: State, local or tribal governments.

Number of Respondents: 25.

Estimated Time Per Response: .5 hours.

Total Annual Burden: 13 hours.

Cost to Respondents: Postage and stationery costs are estimated at an average of $1 per notification. 25 notifications x $1 = $25.

Needs and Uses: Section 76.917 of the Commission's rules requires a local franchising authority (''LFA'') that has been certified to regulate basic service tier (''BST'') cable rates to notify the Commission if it no longer intends to regulate BST cable rates. This notification shall include the LFA's determination that rate regulation no longer serves the best interests of local cable subscribers and that the LFA has received no consideration for its withdrawal of certification. The notifications are used by the Commission to readily determine the extent of basic service tier BST rate regulation of cable systems and to be aware of circumstances where certified LFAs no longer intend to regulate BST cable rates.

Federal Communications Commission.

William F. Caton,

Acting Secretary,

[FR Doc. 97–928 Filed 1–14–97; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

January 7, 1997.

SUMMARY: The Federal Communications Commission, 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 information collection, 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 Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify 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: Persons wishing to comment on this information collection should submit comments March 17, 1997.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.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 Number: 3060–0593.

Title: FCC Form 1215 A la Carte Channel Offerings.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,400. (3,600 filings + 1,800 LFA reviews).

Estimated Time Per Response: .5 hours - 1 hour.

Total Annual Burden: 4,500 hours. We estimate that 3,600 FCC Form 1215s

are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete the FCC Form 1215 is estimated to be 1 hour. 3,600 x 1 hour = 3,600 hours. LFAs will review approximately 1,800 FCC Form 1215 filings per year at an average burden of .5 hours per filing. 1,800 x .5 hours per filing = 900 hours.

Cost to Respondents: $2,000. We estimate photocopying and stationery costs to respondents to be approximately 3,600 filings x 50 cents per filing = $1,800 and then rounded up to $2,000. There are no postage expenses specifically attributed to this collection because the FCC Form 1215 is not a unique mailing, but rather is submitted as part of a package with other rate regulation forms such as FCC Form 1200, FCC Form 1210 or FCC Form 1240.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1215 is filed by cable operators in conjunction with the filing of other rate regulation forms. A la carte channel offerings are not regulated by the Commission; however, the submission of a la carte data is a necessary component to the Commission's system of rate regulation so that the Commission and local franchising authorities (''LFAs'') can examine the entire scope of programming offered by respective cable systems. The requirement to file FCC Form 1215 with the Commission's other rate regulation forms ensures that the Commission's system of rate regulation is not being circumvented. The data are used by Commission staff and LFAs to determine which channels a cable operator is offering on an individual, unregulated basis.

OMB Approval Number: 3060–0594.

Title: FCC 1220 Cost of Service Filing for Regulated Cable Services.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 30. (20 cable operators + 10 LFAs).

Estimated Time Per Response: 4 hours - 80 hours.

Total Annual Burden: 1,640 hours. We estimate that no more than 20 FCC Form 1220s are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete FCC Form 1220 is estimated to be 80 hours. Cable operators will use in-house staff to complete approximately 50% of the filings. Cable operators will use outside assistance to complete approximately 50% of the filings, undergoing a burden of 4 hours per filing to coordinate information with the outside assistance. 10 (50% of 20) filings completed with in-house staff x 80 hours per filing = 800 hours. 10 (50% of 20) filings coordinated with outside assistance x 4 hours per filing = 40 hours. LFAs will review approximately 10 FCC Form 1220 filings per year at an average burden of 80 hours per filing. 10 x 80 hours per filing = 800 hours. Total burden = 800 + 40 + 800 = 1,640 hours.

Cost to Respondents: $120,000. Cable operators will use outside assistance paid at $150 per hour to complete approximately 10 FCC Form 1220 filings. 10 filings x 80 hours per filing x $150 per hour = $120,000. Diskettes, postage and stationery costs are estimated at an average of $5 per filing. 20 filings x $5 = $100. Total costs = $120,000 + $100 = $120,100.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1220 is used by cable operators to demonstrate their costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. Cable operators submit this form to local franchising authorities (''LFAs'') or the Commission (in situations where the Commission has assumed jurisdiction) only when justifying rates based on cost of service. It may also be filed with the Commission as part of the operator's response to a complaint filed with the Commission about cable programming service rates and associated equipment when justifying rates based on cost of service. The data are used by Commission staff and LFAs to determine whether cable rates for basic service, cable programming service and associated equipment are reasonable under Commission regulations.

OMB Approval Number: 3060–0596.

Title: FCC 1225 Computation of Cable Services Revenue Requirements and Charges, Cost of Service for Small Systems.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 15. (10 cable operators + 5 LFAs).

Estimated Time Per Response: 4 hours - 60 hours.

Total Annual Burden: 620 hours. We estimate that no more than 10 FCC Form 1225s are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete FCC Form 1225 is estimated to be 60 hours. Cable operators will use in-house staff to complete approximately 50% of the filings. Cable operators will use outside assistance to complete approximately 50% of the filings, undergoing a burden of 4 hours per filing to coordinate information with the outside assistance. (50% of 10) filings completed with in-house staff x 60 hours per filing = 300 hours. (50% of 10) filings coordinated with outside assistance x 4 hours per filing = 20 hours.LFAs will review approximately 5 FCC Form 1225 filings per year at an average burden of 60 hours per filing. 5 x 60 hours per filing = 300 hours. Total burden = 300 + 20 + 300 = 620 hours.

Cost to Respondents: $45,100. Cable operators will use outside assistance paid at $150 per hour to complete approximately 5 FCC Form 1225 filings. 5 filings x 60 hours per filing x $150 per hour = $45,000. Total annual costs for purchase of diskettes, postage and stationery are estimated to be $100.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1225 may be used by a small cable systems to demonstrate their costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. For purposes of using FCC Form 1225, a small system means one with no more than 1,000 subscribers. A small system generally qualifies to use this form if it is either (a) an independent system, or (b) it is owned by an multiple system operator (''MSO'') that has 250,000 subscribers or less, no system with more than 10,000 subscribers, an average system size of 1,000 or fewer subscribers. Cable operators submit this form to local franchising authorities (''LFAs'') or the Commission (in situations where the Commission has assumed jurisdiction) only when justifying rates based on cost of service. It may also be filed with the Commission as part of the operator's response to a complaint filed with the Commission about cable programming

service rates and associated equipment when justifying rates based on cost of service. The data are used by Commission staff and LFAs to determine whether cable rates for basic service, cable programming service and associated equipment are reasonable under Commission regulations.

OMB Approval Number: 3060–0601.

Title: FCC Form 1200 Setting Maximum Initial Permitted Rates for Regulated Cable Services.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 150. (100 cable operators + 50 LFAs).

Estimated Time Per Response: 2–10 hours.

Total Annual Burden: 1,100 hours. We estimate that 100 FCC Form 1200s are filed annually, approximately 50% with the Commission and 50% with LFAs. The average burden to complete FCC Form 1200 is estimated to be 10 hours. Cable operators will use in-house staff to complete approximately 50% of the filings. Cable operators will use outside assistance to complete approximately 50% of the filings, undergoing a burden of 2 hours per filing to coordinate information with the outside assistance. 50 (50% of 100) filings completed with in-house staff x 10 hours per filing = 500 hours. 50 (50% of 100) filings coordinated with outside assistance x 2 hours per filing = 100 hours. LFAs will review approximately 50 FCC Form 1200 filings per year at an average burden of 10 hours per filing. 50 x 10 hours per filing = 500 hours.

Cost to Respondents: $75,500. Cable operators will use outside assistance paid at $150 per hour to complete approximately 50 FCC Form 1200 filings. 50 filings x 10 hours per filing x $150 per hour = $75,000. Diskettes, postage and stationery costs are estimated at an average of $5 per filing. 100 filings x $5 = $500.

Needs and Uses: The Cable Television Consumer Protection and Competition Act of 1992 required the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. FCC Form 1200 is used by cable operators to justify the reasonableness of rates in effect on or after May 15, 1994. Cable operators submit this form to local franchising authorities (''LFAs'') or the Commission (in situations where the Commission has assumed jurisdiction). It is also filed with the Commission when responding to a complaint filed with the Commission about cable programming service rates and associated equipment. The data are used by Commission staff and LFAs to evaluate cable rates the first time they are reviewed on or after May 15, 1994 so that the maximum permitted rates for regulated cable services can be determined.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–929 Filed 1–14–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the Federal Register.

Agreement No.: 203–011560

Title: The TransAtlantic Bridge Agreement

Parties:

The COSCO/KL TransAtlantic Vessel Sharing Agreement (FMC Agreement No. 232–011561)

The KL/YM TransAtlantic Vessel Sharing Agreement (FMC Agreement No. 232–011562)

Synopsis: The proposed Agreement would permit the parties and their individual signatories to consult and agree on all matters within the scope of the two vessel sharing agreements, including, but not limited to: coordination of sailings, reciprocal space chartering, sub-chartering, vessel particulars, efficient use of equipment, terminals, stevedores, ports and suppliers, documentation, and systems in the trade between United States Ports in the Eastport, Maine/Brownsville, Texas, range, and inland U.S. points via such ports, and ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia, and inland points in Europe via those ports.

Agreement No.: 232–011561

Title: The COSCO/KL TransAtlantic Vessel Sharing Agreement

Parties:

China Ocean Shipping (Group) Company (''COSCO'')

Kawasaki Kisen Kaisha, Ltd. (''KL'')

Synopsis: The proposed Agreement would permit the parties to coordinate their container liner vessel operations and to charter space to one another in the trade between United States Ports in the Eastport, Maine/Brownsville, Texas, range, and inland U.S. points via such ports, and ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia, and inland points in Europe via those ports. Subchartering of space to Yangming Marine Transport Corporation by KL of slots aboard COSCO vessels is also authorized.

Agreement No.: 232–011562

Title: The KL/YM TransAtlantic Vessel Sharing Agreement

Parties:

Yangming Transportation Corporation (''YM'')

Kawasaki Kisen Kaisha, Ltd. (''KL'')

Synopsis: The proposed Agreement would permit the parties to coordinate their container liner vessel operations and to charter space to one another in the trade between United States Ports in the Eastport, Maine/Brownsville, Texas, range, and inland U.S. points via such ports, and ports in North Europe in the Hamburg/Gibraltar range, the United Kingdom, and Scandinavia, and inland points in Europe via those ports. Subchartering of space to China Ocean Shipping (Group) Company by KL of slots aboard YM vessels is also authorized.

Agreement No.: 217–011563

Title: The NOL/HMM Space Charter Agreement

Parties:

Neptume Orient Lines, Ltd.

Hyundai Merchant Marine Co., Ltd.

Synopsis: The subject agreement authorizes Hyundai to charter vessel space to NOL in the trade between all ports in the Far East and South East Asia, on the one hand, and all ports on the U.S. Pacific Coast, including Alaska, on the other, and all inland and coastal points served via those ports.

Agreement No.: 224–003038–004

Title : Supplemental Agreement Between Port of Oakland and American President Lines, Ltd.

Parties:

Port of Oakland

American President Lines, Ltd.

Synopsis: The subject modification amends the wharfage charges for a secondary user at the Port's Middle Harbor Terminal Area assigned to APL and clarifies the definition of primary and secondary users under the terms of the agreement

Dated: January 9, 1997.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–920 Filed 1–14–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 February 10, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Park National Corporation, Newark, Ohio; to merge with First Knox Banc Corp., Mount Vernon, Ohio, and thereby indirectly acquire The First Knox National Bank of Mt. Vernon, Mount Vernon, Ohio, and The Farmers & Savings Bank, Loudonville, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCFT, Inc., Princeton, West Virginia; to acquire 100 percent of the voting shares of Blue Ridge Bank, Sparta, North Carolina.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Zions Bancorporation, Salt Lake City, Utah; merge with Aspen Bancshares, Inc., Aspen, Colorado, and thereby indirectly acquire Pitkin County Bank and Trust Company, Aspen, Colorado, and Valley National Bank of Cortez, Cortez, Colorado. Applicant has also applied to acquire 19.9 percent of the voting shares of Aspen.

In connection with this application, Applicant has also applied to acquire Centennial Savings Bank, F.S.B., Durango, Colorado, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–991 Filed 1–14–97; 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 January 30, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Deutsche Bank AG, Frankfurt (Main), Federal Republic of Germany; to engage *de novo* through its subsidiary, German American Capital, Corp., New York, New York, and thereby indirectly acquire TransAtlantic Capital Company, L.L.C., New York, New York, in commercial real estate mortgage loan origination activities, pursuant to §§ 225.25(b)(1)(ii) and (b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–990 Filed 1–14–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, January 21, 1997.

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: January 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–1069 Filed 1–13–97; 10:51 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3069]

Abbott Laboratories; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Abbott Park, Illinois-based marketer of nutritional beverages from making any claim about the extent to which doctors or other professionals recommend any food or dietary or nutritional supplement, or about any other recommendation, approval, or endorsement of such products, unless it possesses competent and reliable scientific evidence to substantiate the claim. The agreement settles allegations that Abbott made false and unsubstantiated claims in an extensive national advertising campaign that promotes the company's Ensure nutritional beverages for healthy, active adults.

DATES: Comments must be received on or before March 17, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michelle K. Rusk, Federal Trade Commission, S–466, 6th and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3148. Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34) notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 2, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 FR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Abbott Laboratories. This matter concerns advertising for Ensure nutritional products.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Ensure is a canned beverage which contains carbohydrates, protein, fat, vitamins and minerals and is formulated so that the very elderly and others who have difficulty obtaining sufficient nutrition from regular food can subsist on it, for example through tube feeding. The Ensure product line includes not only Ensure, but also Ensure High Protein, Ensure Plus, Ensure With Fiber, Ensure Pudding, and Ensure Light.

According to the Commission's complaint, Abbott advertisements made the unsubstantiated representation that many doctors recommend Ensure as a meal supplement and replacement for healthy adults, including those in their thirties and forties. The complaint explains that, among other reasons, this claim is unsubstantiated because a survey of doctors relied upon by Abbott was not designed to elicit whether many doctors actually recommend Ensure as a meal supplement or replacement for healthy adults—as opposed to adults who are ill or elderly and may have nutritional deficiencies. According to the complaint, the survey merely asked doctors to assume that they would recommend a supplement for adults who were not ill, and then to select the brand they would most recommend.

The complaint also alleges that Abbott misrepresented that one serving of Ensure provides vitamins in an amount comparable to typical multivitamin supplements. According to the complaint, while the typical multivitamin supplement provides at least 100% of the recommended daily intake (RDI) of vitamins, at the time the advertisements challenged in the complaint were first disseminated, one serving of Ensure provided 62% of the RDI of Vitamin C and between 12% and 26% of the RDIs of the other vitamins for which RDIs have been established. The complaint states that, although Ensure has been reformulated, one serving still provides only 50% of the RDI of Vitamin C and 25% of the RDIs of the other vitamins.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent Abbott from engaging in similar acts and practices in the future.

Part I of the order requires Abbott not to make any claim about the extent to which doctors or other professionals recommend any food or dietary or nutritional supplement for healthy adults, or about the recommendation, approval, or endorsement of such products by anyone, unless it possesses

competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the claim.

Part II prohibits Abott from misrepresenting that one serving of any Ensure product, or any other product advertised, marketed or sold as a meal replacement or supplement for healthy adults, provides vitamins in an amount comparable to typical vitamin supplements. It also prohibits Abbott from misrepresenting the absolute or comparative amount of any vitamin or any other nutrient or ingredient provided by such products. Part II also requires that any representation covered by that Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration (''FDA'') must comply with the qualifying amount set forth in that regulation.

Part III provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

The proposed order also requires Abbott to maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain current and future officers and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order. The order also contains a provision stating that it will terminate after twenty (20) years absent the filing in federal court, by either the United States or the FTC, of a complaint against Abbott alleging a violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary,

[FR Doc. 97–922 Filed 1–14–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 961–0101]

General Mills, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Minneapolis-based producer of ready-to-eat cereals to permit New Ralcorp Holdings, Inc. to transfer to any successor party, without any authorization or approval from General Mills, the right to manufacture and sell cereals identical to the Chex brand products. The order also bars General Mills from delaying production of the private label Chex rivals. The agreement settles allegations that General Mills' acquisition of Ralcorp's branded cold cereal business, including the Chex line of cereals, would boost General Mills' share of the U.S. ready-to-eat cereals market to 31 percent and that it would have restricted the entry of new private label cereal products to compete with the General Mills brands. The Commission had alleged that the acquisition could have resulted in higher prices for Chex brand cereals.

DATES: Comments must be received on or before March 17, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2932.

George S. Cary, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3741.

Phillip L. Broyles, Federal Trade Commission, S–2105, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for December 26, 1996), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from General Mills, Inc. (''General Mills''), an agreement containing a consent order. The Commission designed the agreement to remedy any anticompetitive effects stemming from General Mills's acquisition of the branded ready-to-eat (''RTE'') cereal business from Ralcorp Holdings, Inc. (''Ralcorp'').

This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received. The Commission will then decide whether it should withdraw from the agreement or make final the order contained in the agreement.

The Commission's Complaint charges that on or about August 13, 1996, General Mills agreed to acquire the branded RTE cereal and snack-mix businesses owned by Ralcorp. Among the cereals that General Mills agreed to acquire are Corn CHEX, Rice CHEX, and Wheat CHEX. The Commission has reason to believe that the acquisition and the agreement to acquire Ralcorp may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's Complaint, General Mills is the second largest producer of RTE cereals and Ralcorp is the fifth largest producer of branded RTE cereals. Ralcorp is also the largest producer of private label RTE cereals. In 1994, the Ralston Purina Company created Ralcorp by distributing shares of Ralcorp to Ralston's Purina's shareholders. General Mills will not acquire Ralcorp's private label RTE cereal business. Ralcorp will form a new entity, New Ralcorp Holdings, Inc. (''New Ralcorp''), which will continue producing RTE cereals.

The Commission's investigation of this matter found potential anticompetitive problems arising from

this acquisition. The Complaint alleges that concentration is high in the RTE cereal market and entry is difficult and unlikely. Although this transaction does not reduce the number of established substantial firms in the RTE cereals market, it does increase General Mills' market share by approximately 3 percent and thus increases overall concentration in the market. Of particular concern is that the acquisition agreement restricts New Ralcorp's freedom to produce and sell private label CHEX products as well as its ability to transfer the rights to manufacture and sell private label CHEX products to a third party without permission from General Mills.

Under the terms of the proposed order, General Mills must, before consummating the merger, include in its agreements with Ralcorp and New Ralcorp provisions that will permit the transfer to any successor party of the right to manufacture and sell private label CHEX in the United States. These provisions will permit the successor party to sell these private label cereals without further authorization or approval from General Mills or Ralston Purina Company. The proposed order also prohibits General Mills from taking any action to prevent or delay New Ralcorp's sale of private label CHEX products in the United States. Finally, the proposed order prohibits General Mills from enforcing any agreement that would prevent the transfer to a successor party of the right to manufacture and sell private label CHEX in the United States.

Presently, neither Ralcorp nor any other person produces private label CHEX products. The proposed order will increase the likelihood that someone will produce and sell private label CHEX in competition with General Mills' branded CHEX products.

To reduce the possibility of competitive harm before the Commission's entry of a final order, the interim agreement binds General Mills to the terms of the order, as if it were final. The interim agreement became effective on the date General Mills signed the consent agreement.

The purpose of this analysis is to invite public comment concerning the consent order. The Commission does not intend this analysis to be an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in General Mills, Inc., File No. 961–0101

The Commission today issues for public comment a consent order based on a complaint alleging that the acquisition by General Mills, Inc., of the branded ready-to-eat cereal business of Ralcorp Holdings, Inc., violates Section 7 of the Clayton Act. The order is narrow, but I would narrow it even further. In particular, I would delete Paragraph II(B) of the proposed order, which requires elimination of a noncompete clause that would have prevented Ralcorp for a period of eighteen months from introducing a new private label cereal identical or similar to the CHEX-brand cereals being sold to General Mills.

Paragraph 14 of the complaint alleges that the noncompete clause described in paragraph 8 would have the anticompetitive effect of ''restricting the entry of new private label cereal products into competition with General Mills.'' That effect, of course, is precisely the purpose of this (and every other) noncompete clause.[1] Although the complaint might be read as alleging that noncompete clauses are *per se* anticompetitive, that interpretation would be inconsistent with the Commission's decision a few days ago to accept for public comment an order that in paragraph VI imposed an affirmative prohibition on competition for six years between the merged firm and the acquirer of certain animal health assets to be divested under the order. ''Ciba Geigy Limited,'' (File No. 961–0055, December 17, 1996). The Ciba Geigy decision recognizes the efficiency potential of noncompete clauses, which, among other benefits, may facilitate an orderly transfer of ownership and provide a brief transition period for new owners to establish themselves in the business.

Although the appropriate duration of a noncompete clause may vary depending on the circumstances of the industry and the acquisition, using a noncompete clause for a short period to smooth a transition may be procompetitive. I do not find reason to believe that this short-term noncompete clause is anticompetitive, and I dissent from the order requirement to eliminate it.

Statement of Commissioner Roscoe B. Starek, III, Dissenting in General Mills, Inc., File No. 961–0101

I respectfully dissent from the decision of the majority to accept for public comment a consent agreement with General Mills, Inc. relating to the proposed acquisition of the branded ready-to-eat (''RAE'') cereal and snack food businesses of Ralcorp Holdings, Inc. (''Ralcorp''). My dissent rests on two grounds.

As noted in the Commission's proposed complaint, General Mills will not acquire the private label RTE cereal or snack food businesses of Ralcorp. Ralcorp instead will form a new entity, New Ralcorp Holdings, Inc. (''New Ralcorp''), to hold the private label cereal and snack food businesses that General Mills will not acquire. Under the acquisition agreement, New Ralcorp has the right to manufacture and sell a private label version of the Chex RTE cereal products, but is restricted from transferring this right to a third party without permission from General Mills. The acquisition agreement further provides that New Ralcorp may not produce private label Chex products for a period of eighteen months following consummation of the acquisition.

My first reason for voting against acceptance of the proposed consent order is that the Commission lacks sufficient evidence to support the unilateral effects theory alleged in the complaint. Second, it is completely unnecessary—and in fact creates inefficiency—to bar enforcement of the parties' non-compete agreement. Whatever minimal competitive risks this transaction may raise are adequately addressed by eliminating the restrictions on Ralcorp's ability to transfer manufacturing and sales rights for private label Chex to a third party.

General Mills' share of the RTE cereal market will increase by approximately three percent as a result of the proposed acquisition. The number of competitors in the RTE cereal industry will remain the same, and General Mills will remain the second largest RTE cereal producer in the United States.[1] New Ralcorp will

[1] The noncompete clause described in paragraph 8 of the complaint prohibits Ralcorp from entering the market with a private label, CHEX-type cereal product for eighteen months. As indicated in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (April 2, 1992), a merger is unlikely to create or enhance market power if entry is ''timely, likely and sufficient,'' and entry is deemed ''timely'' if it can be achieved within two years. Under this standard, the noncompete clause is unlikely to create or enhance market power.

[1] General Mills' share of branded cereals will of course increase as a result of the transaction, but the complaint does not allege a relevant market

Continued

immediately assume Ralcorp's position as the largest private label cereal producer in the United States. Moreover, General Mills' post-merger share of the RTE cereal market will be between 25 and 31 percent (depending on whether share is measured in pounds or sales dollars), well below levels suggested by the Horizontal Merger Guidelines as the minimum threshold at which the Commission might reasonably presume market power.[2] It is hard to understand under these simple facts how the majority determined that the proposed acquisition will enable General Mills unilaterally to exercise market power.

Unable to presume market power, the Commission instead relies upon a ''close substitutes'' theory of unilateral harm, notwithstanding a paucity of empirical evidence demonstrating that Ralcorp's branded Chex products are the closest substitutes to the branded cereals of General Mills. Although Chex products clearly compete with the branded General Mills RTE cereal products, consumers have a preference for variety when they choose RTE cereals and frequently choose among the many branded and private label cereals produced by RTE cereal manufacturers in the United States. Not surprisingly, Judge Wood reached this conclusion in her opinion explaining why she refused to block the acquisition of the Nabisco RTE cereal assets by Kraft General Foods in early 1993.[3] In *Kraft General Foods*, an empirical analysis of cereal purchasing patterns suggested—as it does in the present matter—that consumers have many attractive alternatives from which to choose in the event that one RTE cereal producer tries to raise prices above competitive levels. Overall, the empirical evidence does not support the Commission's claim, under either a ''close substitutes'' or a dominant firm theory, that General Mills would be able unilaterally to raise the prices of its branded RTE cereals after the acquisition.

Even if I agreed with the majority that this consent agreement rests upon an empirically sound theory of competitive harm, the proposed order would bar General Mills from enforcing an arguably procompetitive non-compete agreement that is properly limited in scope and duration. Covenants not to compete are often included in contracts for the sale of a business, and generally are enforceable when ancillary to an enforceable agreement and reasonable in geographic coverage, scope of activity, and duration. *Lektro-Vend Corp.* v. *Vendo Co.*, 660 F.2d 255, 265 (7th Cir. 1981) (''The recognized benefits of reasonably enforced non-competition covenants are now beyond question.''), *cert. denied*, 455 U.S. 921 (1982); *United States* v. *Addyston Pipe & Steel Co.*, 85 F. 271, 281–82 (6th Cir. 1898), *aff'd as modified*, 175 U.S. 211 (1899).[4] Judicial inquiry into non-compete provisions generally focuses on whether the restriction is reasonably necessary to protect the legitimate business interests of the party seeking to enforce the provision. *United States* v. *Empire Gas Corp.*, 537 F.2d 296, 307 (8th Cir. 1976), *cert. denied*, 429 U.S. 1122 (1977); *Sound Ship Bldg. Corp.* v. *Bethlehem Steel Corp.*, 387 F. Supp. 252, 255 (D.N.J. 1975), *aff'd*, 533 F.2d 96 (3d Cir.), *cert. denied*, 429 U.S. 680 (1976).

The Commission has often recognized that competitive benefits can flow from a non-compete clause in the context of the sale of a business. The Commission's recent acceptance for public comment of a consent agreement in *Ciba-Geigy, Ltd., et al.*, File No. 961 0055 (consent agreement accepted for public comment, Dec. 16, 1996), is illustrative. In *Ciba-Geigy*, the Commission imposed an affirmative obligation on the newly merged entity, Novartis AG, not to compete in the United States and Canada for six years in the sale of animal flea control products.[5] As the *Ciba-Geigy* order indicates, the Commission clearly recognizes that non-compete clauses—even when long in duration and broad in scope—can serve legitimate procompetitive purposes in some circumstances by allowing an acquiring entity a brief period to re-deploy the acquired assets in a manner that increases competition in the marketplace. I am therefore puzzled why the Commission so hastily condemns a non-compete provision here that is only eighteen months in duration, limited to the manufacture and sale of private label Chex products, and arguably necessary to protect the legitimate interests of the contracting parties.[6]

Because I find that the facts do not support the Commission's theory of unilateral competitive harm in this instance, and because in any event I disagree with the Commission's decision to bar enforcement of the non-compete provision contained in the parties' acquisition agreement, I have voted to reject the consent agreement.

[FR Doc. 97–921 Filed 1–14–97; 8:45 am]
BILLING CODE 6750–01–M

consisting of ''branded RTE cereal.'' Indeed, the provisions of the proposed order (which affect the disposition of assets used in the production of nonbranded cereals) make sense only in the context of an ''all RTE cereal'' product market.

[2] *See* U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 2.211, 4 Trade Reg. Rep. (CCH) ¶ 13,104, at 20573–9.

[3] *State of New York* v. *Kraft General Foods, Inc.*, 1995–1 Trade Cas. (CCH) ¶ 70,911, at 74,039, 74,066 (S.D.N.Y. 1995).

[4] *See also Business Elecs. Corp.* v. *Sharp Elecs. Corp.*, 485 U.S. 717, 729 n.3 (''The classic 'ancillary' restraint is an agreement by the seller of a business not to compete within the market.'').

[5] *See* Paragraph VI of the proposed order in *Ciba-Geigy*.

[6] Barring enforcement of the non-compete agreement might undermine adherence by the parties to the supply agreement, an element of the acquisition agreement found acceptable by the majority.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NIOSH Meeting; The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: ''Correlation of Seven Quantitative Fit Test Methods to an Actual Measurement of Exposure Using Negative-Pressure Full Facepiece Respirators,'' and ''Development and Correlation of a New Quantitative Fit Test Method for Health-Care Industry Respirators'' study protocol peer review.

Time and Date: 9 a.m.–3 p.m., February 4, 1997.

Place: NIOSH, CDC, Room L–1047A, 1095 Willowdale Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 20 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the protocols for two NIOSH studies. The first study is entitled ''Correlation of Seven Quantitative Fit Test Methods to an Actual Measurement of Exposure Using Negative-Pressure Full Facepiece Respirators.'' The second study is entitled ''Development and Correlation of a New Quantitative Fit Test Method for Health-Care Industry Respirators.'' Peer review panelists will review the study protocols and provide individual advice on the conduct of the studies. Individual viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

Contact Person for Additional Information: Christopher C. Coffey, M/S 1138, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5958, fax (304) 285–6047.

Dated: January 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers of Disease Control and Prevention (CDC).

[FR Doc. 97–965 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–19–P

NIOSH Meeting; The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: ''Postural Stability and Motor Response Times During Scaffold End Frame Handling'' study protocol peer review.

Time and Date: 1–4 P.M., February 13, 1997.

Location: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding technical and scientific aspects of the NIOSH protocol ''Postural Stability and Motor Response Times During Scaffold End Frame Handling.'' Peer review panelists will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Agenda items are subject to change, as priorities dictate.

For Further Information Contact: Brian E. Moyer, M/S 119, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone (304) 285–5969.

Dated: January 8, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–964 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–19–P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Care Quarterly Unit Report

OMB No.: New collection

Description: This legislatively-mandated report collects program and participants data on children and families receiving direct CCDF services. Disaggregate data will be collected and will be used to determine the participants and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress. Form ACF 801 represents the data elements to be collected and reported to ACF.

Respondents (States and Territories) will be asked to sample the population of families receiving benefits on a monthly basis and submit the three most current monthly samples to ACF quarterly. Each monthly sample is drawn independent of the other samples and retained for submission within a quarterly report. ACF is not issuing specifications on how respondents compile overall database(s) from which samples are drawn. ACF will provide to the respondents a sampling plan which will specify minimum sample size. It is expected to be a monthly sample of approximately 150 cases for large States with smaller samples based on population size adjustments for smaller respondents.

Respondents: States, D.C., Guam, Virgin Islands and Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	54	4	20	4,320

Estimated Total Annual Burden Hours: 4,320.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 9, 1997.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 97–940 Filed 1–14–97; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0488]

Use of Clorsulon Drench in Goats; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data, human food safety data, and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for use of a suspension containing 8.5 percent clorsulon as a drench in goats for the treatment of adult liver fluke infestation. The data, contained in Public Master File (PMF) 5440, were compiled under National Research Support Project No. 7 (NRSP–7), a national agricultural program for obtaining clearances for use of new drugs in minor animal species or in any animal species for the control of diseases that occur infrequently or in limited geographical areas.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: The use of clorsulon suspension in goats is a new animal drug use under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, clorsulon suspension is subject to section 512 of the act (21 U.S.C. 360b), which requires that its use in goats be the subject of an approved NADA or supplemental NADA. Goats are a minor specie under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP–7 Project, Southern Region, University of Florida, Gainesville, FL 32610, has filed data and information that demonstrate safety and effectiveness to goats orally drenched with a suspension containing 8.5 percent of clorsulon for the treatment of adult liver fluke (*Fasciola hepatica*) infestation. NRSP–7 has also filed human food safety data and an environmental assessment that adequately addresses the potential impacts due to use of the drug product.

The data and information are contained in PMF 5440. Sponsors of NADA's or supplemental NADA's may, without further authorization, refer to the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other data needed for approval, such as manufacturing methods, facilities, and controls, and information addressing the potential environmental impacts (including occupational) of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Naba K. Das (address above).

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

Dated: January 6, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–1022 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0478]

Cancer-Related Advisory Committees; Proposed Process for Selection of Patient Representatives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments from interested parties on the proposed process for the selection of patient representatives to serve on cancer-related advisory committees. As part of the ''FDA Initiative on Reinventing the Regulation of Cancer Drugs,'' the Cancer Liaison Staff in the Office of AIDS and Special Health Issues has been charged with developing a process for recruitment, assessment, and selection of patient representatives to serve as members of cancer-related advisory committees in the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Center for Devices and Radiological Health (CDRH). This initiative is intended to provide representation for cancer patients and to ensure that the selection process will provide for broad representation in the nominee pool, and to develop criteria for the selection of the patient representatives. The criteria for both the nomination and selection process will help ensure that the patient representative will provide the perspective of the patients with the disease for which a therapeutic product is being considered by the advisory committee.

DATES: Written comments on the proposed process by March 17, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Minor, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460 or E-mail: JMinor@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 29, 1996, President Clinton announced the ''FDA Initiative on Reinventing the Regulation of Cancer Drugs'' that will result in more rapid approval of cancer therapies and expanded access to investigational cancer therapies. This program of cancer initiatives also includes the participation of patient representatives on FDA advisory committees that review and consider cancer-related therapies. Advisory committees provide independent, outside expert scientific advice to the agency; they evaluate data concerning the safety and efficacy of products and make recommendations to the agency concerning their approval and appropriate use.

Patient representatives can provide a unique perspective during the deliberations of advisory committees. The patient representatives bring to the committee the views on the drug or product under review from individuals and families directly affected by the disease. The agency recognizes the valuable contributions that patient representatives provide. During the past several years, the Antiviral Drugs Advisory Committee and the Blood Products Advisory Committee have included patient representatives at their meetings when products for the treatment or diagnosis of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) and blood safety were under discussion. More recently, the Oncologic Drugs Advisory Committee, the Biological Response Modifiers Advisory Committee, and the Medical Imaging Drugs Advisory Committee have begun including such representatives.

Patients, patient advocacy groups, and others have endorsed the agency in its commitment to include patient representation on advisory committees. In the past, the medical review division and the advisory committee's Executive Secretary, acting upon recommendations by the Office of AIDS and Special Health Issues, selected patient representatives through an informal process. The agency believes that it would be useful to have a uniform system to recruit, select, and refer patient representatives to serve on FDA advisory committees. The following is a proposed process to formalize the recruitment and selection of patient representatives to serve on committees reviewing cancer-related therapies.

II. The Proposed Process

The agency is developing a process for the recruitment, assessment, selection, and training of patient representatives. As part of this process, the agency believes that a mechanism for soliciting nominations of qualified patient representatives to ensure broad representation in the nominee pool is critical. To that end, the agency proposes to develop: (1) A listing of qualifications to be considered in

selecting patient representatives, and (2) a plan for soliciting nominations.

A. Qualifications for Patient Representatives

The agency has decided that patient representatives on FDA advisory committees that review and consider cancer therapies will be voting members. Patient representatives will be subject to the same conflict of interest requirements as other committee members as set out in § 14.80 (21 CFR 14.80) and must serve as special Government employees. Section 14.80 defines the qualifications for voting members of advisory committees. FDA recognizes that in some cases the composition of an advisory committee is mandated by statute or regulation. The agency will make a determination to add a voting patient representative on a case-by-case basis when: (1) Meetings are planned; (2) FDA determines it is allowable within the statutes and regulations; and (3) it is feasible and beneficial to a committee's deliberation.

The primary role of the patient representative would be to provide to the advisory committee the perspective of the patients with the disease for which the therapeutic agent is being considered. Currently, many of the FDA advisory committees, including those that provide advice on cancer-related issues, include a representative who is broadly identified with consumer interests and who has been nominated and recommended by a consumer-oriented organization. However, because there are so many different cancers, the number of appropriate perspectives is larger than a single consumer can represent. To more specifically represent the interests of the patients, the FDA believes that a patient representative who understands issues specific to the cancer for which a drug, device, or biologic approval is being sought would bring valuable insights to the FDA advisory committee process. Multiple factors are important to determine the ability of a person to be an effective patient representative. In addition to the qualifications described under § 14.80, the following qualifications are under consideration for selecting patient representatives: (1) Personal experience with an illness, condition, or treatment; (2) experience as a patient advocate; (3) formal affiliation with a patient advocacy organization; (4) ability to articulate the perspective of the patient; (5) ability to identify issues through communications with patient constituencies; (6) ability to access mechanisms to disseminate information from an advisory committee meeting to the affected community; and (7) experience in technical issues before the committee.

B. Soliciting Nominations

The agency believes that a mechanism for soliciting nominations of qualified patient representatives to ensure broad representation in the nominee pool is critical. After the qualifications for voting patient representatives are defined, the agency proposes to solicit nominations by the following methods: (1) Federal Register announcement as set out in 21 CFR 14.82; and possibly through Internet announcements; (2) direct mailings of announcements and personalized letters to patient advocacy groups, community organizations, and other public interest organizations; (3) patient newsletter announcements; or (4) display announcements at conferences, advisory committee meetings, workshops, etc. that FDA staff members attend, and at other conferences, meetings, and workshops.

Nominations may be submitted by individuals, patient advocacy groups and organizations. Self nominations will also be acceptable.

III. Comments

FDA is seeking the views of the public with regard to the proposed qualifications that should be considered in selecting a patient representative and comments on the adequacy of the methods proposed to obtain nominations. The agency will review and consider written comments on the approach set forth in this notice. Any comments received will be considered in determining whether amendments to, or revisions of, the approach are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments received are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 30, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–945 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 97N–0002]

Policy on Period of Marketing Exclusivity for Newly Approved Drug Products With Enantiomer Active Ingredients; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is reevaluating its policy on the appropriate period of marketing exclusivity for newly approved drug products whose active ingredient is a single enantiomer of a previously approved racemate. This action is being taken to assess incentives for the development of new enantiomer drug products that may represent significant pharmaceutic advances. The agency is requesting comments on this issue and intends to publish a notice in Federal Register at a later date announcing its policy.

DATES: Written comments by March 17, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: FDA is requesting comments on the agency's policy on marketing exclusivity for drug products whose active ingredient is a single enantiomer of a previously approved racemate.

I. Enantiomers and Racemates

Stereoisomers are molecules that have the same constitution (i.e., molecular formula and chemical connectivity), but differ in the spatial orientation of the atoms. When two stereoisomers are mirror images, but are not superimposable upon each other (like left and right hands), they are referred to as enantiomers. Enantiomeric molecules are identical in all physical and chemical properties, except in an environment which is also chiral (characterized by handedness). Polarized light is such an environment, and pairs of enantiomers rotate the plane of polarization by equal amounts in opposite directions. Enantiomers may be either right-handed (dextro-rotary) S(+)-isomers or left-handed (levo-rotary) R(-)-isomers. Racemates are equimolar mixtures of enantiomers of the same molecule.

Frequently, both enantiomers found in a racemate will have similar desirable pharmacological activity. In other cases, one member of a pair of enantiomers is pharmacologically active and the other inactive or nearly inactive, as in baclofen where the R(-)-isomer is a muscle relaxant and antispastic, and the S(+)-isomer is essentially inactive. In other racemates, the enantiomers show significantly different pharmacological activity. For example, both isomers of sotalol have similar antiarrhythmic effects, but only the R(-)-isomer has significant beta-blocking activity. There are also instances where only one member of a pair of enantiomers has shown significant toxicity; an example of this may be found with thalidomide, where it is generally believed that most, if not all, of the teratogenicity associated with the drug is attributable to the R(-)-isomer.

In the past, the usual practice in the pharmaceutical industry has been to develop either a racemate or an enantiomer without fully characterizing or studying its respective properties. When separation of enantiomers was difficult, the question of which stereoisomeric form should be developed was largely an academic question. However, in many cases, current technology permits production of pure enantiomers on a commercial scale. Improved pharmacologic study of enantiomers has been permitted by developments in analytical technology that frequently enable detection of one enantiomer in the presence of the other at concentrations found in biological fluids.

The increased feasibility of such efforts led the agency to issue on May 1, 1992,''FDA's Policy Statement on the Development of New Stereoisomeric Drugs'' (Stereoisomeric Drug Policy). (See the Federal Register of May 27, 1992 (57 FR 22249).) The Stereoisomeric Drug Policy provides general recommendations for conducting and reviewing studies of the safety and effectiveness of drug products whose active ingredient is an enantiomer, a racemate, or a nonracemic mixture of enantiomers. Although the Stereoisomeric Drug Policy does not address issues of marketing exclusivity, it does contain the agency's thinking on the approval of stereoisomeric drug products. As such, it may be of interest to anyone commenting on marketing exclusivity for drug products whose active ingredient is a single enantiomer of an approved racemate.

II. Marketing Exclusivity

A. The 1984 Amendments

The 1984 amendments amended the Federal Food, Drug, and Cosmetic Act (the act) to establish two new types of marketing applications: Abbreviated new drug applications (ANDA's), established under section 505(j) of the act (21 U.S.C. 355(j)); and 505(b)(2) applications, established under section 505(b)(2) of the act. The 1984 amendments also provide for the granting of nonpatent marketing exclusivity to certain drug products. Marketing exclusivity gives qualified drug products periods free of competition from drugs approved under ANDA's and 505(b)(2) applications.

Marketing exclusivity is provided for in section 505(c)(3)(D) of the act, which limits approval of competing 505(b)(2) applications, and section 505(j)(4)(D) of the act, which limits approval of competing ANDA's.

Section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act provides that if an NDA is approved for a drug, no active ingredient of which has been approved in a previous NDA, no 505(b)(2) application or ANDA for a drug product with the same active ingredient as the previously approved NDA drug product may be submitted until 5 years after the date of approval of the first drug product.

Section 505(c)(3)(D)(iii) and (j)(4)(D)(iii) of the act provides 3 years of exclusivity to a drug product that includes a previously approved active ingredient, where the NDA for the drug product contains reports of new clinical investigations (other than bioavailability studies), conducted or sponsored by the applicant, that are essential to the approval of the NDA. (Section 505(c)(3)(D) and (j)(4)(D) of the act has other marketing exclusivity provisions which are not relevant to this notice.)

The text of the amendments and the legislative history accompanying the amendments do not directly address how these provisions of the 1984 amendments regarding marketing exclusivity should be applied to enantiomers.

B. Regulations

FDA's regulations implementing the marketing exclusivity provisions of the 1984 amendments are found in § 314.108 (21 CFR 314.108). Section 314.108(b)(2) states that if a drug product that contains a ''new chemical entity'' was approved in an NDA, ''no person may submit a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act for a drug product that contains the same active moiety as in the new chemical entity for a period of 5 years from the date of approval of the first approved new drug application.'' Section 314.108(b)(4) states that if an NDA is for a drug product that contains an active moiety that has been previously approved in another NDA, and includes reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the NDA, that drug product will be entitled to 3 years of marketing exclusivity.

''New chemical entity'' is defined in § 314.108(a) as ''a drug that contains no active moiety that has been approved by FDA in any other application submitted under section 505(b) of the act.'' ''Active moiety'' is defined in the same section as follows:

> [T]he molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

The issue of marketing exclusivity for enantiomers is not addressed in the body of the regulation.

In the Federal Register of July 10, 1989 (54 FR 28872), FDA proposed regulations implementing the 1984 amendments. In the preamble to the proposed rule (54 FR 28872 at 28898), FDA briefly examined the issue of whether a single enantiomer of a previously approved racemate is entitled to 5 years of exclusivity under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act, or 3 years of exclusivity under section 505(c)(3)(D)(iii) and (j)(4)(D)(iii) of the act. The agency stated that:

> FDA will consider whether a drug contains a previously approved active moiety on a case-by-case basis. FDA notes that a single enantiomer of a previously approved racemate contains a previously approved active moiety and is therefore not considered a new chemical entity.

FDA received one comment disagreeing with the stated policy. This comment was received nearly 4 years after the comment period closed, and the agency responded to it in the preamble to the final rule with a reiteration of the statement from the proposal. (See the Federal Register of October 3, 1994 (59 FR 50338 at 50359).)

III. Request for Comments

In light of the complexity of the scientific and regulatory issues involved, FDA believes it is appropriate to reexamine the question of exclusivity for enantiomers of previously approved

racemates. The agency believes that this issue would benefit from a more focused consideration than it was subject to in the rulemaking process for the regulations implementing the 1984 amendments, where there were many complicated and contentious regulatory matters under consideration, and where this issue was raised by one comment submitted very late in the rulemaking process. Accordingly, FDA is requesting comments on the appropriate period of marketing exclusivity for drug products whose active ingredient is a single enantiomer of a racemate that is an active ingredient of a previously approved drug product. Among the issues that the agency is interested in receiving comment on are as follows:

(1) What period of marketing exclusivity would best effectuate the 1984 amendments' dual policy goals of increasing drug price competition and providing incentives for the development of innovative drug products?

(2) Would granting a 5-year period of exclusivity to enantiomers of previously approved racemates encourage medically significant pharmaceutical innovation?

(3) If the pharmacological action of each enantiomer is described in the approved NDA for the racemate, should a subsequently submitted application for an enantiomer of the racemate receive different treatment for exclusivity purposes than if the pharmacological action of each enantiomer is not described in the approved NDA for the racemate drug product?

(4) If the agency were to assess requests for exclusivity for enantiomers of previously approved racemates on a case-by-case basis, what criteria should the agency apply?

(5) Compared with other drug products, what are the costs of and technical barriers to obtaining safety and efficacy data for a drug product whose active ingredient is a single enantiomer of a previously approved racemate?

(6) How many drug products (whether approved, the subject of pending NDA's, or in development) are likely to be affected by this policy?

After considering comments received in response to this notice, FDA will publish a Federal Register notice setting forth its policy on exclusivity for a drug product whose active ingredient is an enantiomer of a previously approved racemate.

Interested persons may, on or before March 17, 1997, submit to the Dockets Management Branch (address above) written comments regarding this notice. 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. Copies of the comment on exclusivity for enantiomers submitted to the docket for the July 10, 1989, proposed rule; FDA's Stereoisomeric Drug Policy; and other correspondence and documents relating to the subject matter of this notice have been placed in the docket for this notice. Received comments and other material placed in the docket may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Persons considering submitting a 505(b)(2) application or an ANDA for a drug product that may be affected by any change in FDA's policy on marketing exclusivity for enantiomer drug products should contact the Center for Drug Evaluation and Research's (CDER's) Office of Generic Drugs or the appropriate review division within CDER before submitting the application.

Dated: January 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–944 Filed 1–10–97; 12:29 pm]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement for Grant Programs Administered by the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions for Fiscal Year 1997

Correction

In notice document 96–28112 appearing on page 56550 on the issue of Friday, November 1, 1996 make the following correction:

On page 56550, in the table on the fourth line titled ''Public Health Special Projects'' in the fourth column under the column heading ''Available for competing awards'', the amount should read ''$2,500,000''.

Dated: January 7, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–943 Filed 1–14–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Monoclonal Antibodies to a Tumor-Specific Growth Factor for the Diagnosis and Prognosis of Premalignant Lesion and Cancer

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a pharmaceutical or biotechnology company that can effectively pursue the scientific and commercial generation and development of a panel of monoclonal antibodies against an epidermal growth factor (EGF)-related peptide, cripto-1 (CR–1) and its novel receptor. The project is of scientific importance because CR–1 is a protein that exhibits structural homology to the EGF / transforming growth factor α (TGFα) gene family of peptides. As such, CR–1 might function as a growth or survival factor. Therefore, CR–1 may be important as an autocrine or paracrine modulator in such processes a tumor cell growth, wound repair, neovascularization, inflammation, and apoptosis.

NCI has successfully isolated and cloned the gene that encodes CR–1, an EGF-related peptide growth factor that does not bind to the EGF receptor or other type 1 receptor tyrosine kinases. The NCI has also obtained a rabbit anti-peptide polyclonal antibody that can detect the expression of CR–1 in formalin-fixed, paraffin-embedded human tissue sections. CR–1 has been shown to be preferentially and differentially expressed in several different human premalignant lesions and cancers. The selected sponsor will purify a recombinant CR–1 protein and use this material as an immunogen to generate anti-CR–1 monoclonal antibodies for use in the diagnosis and prognosis of human cancers.

ADDRESSES: Inquiries and proposals regarding this opportunity should be sent to Richard I. Kohn, J.D., M.S., Office of Technology Development, National Cancer Institute, as follows: (a) *by U.S. Mail to:* Executive Plaza South, Room 450, 6120 Executive Blvd., MSC 7182, Bethesda MD 20892–7182; (b) *By messengers and express delivery to:* 6120 Executive Blvd, Suite 450, Rockville, MD 20852; (c) *by telephone at* (301) 496–0477; (d) *by fax at* (301) 402–2117.

DATES: Written proposals must be received at the above address by 5:00 p.m. on March 17, 1996.

SUPPLEMENTARY INFORMATION: The NCI is seeking a pharmaceutical or biotechnology company which, after obtaining a license in accordance with the requirements of the regulations governing the transfer of Government-developed rights, (37 CFR part 404), can purify a recombinant CR–1 protein (for which patents are pending or have been issued) and utilize this purified recombinant CR–1 protein as an immunogen to generate a panel of mouse monoclonal antibodies. The immunoreactive CR–1 protein has been detected by immunoperoxidase staining using a rabbit anti-peptide polyclonal CR–1 antibody in a majority of human colon cancers, breast cancers, gastric cancers, and pancreatic cancers. Little or no staining was detected in surrounding, noninvolved colon, breast or gastric epithelial cells. In addition, a majority of premalignant colonic adenomas, breast ductal carcinomas *in situ* and gastric intestinal metaplasia express immunoreactive CR–1.

A recombinant CR–1 protein has been generated using a baculovirus expression vector in Sf-9 insect cells and a partially purified protein obtained. This protein as well as synthetic, refolded peptides that correspond to the EGF-like domain in CR–1 are mitogenic for human breast cancer cells and can modulate milk protein expression, yet fail to bind to the EGF receptor or other type I receptor tyrosine kinases. Expression of CR–1 antisense mRNA using a recombinant, replication defective retroviral expression vector in colon cancer cells that expresses CR–1 inhibits the growth of these cells *in vivo* in nude mice. In order to utilize diagnostic and therapeutic potentials of CR–1, it will be necessary to purify a significant amount of the recombinant CR–1 protein to more fully define its biological properties and to identify the receptor through which it functions. In addition, mouse monoclonal antibodies against the purified CR–1 recombinant protein will expedite screening studies for CR–1 expression in other human premalignant lesions and cancers and should exhibit more specificity and sensitivity for the detection of CR–1 in tissues by immunocytochemistry (ICC) or in tissue extracts or serum samples by ELISA.

The United States Public Health Service owns the following issued patents which may be relevant to the subject technology:

1. United States Patent No. 5,264,557, issued November 23, 1993, ''Human CRIPTO-Related Gene.''

2. United States Patent No. 5,256,643, issued October 26, 1993, ''Cloned Human CRIPTO Gene and Applications Thereof.''

Questions regarding licensing should be directed to Joseph Hemby, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, #325, Rockville, MD 20852–3804, telephone (301) 496–7056.

The role of the National Cancer Institute, Division of Basic Sciences, includes:

1. NCI will provide vectors that encode CR–1 and can be used to produce CR–1 in *E. coli* and in Sf-9 insect cells.

2. NCI will provide a rabbit polyclonal anti-CR–1 antibody for monitoring CR–1 recovery during the purification from the yeast conditioned medium.

3. NCI will assay the purified recombinant CR–1 protein for bioactivity.

4. NCI will screen anti-CR–1 monoclonal antibodies for reactivity by Western blot analysis against native CR–1 protein from CR–1 positive human embryonal carcinoma or colon carcinoma cells.

The role of the successful collaborator will include:

1. Purify to homogeneity 30–50 milligrams of CR–1 from *E. coli* or Sf-9 insect cell conditioned medium.

2. Provide the purified recombinant CR–1 protein.

3. Utilize the purified recombinant CR–1 protein to generate mouse anti-CR–1 monoclonal antibodies.

4. Screen anti-CR–1 monoclonal antibodies for specificity, reactivity, and sensitivity towards the recombinant CR–1 protein.

5. Ascertain whether monoclonal anti-CR–1 antibodies can detect nature CR–1 protein in CR–1 positive human colorectal or embryonal carcinoma cells by radioimmunoprecipitation analysis and by ELISA.

6. Determine whether anti-CR–1 antibodies can be used for ICC on formalin-fixed, paraffin embedded tissues known for CR–1 expression.

7. Provide funds to support a postdoctoral fellow and associated expenses.

Criteria for choosing the collaborator will include:

1. Experience in producing and purifying recombinant proteins, particularly growth factors or cytokines.

2. Experience in generating and screening monoclonal antibodies.

3. Willingness to cooperate with the NCI in the collection and evaluation of data.

4. Willingness to cost share in laboratory expenses.

5. And agreement to be bound by the DHHS rules involving the use of human and animal subjects and human tissues.

6. Provisions for equitable distribution of patent rights to any inventions. Generally, the rights of ownership are retained by the organization(s) which is/are the employer(s) of the inventor. For inventions made solely by the collaborator's employees, there shall be a grant to the Government of a nonexclusive, nontransferable, irrevocable, paid up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government for research or other Government purposes. For inventions not made solely by the collaborator's employees, there shall be a grant to the collaborator of an option to elect an exclusive or nonexclusive commercialization license.

Dated: December 9, 1996.

Thomas Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 97–1004 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Human Development Research Subcommittee.

Date: February 11–12, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Neuropharmacology Research Subcommittee.

Date: February 11–12, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Syed Husain, Ph.D, Scientific Review, Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Basic Behavioral Science Research Subcommittee.
Date: February 11–13, 1997.
Time: 8:30 a.m.
Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut, N.W., Washington, DC 20008.
Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Epidemiology and Prevention Research Subcommittee.
Date: February 11–13, 1997.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Molecular, Cellular and Chemical Neurobiology Research Subcommittee.
Date: February 12–14, 1997.
Time: 8:30 a.m.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel.
Date: February 13, 1997.
Time: 2:00 p.m.
Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut, N.W., Washington, DC 20008.
Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

Name of Committee: Neurophysiology and Neuroanatomy Research Subcommittee.
Date: February 18–20, 1997.
Time: 8:30 a.m.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: January 10, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–997 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on February 4–5, 1997, at the National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD 20892.

On February 4, from 9 a.m. to 4 p.m., the meeting will be held in Conference Rooms 9 and 10. In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On February 5, from 9 a.m. to 5 p.m., the meeting will be held in Conference Room 6. This portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443/2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Eleanor C. Friedenberg in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: January 10, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–998 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public law 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on February 3–5, 1997, at the Belmont, 6555 Belmont Woods Road, Elkridge, Maryland.

The meeting will be open to the public from 8:30 to 9:30 a.m. on February 3, to discuss administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on February 3, from 9:30 a.m. until recess on February 4, and from 9:30 a.m. until adjournment on February 5. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

contact Ms. Goad in advance of the meeting.

Dr. Keven M. Callahan, Scientific Review Administrator, Allergy, Immunology, and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C20, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1000 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: February 14, 1997.

Time: 2:00 p.m.

Place: 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person: Dr. Paul Sheehy, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate one grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1002 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: February 4, 1997.

Time: 10:00 a.m.

Place: 7550 Wisconsin Avenue, Room 9C10, Bethesda, Maryland 20892.

Contact Person. Dr. Lillian Pubols, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate one SBIR Phase I Contract Proposal.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1003 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 13–14, 1997, convening at 9 a.m. on February 13 and at 8:30 a.m. on February 14 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 13 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C. Public Law 92–463, the meeting will be closed on February 13 from 10:30 a.m. to approximately 5 p.m. and on February 14 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–999 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: January 29, 1997.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4134, Telephone Conference.

Contact Person: Dr. Clark Lum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4134, Bethesda, Maryland 20892, (301) 435–1195.

Name of SEP: Biological and Physiological Sciences.

Date: February 7, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6168, Telephone Conference.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Name of SEP: Clinical Sciences.

Date: February 25–26, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: March 4–5, 1997.
Time: Holiday Inn, Gaithersburg, Maryland.
Place: Holiday Inn, Gaithersburg, Maryland..
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93,844, 93.846–93.878, 93.982, 93.893, National Institutes of Health, HHS)

Date: January 9, 1997.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 97–1001 Filed 1–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–05]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 17, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451–7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Rebecca Wiley, Office of Special Needs Assistance, Room 7258, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–1226. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Ms. Wiley at (202) 708–3617. (Except for the ''800'' number, these telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Application

OMB Control Number, if applicable: 2506–0112

Description of the need for the information and proposed use: This request is for revision of a currently approved information collection for use in HUD's competitive homeless assistance programs authorized by the Stewart B. McKinney Act, as amended. The application form is needed to assist in the selection of proposals submitted to HUD (by State and local governments, public housing authorities, Indian tribes, and nonprofit organizations) for the awarded funds under the Supportive Housing, Shelter Plus Care, and Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals programs.

Agency form numbers, if applicable: HUD–40076, SF–424

Members of affected public: States, units of local government, tribal government, not–for–profit institutions

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The numbers below represent HUD's estimate of the additional hours it will take Continuum of Care Homeless Assistance applicants to prepare the required information.

	Number of respondents	Frequency of responses	Hours per response	Total hours
Application Preparation	2,700	1	42	113,400

Status of the proposed information collection: Revision of a currently approved collection is pending.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 9, 1997.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 97–950 Filed 1–14–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–3095–N–04]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 14, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 8, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: HUD Systems for Approval of Single Family Housing in New Subdivisions (FR–3095).

Office: Housing.

OMB Approval Number: 2502–0496.

Description of the Need for the Information and Its Proposed Use: HUD requires the builder to complete a certification (HUD–92541) that notes any adverse site/location factors on the property. HUD needs this information so that they will not insure a mortgage on a property where site/location conditions will pose a health or safety risk to the occupant or will adversely affect the continued marketability of the property.

Form Number: HUD–92541.

Respondents: Business or Other-For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Information Collection	800		82		.25		16,400

Total Estimated Burden Hours: 16,400.

Status: Reinstatement, without changes.

Contact: Ken Crandall, HUD, (202) 708–2121; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 8, 1997.

[FR Doc. 97–949 Filed 1–14–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Natomas Basin Habitat Conservation Plan, Sacramento and Sutter Counties, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the City of Sacramento has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–823773. The proposed permit would authorize the incidental take of the federally threatened giant garter snake (*Thamnophis gigas*), Aleutian Canada goose (*Branta canadensis leucopareia*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and vernal pool fairy shrimp (*Branchinecta lynchi*); the federally endangered peregrine falcon (Falco peregrinus anatum), conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), and palmate bird's beak (*Cordylanthus palmatus*); the proposed threatened slender orcutt grass (*Orcuttia tenuis*) and hairy orcutt grass (*Orcuttia pilosa*); and the proposed endangered Sacramento orcutt grass (*Orcuttia viscida*). The proposed taking of these species would be incidental to development for urban uses within the 55,000-acre Natomas Basin in Sacramento and Sutter Counties. The proposed permit also would authorize future incidental take of the currently unlisted California tiger salamander (*Ambystoma tigrinum californiense*), Swainson's hawk (*Buteo swainsoni*), greater sandhill crane (*Grus canadensis tubida*), bank swallow (*Riparia riparia*), Boggs Lake hedge-hyssop (*Gratiaola heterosepala*) and Ahart's dwarf flax (*Juncus leiospermus var ahartii*), should any of these species become listed under the Endangered Species Act in the future. The permit would be in effect for 50 years.

The U.S. Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application, which includes the proposed Habitat Conservation Plan fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before March 3, 1997.

ADDRESSES: Comments regarding the application or adequacy of the Environmental Assessment and Implementing Agreement should be addressed to, U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–823773 when submitting comments. Individuals wishing copies of the application, Environmental Assessment or Implementing Agreement for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton, Sacramento Field Office, 916–979–2725.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the ''taking'' of a species listed as threatened or endangered. However, the U.S. Fish and Wildlife Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The Natomas Basin Habitat Conservation Plan addresses development within the 55,000-acre Natomas Basin in Sutter and Sacramento Counties. The Natomas Basin is subject to several approved or proposed land use plans that will convert portions of the Basin to urban uses. Based on these plans, approximately 17,500 acres of undeveloped land is expected to be urbanized during the 50-year term of the proposed permit. Development activities may result in take of covered species and permanent disturbance to their habitats. In addition, the proposed permit would cover incidental take that occurs during implementation of rice farming activities within the permit area. Rice farming may result in take of the giant garter snake because rice fields are used as habitat by this species.

The Natomas Basin Habitat Conservation Plan establishes a mitigation program for urban development, water system operation, and agriculture. The focus of the program is a system of mitigation lands which would be managed as wetland and upland habitat for the giant garter snake, the Swainson's hawk and other covered species. One-half acre of mitigation land would be established for every acre of land developed within the Natomas Basin Habitat Conservation Plan Area. The mitigation land would be acquired and managed by the Natomas Basin Conservancy, a non-profit conservation organization that would be established at the time the Natomas Basin Habitat Conservation Plan is implemented. Currently, the City of Sacramento is the only entity seeking a section 10(a)(1)(B) permit to cover land use approvals and public works activities; however, entities such as the County of Sacramento and the County of Sutter, among others, could apply to be added to this permit or apply for separate permits in the future.

Habitat acquisition and management would be funded by one-time assessments (''base fees'') on development. The base fee is projected to be $2,240.00 (in 1995 dollars, to be adjusted using the Consumer Price Index to reflect current dollars at the time of permit issuance) per acre of development. All lands developed within the area of the proposed permit would be subject to the base fee; no distinction would be made between areas with approved land use plans and areas currently zoned for agriculture. The base fee also would be adjusted as necessary throughout the term of the permit to provide for inflation. In addition, the base fee could be adjusted to cover increasing costs of mitigation. This adjustment would be limited to increases of no more than 10 percent per year (not including adjustments made for inflation), with a maximum cumulative base fee increase of 50 percent above the base fee at the time of permit issuance.

Initially, a minimum of 80 percent of the mitigation lands acquired to mitigate for the loss of giant garter snake habitat would be located within the Natomas Basin; up to 20 percent of the giant garter snake mitigation lands could be located in specified areas outside of the Natomas Basin. After completion of the yet-to-be-developed Giant Garter Snake Recovery Plan, location of the mitigation lands could be shifted to a minimum of 50 percent within the Basin and up to 50 percent outside of the Basin, as directed by the Giant Garter Snake Recovery Plan and approved by the U.S. Fish and Wildlife Service. Mitigation lands would be managed as a combination of rice farms and marsh habitat, with at least 25 percent of the mitigation lands in marsh habitat and 25 percent in rice-farm habitat. The remaining 50 percent of the giant garter snake mitigation lands would be either marsh or rice, as determined by the Giant Garter Snake Recovery Plan.

The Environmental Assessment considers the environmental consequences of four alternatives. Alternative 1, the proposed action, consists of the issuance of an incidental take permit to the City of Sacramento and implementation of the Habitat Conservation Plan and its Implementing Agreement. This alternative is preferred because it satisfies the purpose and needs of the U.S. Fish and Wildlife Service and the City of Sacramento, and the impacts of urbanization are minimized and mitigated by the establishment of habitat preserves. The specifications of the habitat preserves under this alternative ensure that long-term wetland and upland habitat values are maintained for the giant garter snake, Swainson's hawk, and other species covered by the Natomas Basin Habitat Conservation Plan. Alternative 2 proposes a variable mitigation ratio in which landowners with documented occurrences of covered species or ''high quality'' habitat would be required to compensate at a higher ratio than landowners with no documented occurrences of covered species or ''poor quality'' habitat. Under this alternative, each parcel of land proposed for development would need to be inspected and a mitigation ratio assessed based on existing habitat quality and/or species utilization. This alternative would place a greater emphasis on proving presence or absence of covered species, primarily giant garter snake. Because survey procedures used to locate giant garter snakes and/or determine suitability of habitat are not fully reliable, it is likely that this method would not adequately reflect the ecology of the giant garter snake and would not effectively address the indirect and cumulative impacts of urbanization on the species.

Alternative 3 is similar to the proposed action except that the minimum percentage of mitigation lands to be maintained as managed marsh habitat (as opposed to rice-farm habitat) would increase from 25 to 50 percent. This alternative would likely provide greater habitat values than the proposed action because a greater proportion of the habitat preserves would be enhanced and managed as marsh. This alternative, however, contains a greater risk that the smaller proportion of revenue-generating rice lands could result in economic instability and consequently have an

adverse impact on the maintenance and management of the preserve system. Under Alternative 4, the no action alternative, the U.S. Fish and Wildlife Service would not issue an incidental take permit. Under this alternative, development within the Natomas Basin Habitat Conservation Plan area would occur with individual development projects mitigating for their impacts independently in an unstructured manner. The current process of individual consultation on each development project has resulted in mitigation which is fragmented over the landscape and is likely to be of limited long-term value in providing for the conservation of species such as the giant garter snake.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The U.S. Fish and Wildlife Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 45 days from the date of this notice.

Dated: January 7, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–967 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Interior Columbia Basin Ecosystem Management Project

AGENCIES: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Revised notice of intent to prepare environmental impact statements.

SUMMARY: Interior Columbia Basin Ecosystem Management Project (ICBEMP). The purpose for this revised notice of intent is to provide public notice of the changed completion schedule for the ICBEMP's environmental impact statements (EIS). This Federal Register notice revises the schedule published in the September 11, 1996 Federal Register (61 FR 47859) for the completion of the EISs. The Executive Steering Committee (ESC), at its meeting from December 2–4, 1996, took the important step of approving the alternatives for inclusion in the draft EISs. The ESC also directed changes to the draft EISs to improve them and address specific concerns raised in its earlier internal review of the draft documents. The directed changes focus on clarification of the objectives and standards for the alternatives. Based on the amount of time to implement these changes and then to prepare and print the document, the draft EISs are now planned to go to the printer in April, with a scheduled release for public comment in June 1997. Release of the final EISs and Records of Decision is anticipated approximately one year later.

FOR FURTHER INFORMATION CONTACT: Linda S. Colville, Project Management Team, Interior Columbia Basin Ecosystem Management Project; 304 North 8th Street, Room 246, Boise, Idaho 83702, phone 208–334–1770.

Dated: January 6, 1997.

Robert W. Williams,

Regional Forester.

Dated: January 6, 1997.

Elaine Y. Zielinski,

State Director.

[FR Doc. 97–963 Filed 1–14–97; 8:45 am]

BILLING CODE 3410–11–M; 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–07–1060–00]

Notice of Public Hearing

AGENCY: Bureau of Land Management, Interior.

SUMMARY: A public hearing on the use of helicopters in wild horse roundup activities will be held at the White Mountain Library, Grace Gasson Room.

DATE: February 19, 1997, 7 p.m. until 9 p.m.

ADDRESSES: White Mountain Library, 2935 Sweetwater Drive, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Michelle Chávez, District Manager, Rock Springs District Office, 280 Highway 191 North, Rock Springs, Wyoming, (307–352–0200).

SUPPLEMENTARY INFORMATION: The agenda will be limited to:

1. Introduction and opening remarks.

2. Review of the Wild Horse Management Plan.

3. Use of helicopters in the Plan.

4. Film presentation of roundup activity.

5. Public comment period.

The meeting is open to the public and interested persons may make statements on the subject.

All statements will be recorded.

Michelle Chávez,

District Manager.

[FR Doc. 97–585 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–22–P

[ID–990–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Idaho.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater District Resource Advisory Council (RAC) on Friday, January 31, 1997. The meeting will be held via telephone conference.

The purpose of the meeting is for the RAC members to discuss and make recommendations to the District Manager, State Director and Secretary of the Interior concerning the procedures and implementation schedule for the proposed rangeland standards and guidelines. Other administrative issues may be discussed as time permits. The RAC will meet from 9:00 a.m. to 11:00 a.m. (PST). The public may address the Council during the public comment period starting at 10:00 a.m. at BLM's Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, Idaho.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing long-range planning and establishing resource management priorities; and assisting the BLM to identify state standards for rangeland health and guidelines for grazing.

For further information contact: Ted Graf (208) 769–5004.

Dated: January 9, 1997.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 97–966 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–GG–M

[MT–924–1430–01; MTM 40735]

Public Land Order No. 7235; Partial Revocation of Secretarial Order Dated August 18, 1902; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 80 acres of public land withdrawn for the Bureau of Reclamation's Milk River Reclamation Project. The land is no longer needed for this purpose and the revocation is needed to permit disposal of the land through direct sale. This action will open the land to surface entry subject to temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated August 18, 1902, which withdrew public lands for the Bureau of Land Reclamation's Milk River Reclamation Project, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

T. 30 N., R. 29 E.,
Sec. 11, S½SE¼

The area described contains 80 acres in Phillips County.

2. At 9 a.m. on February 14, 1997, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 14, 1997, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–919 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–DN–P

[NM–070–1430–01; NMNM 92843]

Public Land Order No. 7234; Withdrawal of Public Lands for the Lee Acres Landfill; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 134.68 acres of public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect public health and welfare, and the environment from hazardous materials existing in soils and groundwater of the Lee Acres Landfill. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Jo Albin, BLM Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401, 505–599–6332.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect public health and welfare, and the environment from hazardous materials existing in soils and groundwater of the Lee Acres Landfill:

New Mexico Principal Meridian

T. 29 N., R. 12 W.,
Sec. 21, lots 6 and 7 (everything southeast of County Road No. 5569);
Sec. 22, lot 5 (everything southeast of County Road No. 5569), lot 6 W½, lot 11 W½, and lot 12;
Sec. 28, lot 2.

The areas described aggregate 134.68 acres in San Juan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: January 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–918 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–FB–P

[ES–030–07–1430–01; WIES–048261]

Notice of Realty Action: Sale of Public Land in Bayfield County, Wisconsin

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The following land has been found suitable for disposal by direct sale under the authority of Sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. This land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian,

T.43N., R.7W.
Sec. 17, Lot #9.

Containing 21.43 acres.

The land described is being offered as a direct sale to the trustee for the owners of the improvements on the land at the appraised value. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interest may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

DATES: Interested parties may submit comments until March 7, 1997. Any adverse comments will be evaluated by the District Manager. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments should be sent to: Bureau of Land Management, Milwaukee District, P.O. Box 631, Milwaukee, WI 53201–0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Milwaukee District, (414) 297–4413.

SUPPLEMENTARY INFORMATION: The proposed sale will resolve an occupancy trespass resulting from a correction of an erroneous survey of the meander line of Perry Lake. The land has not been used for and is not required for any

Federal purpose. The public interest will be served by the sale of this parcel to protect the private landowner's equities.

Publication of this notice in the Federal Register will segregate the public land described above from settlement, location, or entry under the public land laws, including the mining laws, as provided in 43 CFR 2711.102, but not from sale pursuant to Sec. 203 of the Federal Land Policy and Management Act of 1976.

Dated: January 9, 1997.

Chris Hanson,

Acting District Manager.

[FR Doc. 97–962 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–GJ–P

National Park Service

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, March 5, 1997, 6:30 p.m. to 9:30 p.m.; Community Room, Anoka City Hall, 2015 First Avenue, Anoka, Minnesota. An agenda for the meeting will be available by February 26, 1997. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be accepted at this time.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

Dated: January 3, 1997.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 97–973 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–70–P

Eastern Greene Township Rural Historic District; Determination of Eligibility for the National Register of Historic Places

ACTION: Request for comments.

On February 24, 1995, the Eastern Greene Township Rural Historic District, Franklin County, Pennsylvania was determined eligible for the National Register of Historic Places for its historic and architectural importance, following a request from the Federal Highway Administration. The district consists of a landscape farmed continuously since the eighteenth century and reflects the agricultural patterns of the rich Cumberland Valley. Important features found in the district include intact farmsteads, with their significant collection of barns, farmhouses and outbuildings, the field patterns, fencerows, family cemeteries, and the network of the historic farm roads. The finding of eligibility was based upon review of documentation submitted by the Federal Highway Administration, the Pennsylvania Historical and Museum Commission, and Greene Township. All agreed that the historic district is eligible for the National Register of Historic Places.

Since the determination of eligibility was issued, the National Park Service has received a request that the boundary of the district be redrawn to exclude lands located within the Borough of Chambersburg, based upon a claimed loss of historic integrity of the area. Documentation relative to the historic integrity of this portion of the district was submitted to the National Register. Copies of this documentation are available from the National Register at the address below. In order to accommodate those who wish to provide new information concerning the boundary of the Eastern Greene Township Rural Historic District, the National Park Service is providing a 60 day comment period. A written statement on the determination of eligibility will be issued by the National Park Service within 30 days of the close of the comment period.

The determination of eligibility remains in effect pending review of responses submitted during the comment period. In order to revise the boundary the National Park Service must receive authoritative information, which evaluated in conjunction with documentation already on file, results in a finding that the determined eligible boundary does not accurately delineate the historic district in accordance with established National Register standards.

Comments should be addressed to the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 97–972 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 4, 1997. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by January 30, 1997.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Dillingham Borough-Census Area

Aniakchak Bay Historic Landscape District, Surrounding the Aniakchak River from Aniakchak Crater to Aniakchak Bay, Aniakchak National Preserve, Chignik vicinity, 97000016

COLORADO

Denver County

Bluebird Theater, 3315—3317 E. Colfax Ave., Denver, 97000018

Morgan County

Knearl School, 314 S. Clayton St., Brush, 97000017

IOWA

Pottawattamie County,

Turner, Francis A. And Rose M., House, 1004 Cherry St., Avoca, 96001583

MINNESOTA

St. Louis County

Virginia Commercial Historic District, Chestnut St. between 1st and 6th Aves., Virginia, 97000020

Steele County

Owatonna City and Firemen's Hall, 107 W. Main St., Owatonna, 97000019

NORTH CAROLINA

Craven County

New Bern National Cemetery (Civil War National Cemeteries MPS), 1711 National Ave., New Bern, 97000023

New Hanover County

Wilmington National Cemetery (Civil War Era National Cemeteries MPS), 2011 Market St., Wilmington, 97000021

Wake County

Raleigh National Cemetery (Civil War Era National Cemeteries MPS) 501 Rock Quarry Rd., Raleigh, 97000022

VERMONT

Grand Isle County

South Stone School House (Educational Resources of Vermont MPS) VT 129, jct. with Quarry Rd., Isle LaMotte, 97000025

Rutland County

Kidder, Asahel, House, VT 22A, S of jct. with Bolger Rd., Fair Haven, 97000024

Windsor County

King Farm, The (Agricultural Resources of Vermont MPS) King Farm Rd., .5 mi. N of jct with US 4, Woodstock, 97000026

WASHINGTON

Pend Oreille County

United States Border Station, Roughly bounded by WA 31 and the U.S.-Canadian border, Colville National Forest, Metaline Falls vicinity, 96001634

[FR Doc. 97–971 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Change in meeting dates.

SUMMARY: The Bureau of Reclamation published a notice of scheduled meetings for the Conservation Advisory Group, Yakima River Basin Water Enhancement Project in the Federal Register (61 FR 54214, Oct. 17, 1996). The meeting dates have been changed to January 15–16.

FOR FURTHER INFORMATION CONTACT: Walt Fite, Program Manager, Yakima River Water Enhancement Project, PO Box 1749, Yakima, Washington 98907; (509) 575–5848 ext. 267.

SUPPLEMENTARY INFORMATION: The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved stream flows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: November 26, 1996.

James V. Cole,

Manager, Upper Columbia Area Office.

[FR Doc. 97–886 Filed 1–14–97; 8:45 am]

BILLING CODE 4310–04–M

INTERNATIONAL TRADE COMMISSION

Certain Agricultural Tractors Under 50 Power; Take-off Horsepower; Notice of Commission Determination to Review in Part an Initial Determination; Schedule for the Filing of Written Submissions on the Issue Under Review, and on Remedy, the Public interest, and Bonding

Investigation No. 337–TA–380

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission had determined to review in part the initial determination (ID) issued by the presiding administrative law judge (ALJ) on November 22, 1996, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission on February 14, 1996, based on a complaint filed by Kubota Tractor Corporation (''KTC'), Kubota Manufacturing of America (''KMA'), and Kubota Corporation (''KBT'') (collectively ''complainants'). Complainants alleged unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, and/or the sale within the United States after importation of certain agricultural tractors under 50 power take-off horsepower, by reason of infringement of complainants' four registered trademarks, U.S. Reg. Nos. 922,330 (''KUBOTA'' in block letters), 1,775,620 (''KUBOTA'' stylized), 1,028,221 (Gear Design), and 1,874,414 (stylized ''K'). The Commission's notice of investigation named Eisho World Ltd., Nitto Trading Corporation, Nitto Trading Co. Ltd., Sanko Industries Co., Ltd., Sonica Trading, Inc., Suma Sangyo, Toyo Service Co., Ltd., Bay Implement Company, Casteel Farm Implement Co. of Monticello, Arkansas, Casteel Farm Implement Co. of Pine Bluff, Arkansas, Casteel World Group, Inc., Gamut Trading Co., Gamut Imports, Lost Creek Tractor Sales, MGA, Inc. Auctioneers, Tom Yarbrough Equipment Rental and Sales, Inc., The Tractor Shop, Tractor Company, Wallace International Trading Co. and Wallace Import Marketing Co. Inc. as respondents. 61 Fed. Reg. 6802 (Feb. 22, 1996).

On June 19, 1996, the notice of investigation was amended to add Fujisawa Trading Company as a respondent. On May 29, 1996, the Commission determined not to review an ID (Order No. 13) finding respondents Tractor Company, Sonica Trading, and Toyo Service in default pursuant to Commission rule 210.16, and ruling that they had waived their respective rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. On September 25, 1996, the Commission issued a consent order terminating the investigation as to respondent Nitto Trading Corporation. On September 30, 1996, the Commission issued a consent order terminating the investigation as to respondent Yarbrough Equipment Rental and Sales Inc.

On August 21, 1996, the Commission determined not to review an ID (Order No. 40), granting complainants' motion for summary determination that complainants' four trademarks are valid and that the ''KUBOTA'' (block letters) and Gear Design marks are incontestable. On September 6, 1996, the Commission determined not to review an ID (Order No. 47), granting complainants' motion for summary determination that a domestic industry exists with respect to the ''KUBOTA'' (block letters) and ''KUBOTA'' (stylized) trademarks.

The ALJ held an evidentiary hearing on the merits between August 29 and September 7, 1996, and heard closing arguments on October 24, 1996. The ALJ issued his final ID finding a violation of section 337 on November 22, 1996. He found that there had been imports of the accused products; that 24 specific models of the accused tractors infringed the ''KUBOTA'' (block letters) trademark (U.S. Reg. No. 922,330); that one model of the accused tractors, the KBT L200, did not infringe the ''KUBOTA'' (block letters) trademark; that the accused products did not infringe the ''KUBOTA'' (stylized) trademark (U.S. Reg. No. 1,775,620); and that complainants were no longer asserting violations of section 337 based on infringement of the stylized ''K'' and ''Gear Design'' trademarks.

Both complainants and respondents filed petitions for review of the final ID, and complainants and the Commission investigative attorney filed responses to the petitions. On December 19, 1996, complainants filed a motion for leave to file a reply to the investigative attorney's response. There is no provision in the Commission's rules for such a reply. See 19 C.F.R. 210.43(c). Moreover, complainants' reply fails to raise any arguments that could not have been raised before the ALJ or in their petition for review. Accordingly, the Commission has determined to deny complainants' motion for leave to file a reply.

Having examined the record in this investigation, including the ID, the Commission has determined to review (1) the finding of no infringement with respect to the KBT model L200 tractor; and (2) the decision to limit infringement analysis to 25 models of accused tractors rather than all models of KBT tractors as to which there is evidence of importation and sale in the United States. The Commission has determined not to review the ID in all other respects. On review, the Commission will consider the following issues:

(1) whether the fact that gray market KBT L200 tractors are imported and sold bearing Japanese-language labels constitutes a ''material difference'' from the authorized KTC L200 model tractors sufficient to establish a likelihood of confusion;

(2) whether evidence on the record in this investigation demonstrates that specific KBT models other than the 25 identified on SX–1 have been imported and sold in the United States; and, if so,

(3) whether evidence on the record in this investigation demonstrates that any specific KBT model identified in number (2) above was imported and sold in the United States bearing Japanese-language labels or is otherwise materially different than the closest corresponding KTC model with respect to any of the differences found to be ''material'' in the ID.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion in *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the November 22, 1996, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 23, 1997. Reply submissions must be filed no later than the close of business on January 30, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.45-.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.45-.51).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: January 9, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–969 Filed 1–14–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–740 (Final)]

Sodium Azide From Japan

AGENCY: United States International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: On January 7, 1997, the Department of Commerce published notice of the suspension of its antidumping investigation on sodium azide from Japan (62 FR 973). The basis for the suspension is an agreement between the Department of Commerce and producers/exporters which account

for substantially all imports of this product from Japan, wherein each signatory producer/exporter agreed either to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value or to cease exports of this merchandise to the United States. Accordingly, the United States International Trade Commission gives notice of the suspension of its antidumping investigation involving imports from Japan of sodium azide, provided for in subheading 2850.00.50 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority: This investigation is being suspended under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: January 9, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–970 Filed 1–14–97; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Billing Instructions for NRC Cost Type Contracts.

3. The form number if applicable: N/A.

4. How often the collection is required: Monthly.

5. Who will be required or asked to report: NRC Contractors.

6. An estimate of the number of responses: 4308.

7. The estimated number of annual respondents: 106.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 2,000 hours (Billing Instructions—1384 + 616 License Fee Recovery Cost Summary).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: N/A.

10. Abstract: The NRC Division of Contracts in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting cost data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs in accordance with the contract terms and conditions.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by February 14, 1997. Edward Michlovich, Office of Information and Regulatory Affairs (3150–0109), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 7th day of January, 1997.

For the Nuclear Regulatory Commission

Gerald F. Cranford,

Designated Senior Official for Information Resources Managememt.

[FR Doc. 97–981 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–32908, License No. 29–28784–01, EAs 96–152 and 96–301]

Shashi K. Agarwal, M.D., Orange, New Jersey; Settlement Order Terminating License and Prohibiting Involvement in Licensed Activities

I

Shashi K. Agarwal, M.D. (Dr. Agarwal or licensee) is the holder of Byproduct Materials License No. 29–28784–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992, and is due to expire on December 31, 1997.

II

On September 12, 1996, an Order Suspending License (Effective Immediately) and Demand for Information (Order and Demand) was issued to the licensee based on the licensee's: (1) Failure to comply with numerous NRC requirements, as identified during an NRC inspection conducted at the licensee's facility April 18 and 30, 1996; (2) providing apparent inaccurate information to the NRC; and (3) failure to cooperate with the NRC or appear for a predecisional enforcement conference. The Order and Demand required that the licensee provide responses in writing by October 2, 1996, and contained instructions for providing the responses. To date, the licensee has not provided the required written responses.

III

On October 7, 1996, Dr. Agarwal, through his attorney, contacted the NRC and indicated that he desired to terminate his license and resolve all matters pending between himself and the NRC. As the parties desire to resolve all matters pending between them, the

licensee has entered into a Settlement Agreement with the NRC executed on January 3, 1997. Under the terms of the Settlement Agreement, Dr. Agarwal agrees to the termination of his NRC license and that he will not apply for an NRC license or engage in NRC-licensed activities for a period of five years from the date of the execution of the Settlement Agreement; and the NRC agrees that it will take no further enforcement action for the matters set forth in the Order and Demand.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.204, and 10 CFR Parts 30 and 35, It is hereby ordered that:

A. By February 7, 1997, Dr. Agarwal shall transfer all NRC-licensed material to an authorized recipient.

B. Within seven days following the completion of the transfer, Dr. Agarwal shall provide to the Regional Administrator, Region I:

1. a completed NRC Form 314 to certify that the licensed material has been transferred, and

2. the results of a radiation survey, conducted and prepared in accordance with 10 CFR 30.36(j)(2), of the premises where licensed activities were carried out.

C. Upon written approval by NRC Region I of the information submitted under Section IV.B., NRC Byproduct Materials License No. 29–28784–01 is hereby terminated.

D. For a period of five years from November 22, 1996, neither Dr. Agarwal nor a successor entity shall be involved in or exercise any control over licensed activities within the jurisdiction of the NRC, including, but not limited to, involvement as owner, authorized user, controlling shareholder, or radiation safety officer.

Dated at Rockville, Maryland this 6th day of January 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–980 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–P

Docket No. 50–286

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–64 issued to the Power Authority of the State of New York for operation of the Indian Point Nuclear Generating Station Unit No. 3 (IP3) located in Westchester County, New York.

The proposed amendment would revise the IP3 Technical Specifications (TS) to allow the storage of fuel assemblies with nominal enrichments up to 5.0 weight percent (w/o) Uranium-235 (U–235).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed license amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. This statement is based on an evaluation of relevant hypothetical accident scenarios, the NRC's evaluation of Westinghouse extended burnup fuel, and the criticality analysis of the Indian Point 3 fresh and spent fuel pits.

Evaluation of Relevant Hypothetical Accident Scenarios

Increasing the enrichment of fuel stored in the spent fuel pit will not increase the probability of occurrence of the following hypothetical accident scenarios:

1. misload of a fuel assembly;
2. spent fuel assembly drop in the spent fuel pit;
3. spent fuel cask drop;
4. loss of spent fuel pit cooling system flow; or
5. seismic event.

1. Misload of a Fuel Assembly

Detailed instructions and administrative controls govern refueling operations, precluding the misload of an assembly. The proposed storage of extended burnup fuel will not result in these administrative controls being relaxed in any manner. The probability of inserting an assembly into the wrong location is not impacted by the enrichment and burnup of the fuel. Consequently, the proposed changes will not increase the probability of misloading a fuel assembly.

2. Spent Fuel Assembly Drop in the Spent Fuel Pit

The probability of a spent fuel assembly drop in the spent fuel pit is a function of the structural integrity of the fuel storage building overhead crane and the integrity of the crane-assembly coupling. The probability of such a drop is not affected by the enrichment or burnup of the fuel. Therefore, the use and storage of extended burnup fuel will not increase the probability of a fuel assembly drop.

3. Spent Fuel Cask Drop

The probability of a spent fuel cask drop will not be affected by the increased enrichment of the fuel. The probability of such an event occurring is a function of the overhead crane's integrity, which will not be affected by this amendment. In addition, administrative controls are in place to preclude the occurrence of such an event.

4. Loss of Spent Fuel Pit Cooling System Flow

A reevaluation of the Indian Point Unit 3 decay heat removal analysis to address the storage of extended burnup fuel concluded that the existing spent fuel pit cooling system is adequate to handle the heat load associated with extended burnup fuel since any incremental increase in decay heat for extended burnup fuel is more than compensated for by the greater time interval between refueling outages. In the unlikely event the cooling system should experience a failure, adequate time is available to provide an alternate cooling system, which is not affected by the fuel's enrichment. In addition, an existing off normal operating procedure (ONOP) is available to compensate for any postulated loss of spent fuel pit cooling. Consequently, the storage of extended burnup fuel in the spent fuel pit will not involve a significant increase in the probability or consequences of a loss of cooling system flow event.

5. Seismic Event

The enrichment of the fuel has no effect on the probability of a seismic event occurring. In support of Amendment 90 to Indian Point 3's Operating License, a seismic analysis of the spent fuel storage racks was performed. This analysis, which was summarized in

Reference 3 [See application dated November 22, 1996] is still applicable.

NRC Evaluation of Westinghouse Extended Burnup Fuel

Westinghouse's analysis of the use of extended burnup fuel is documented in WCAP–10125 (Proprietary), ''Extended Burnup Evaluation of Westinghouse Fuel''. On October 11, 1985, the NRC issued a Safety Evaluation Report (SER) on this WCAP (Reference 2), which concluded that: 1) fuel damage is not expected to occur as a result of normal operation and anticipated operational occurrences (Condition I and II events); 2) fuel damage during postulated accidents (Condition III and IV events) would not be severe enough to prevent control rod insertion when it is required; and 3) core coolability will always be maintained, even after postulated accidents (Condition III and IV events). These conclusions support the determination that the use of extended burnup fuel will not increase the probability or consequences of any accident previously evaluated.

The consequences from accidents involving extended burnup fuel, both during operations and fuel handling, are evaluated in Reference 6 [See application]. This report, which was the basis for the NRC's determination of no environmental impact, documents the amount of radioactivity released from extended burnup fuel during an accident may be greater than that released from lower burnup fuel. However, the projected offsite dose incurred during accidents with extended burnup fuel is still within 10 CFR 100 criteria. Reference 6 [See application] concludes that since there is an order of magnitude uncertainty in the risk estimates for accidents, any increased risk from the increased fission products in extended burnup fuel is small compared to the uncertainties associated with risk estimates. Consequently, the proposed changes do not significantly increase the consequences of any accident previously evaluated.

Criticality Analysis of the Indian Point 3 Fresh and Spent Fuel Pits

Westinghouse performed a criticality analysis of the Indian Point 3 fresh and spent fuel storage racks to determine whether the storage of Westinghouse 15x15 fuel assembly designs with nominal enrichments up to 5.0 w/o U–235 would result in the effective neutron multiplication factor, K_{eff}, exceeding design and licensing basis criticality limits. The analysis demonstrated that these criteria would be met during design basis conditions using the fuel storage configurations proposed in this submittal.

Although the analysis identified three scenarios which would exceed the criticality limits, each of these scenarios are outside the design and licensing basis, since they entail the occurrence of two, independent, concurrent events. Specifically, the analysis assumes the occurrence of the initiating accident event and the loss of all soluble boron in the spent fuel pit water. However, the analysis also documents that 700 ppm of soluble boron in the spent fuel pit water will maintain K_{eff} within acceptable limits. The Indian Point Unit 3 spent fuel pit boron concentration is maintained at a minimum of 1000 ppm during fuel handling operations, which is more than adequate to offset the potential reactivity increases incurred from even the most limiting criticality accident scenarios. If credit for integral burnable neutron absorbers is taken, the boron concentration to maintain K_{eff} less than or equal to 0.95 is considerably reduced.

Consequently, as supported by the NRC's issuance of similar license amendments to other plants whose criticality analyses have identified similar issues, the proposed amendment does not significantly increase the probability or consequences of any accident previously evaluated.

The administrative changes proposed by this amendment request do not involve a significant increase in the probability or consequences of any accident previously evaluated as they do not involve any plant hardware changes, nor do they change the way the plant systems function.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. This determination is based on the NRC's SER regarding Westinghouse extended burnup fuel, Indian Point 3 decay heat removal analysis, and spent fuel pit criticality analysis.

The only aspect of the plant that will be physically changed by the proposed amendment will be the enrichment and burnup of the fuel, which will not introduce any new fuel failure mechanisms. While some characteristics of fuel performance change with extended burnup, these considerations have been factored into the design of the fuel. The NRC issued a Safety Evaluation Report (SER) regarding the Westinghouse extended burnup fuel design on October 11, 1985 (Reference 2). In addition, Reference 6 [See application] documents that each fuel vendor has adequately considered the performance of extended burnup fuel to preclude the introduction of a new or different type of fuel failure mechanism.

Two site specific evaluations demonstrate the storage of spent and/or fresh extended burnup fuel will not introduce any new fuel storage accidents at Indian Point Unit 3. First, the Authority has verified the existing spent fuel pit cooling system can adequately handle the heat load associated with extended burnup fuel. Second, the criticality analysis performed by Westinghouse demonstrates the criticality limits will continue to be satisfied during design basis conditions. While three scenarios outside of the design basis have been identified as potentially resulting in an increase in spent fuel pit criticality, spent fuel pit soluble boron concentrations are maintained sufficiently high to preclude even the most limiting criticality scenarios from occurring. Consequently, the proposed amendment will not create a new or different kind of accident from any previously evaluated.

The administrative changes proposed by this amendment request do not create the possibility of a new or different kind of accident from any previously evaluated as the changes do not affect current plant configuration or how the plant operates.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. This determination is based on the fact that the spent fuel pit racks are not being physically altered, the results of the Indian Point 3 spent fuel pit criticality analysis, the spent fuel pit decay heat analysis, and the NRC issuance of similar amendments to other licensees.

The main safety function of the fresh and spent fuel racks is to maintain the fuel assemblies in a safe configuration through all normal and abnormal conditions. The proposed changes will not result in any changes to the fresh and spent fuel racks or the manner in which they perform. Thus, the margin of safety associated with the fresh and spent fuel racks'' ability to physically maintain the fuel in a safe configuration is not significantly reduced by the proposed changes.

A criticality analysis was performed regarding the Indian Point 3 fresh and spent fuel storage racks' ability to store extended burnup fuel within design and licensing basis criticality limits. The analysis concludes during design basis conditions these limits would not be violated. However, it identified three events outside the design and licensing basis which would violate these limits. Nevertheless, if credit is taken for the soluble boron in the spent fuel pit water, criticality is adequately controlled even during these three events. Consequently, as supported by the NRC issuance of similar license amendments to other plants whose criticality analyses have identified similar issues, the proposed amendment does not involve a significant reduction in the margin of safety associated with the control of criticality.

An evaluation was performed to address the spent fuel pit heat load associated with the storage of extended burnup fuel. The analysis concluded the existing spent fuel cooling system will adequately dissipate the heat. Thus, there is no significant reduction in the margin of safety with regards to spent fuel cooling.

The administrative changes proposed by this amendment request do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to S. Singh Bajwa: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 22, 1996, 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 White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 9th day of January 1997.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager, Project Directorate 1–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–982 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 20, 1996, through January 3, 1997. The last biweekly notice was published on January 2, 1997 (62 FR 121).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 4, 1996, as supplemented on December 4, 1996.

Description of amendment request: The proposed amendment would permit Byron, Unit 1, and Braidwood, Unit 1, to remove sheathing filler grease in the tendon sheathing for up to 35 tendons in advance of the steam generator replacement outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The prestressing tendons are passive components that form part of the containment structure. As passive components, there are no tendon failure modes that could act as accident initiators or precursors.

Consequently, the proposed change to remove a portion of the tendon sheathing filler grease will not increase the probability of an accident previously evaluated.

The tendons, in their passive role, function to limit the consequences of accidents previously evaluated, and their continued integrity is important to the ability of the containment to mitigate design basis accidents. Structural degradation of the containment is a predictable process that can be monitored by a comprehensive containment tendon monitoring program as required by Technical Specification Surveillance Requirement 4.6.1.6. The monitoring program is based on proposed Revision 3 of Regulatory Guide 1.35, ''Inservice Surveillance of Ungrouted Tendons in Prestressed Concrete Containment Structures,'' April 1979.

The tendon surveillances conducted at both Byron and Braidwood have consistently shown that structural integrity of the tendon system has been maintained, including adequate corrosion protection for the tendon wires and end anchorage components, and there has been no evidence of grease leakage from the tendon sheathings. While a number of below-grade hoop tendons have shown signs of water intrusion, the tendons that will have grease removed are above-grade and are not expected to experience water intrusion.

A review of domestic nuclear facility experience found cases where large grease voids existed for periods longer than requested under the proposed change without resultant corrosion in those tendon systems. A case where tendon wires removed from a decommissioned plant were exposed to an environment more severe than expected in a sealed tendon sheath did not show signs of corrosion. These experiences demonstrate the effectiveness of the initial corrosion protection systems applied to the tendons and the effectiveness of partial grease protection in the tendon sheathing.

Based on the above cases, it can be concluded that the removal of the filler grease (grease voids greater than 5 percent) from the tendon sheathing in up to thirty-five tendons for a limited period will not adversely affect the integrity of the tendons or the capability of the tendon system to fulfill its design basis function.

The removal process will only remove the grease not directly adhering to the tendons. The grease remaining will be adequate to protect the tendons during the relatively short period of partial grease removal. Therefore, no changes in the tendon properties would be expected, and the consequences of design basis accidents previously evaluated will not be affected by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only affects the tendon sheathing filler grease void limits of TSSR 4.6.1.6. No new equipment is being installed and no existing equipment is being modified. Operation with a grease void in excess of current requirements does not alter system configurations such that any new or different accidents can be initiated. Therefore, no new or different accident initiators or precursors are being introduced, and the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety applicable to the proposed change is defined by the difference between the design pressure of the containment and the point at which the containment would actually fail. The design pressure of the containment is 50 psi. As a result of conservatism inherent in the design techniques and in the material selections made for the Byron and Braidwood containments, a substantial margin to failure exists in the containment. This margin is discussed in Subsection 3.8.1.8 of the Updated Final Safety Analysis Report. It is noted therein that the ultimate capacity of the concrete shell is 125 psi, corresponding to the initiation of yield in the hoop post-tensioning tendons in conjunction with yielding of the reinforcement near the mid-height of the containment wall.

It is also noted in Subsection 3.8.1.8 that the ultimate capacity of a containment electrical penetration is 108 psi. While this value is substantially greater than the 50 psi required of the design, it is lower than the 125 psi at which failure of the containment wall section would be predicted. Therefore, tendon strength is not the limiting factor in the margin of safety inherent in the containment.

As previously discussed, no degradation of the tendons is expected to occur as a result of the proposed TS change. Further, the tendon strength is not the limiting factor in the containment ultimate capacity, which is substantially greater than the requirement placed on the containment design by the plant design basis. Therefore, the proposed change will not reduce the margin of safety designed into Byron and Braidwood.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: December 6, 1996

Description of amendment request: The proposed amendment would allow a single control rod to be moved when the plant is in HOT SHUTDOWN and COLD SHUTDOWN condition provided the one-rod-out interlock is OPERABLE and the reactor mode switch is in the refuel position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

This revision would allow a single control rod to be withdrawn under control of the reactor mode switch position one-rod-out interlock in OPERATIONAL MODES 3 or 4. This interlock is explicitly assumed in the safety analysis for control rod removal error during refueling. A prompt reactivity excursion could potentially result in fuel failure. The one-rod-out interlock, together with the requirements for adequate SHUTDOWN MARGIN (SDM), provides protection against prompt reactivity excursions by preventing withdrawal of more than one control rod and ensuring the core remains subcritical with any one control rod withdrawn. The addition of surveillance requirements for the one-rod-out interlock will assure the interlock is OPERABLE prior to withdrawal of a control rod in OPERATIONAL MODES 3 and 4. Although this change will increase the frequency of single control rod withdrawals in OPERATIONAL MODES 3 and 4, the probability of previously analyzed accidents, including control rod withdrawal error, is not affected because the same actions are required, although they are now conducted in different OPERATIONAL MODES.

The consequences of previously analyzed accidents in OPERATIONAL MODES 3 and 4 are not affected by this proposed change. The SDM requirements of TS 3.3.A assure the reactor is maintained subcritical when all control rods are fully inserted, without crediting the single control rod having the highest reactivity worth which is assumed to be fully withdrawn. The one-rod-out interlock of the reactor mode switch Refuel position permits only a single control rod to be withdrawn. The proposed change will not affect the potential for attaining criticality in OPERATIONAL MODES 3 and 4 or effect the initial conditions assumed in any design basis accident analysis.

Based on this, the probability or consequences of any accident previously evaluated is not increased by the proposed changes.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Single control rods can be withdrawn to permit control rod recoupling in OPERATIONAL MODES 3 and 4 under existing TS. The proposed change will merely expand this allowance to other control rod maintenance and testing activities performed in OPERATIONAL MODES 3 and 4. The revision to Specification 3/4.10.A provides additional assurance that the one-rod-out interlock is OPERABLE in OPERATIONAL MODES 3 and 4.

The additional control rod maintenance and testing activities which could be performed in OPERATIONAL MODES 3 and 4 are permitted by the existing TS in OPERATIONAL MODES 1, 2 and 5. Examples of activities which could be performed include venting of control rods following a reactor scram or control rod drive system outage, normal control rod insertion/withdrawal timing and adjustment, control rod scram time testing and control rod friction testing.

Based on this, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

Specification 3/4.10.A is revised to ensure the one-rod-out interlock is OPERABLE, enhancing the assurance that the plant will prevent the withdrawal of more than one control rod in the manner currently assumed. Expanding the applicability of this existing requirement to OPERATIONAL MODES 3 and 4 similarly does not create the possibility of a new or different kind of accident from those previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The TS currently permit single control rod withdrawal for the purpose of control rod recoupling when in OPERATIONAL MODES 3 or 4 if the one-rod-out interlock is OPERABLE. This change merely allows additional activities for which a single control rod may be withdrawn in OPERATIONAL MODES 3 or 4, with the same restriction that the one-rod-out interlock is OPERABLE.

While the TS currently allow limited control rod withdrawal in OPERATIONAL MODES 3 and 4 provided the one-rod-out interlock is OPERABLE, no explicit surveillance requirements for the one-rod-out interlock exist while in OPERATIONAL MODES 3 or 4. The proposed changes to the Applicability statement in TS 3/4.10.A will result in applicability of the Surveillance Requirements for the one-rod-out interlock whenever control rod withdrawal is performed in OPERATIONAL MODES 3 and 4.

Together, the OPERABILITY requirements for the one-rod-out interlock and the SDM requirements of TS 3.3.A will continue to ensure that the reactor will be maintained subcritical during single control rod withdrawals. Therefore, this change will not involve a significant reduction in the margin of safety.

As described, the proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems required to mitigate accident conditions. Neither are new or significantly different modes of operation proposed. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: October 2, 1996

Description of amendment request: Relocation of Radiological Effluent Technical Specifications for Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the probability or Consequences of an Accident Previously Evaluated.

The proposed changes are considered administrative in nature. These changes alter only the location of programmatic controls and procedural details relative to radioactive effluents, radiological environmental monitoring, solid radioactive wastes, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions and assumptions in any of the Safety Analysis Report (SAR) accident analyses. Since the SAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not involve any changes to the configuration or method of operation any plant equipment. The proposed changes are considered administrative in nature. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure have been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any radioactive effluents released offsite.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in Margin of Safety.

The proposed changes do not involve nay actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes are considered administrative in nature and provide for the relocation of procedural details outside the Technical Specifications. This change adds appropriate administrative controls in the Technical Specifications to provide continued assurance of compliance with applicable regulatory requirements.

Therefore, this change does not involve a significant reduction in the margin of safety. I21Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: October 2, 1996

Description of amendment request: Relocation of Selected Technical Specifications Instrumentation Requirements Allowed by Generic Letter 95-10

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the probability or Consequences of an Accident Previously Evaluated.

The [Nuclear Regulatory Commission] NRC issued Generic Letter (GL) 95-10 to allow licensees to relocate certain instrumentation requirements to licensee controlled documents or programs. The staff has concluded that the specifications listed in the GL were not required to be included in the technical specifications as required by 10 CFR 50.36. The staff concluded that the instrumentation addressed in these specifications are not related to dominant contributors to plant risk.

The specifications included in this amendment request are being relocated to the Technical Requirements Manual (TRM). Once in the TRM, future changes to these requirements will be controlled under 10 CFR 50.59. By controlling future changes under 10 CFR 50.59, NRC review and approval will be requested for changes exceeding the regulatory threshold of an unreviewed safety question.

This amendment request does not remove or modify any of the instrumentation requirements for either unit. This amendment request does not affect any of the accident initiators, conditions or assumptions for any of the accidents previously evaluated. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated.

This amendment request is administrative in nature and does not affect any system or component functional requirements. This change does not affect the operation of the plant or affect any component that is used to mitigate the consequences of any accident. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The relocation of existing requirements from the technical specifications to other licensee controlled documents is considered administrative in nature. This change does not modify or remove any plant instrumentation requirements. This proposed change will not affect any plant system or structure, nor will it affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of this change. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in Margin of Safety.

The proposed amendment request represents a relocation of a portion of the information previously located in each unit's technical specification instrumentation section to other licensee controlled documents that ate controlled under 10 CFR 50.59. The proposed change is administrative in nature because the instrumentation requirements for the facility remain the same.

The proposed change does not represent a change in the configuration or operation of the plant. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 2, 1996

Description of amendment request: The proposed Technical Specification (TS) Change Request will permit the use of 10 CFR Part 50 Appendix J, Option B, Performance-Based Containment Leakage Testing for Type A, B and C leak rate testing. TSs 3/4.6.1.1, 3/4.6.1.2, 3/4.6.1.3, 4.6.1.6 and 4.6.1.7 are revised and Section 6.15 is added establishing the Containment Leakage Rate Testing Program. The Bases are revised to reflect this change. Minor editorial changes are included in this request. Waterford Steam Electric Station is planning to have a Containment Leakage Rate Testing Program in place prior to the next scheduled refueling outage. This program will be in accordance with the guidelines contained in Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' dated September 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed changes will result in increased intervals between containment leakage tests determined through a performance based approach. The intervals between such tests are not related to conditions which cause accidents. The proposed changes do not involve a change to the plant design or operation. Therefore, this change does not involve a significant increase in the probability of any accident previously evaluated.

NUREG-1493, ''Performance-Based Containment Leak-Test Program,'' contributed to the technical bases for Option B of 10 CFR 50 Appendix J. NUREG-1493 contains a detailed evaluation of the expected leakage from containment and the associated consequences. The increased risk due to lengthening of the intervals between containment leakage tests was also evaluated and found acceptable. Using a statistical approach, NUREG-1493 determined the increase in the expected dose to the public from extending the testing frequency is extremely small. It also concluded that a small increase is justifiable due to the benefits which accrue from the interval extension. The primary benefit is in the reduction in occupational exposure. The reduction in the occupational exposure is a real reduction, while the small increase to the public is statistically derived using conservative assumptions. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. The reduced testing frequency will not affect the testing methodology. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not change the performance methodology of the containment leakage rate testing program. However, the proposed change does affect the frequency of containment leakage rate testing. With an increased frequency between tests, the proposed change does increase the probability that a increase in leakage could go undetected for a longer period of time. Operational experience has demonstrated the leak tightness of the containment buildings has been significantly below the allowable leakage limit.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rates. The limitation on containment leakage rate is designed to ensure the total leakage volume will not exceed the value assumed in our accident analysis. The margin of safety for the offsite dose consequences of postulated accidents directly related to containment leakage is maintained by meeting the 1.0 La acceptance criteria. The proposed change maintains the 1.0 La acceptance criteria. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant Unit 1, St. Lucie County, Florida

Dates of amendment request: December 9, 1996

Description of amendment request: The licensee proposed to modify specifications for selected cycle-specific reactor physics parameters to refer to the St. Lucie Unit 1 Core Operating Limits Report (COLR) for limiting values. Minor administrative changes are also included. The proposed Technical Specification (TS) changes utilized the guidance provided in Generic Letter 88-16 and are intended to be consistent with the Standard Technical Specifications for Combustion Engineering Plants (NUREG-1432, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment relocates the calculated values of selected cycle-specific reactor physics parameter limits from the TS to the COLR, and includes minor editorial changes which do not alter the intent of stated requirements. The amendment is administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Parameter limits specified in the COLR for this amendment are not changed from the values presently required by Technical Specifications. Future changes to the calculated values of such limits may only be made using NRC approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 process. Assumptions used for accident initiators and/or safety analysis acceptance criteria are not changed by this amendment. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed

amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment relocates the calculated values of cycle specific reactor physics limiting parameters to the COLR and will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design configuration of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed

amendment would not involve a significant reduction in a margin of safety.

The cycle specific parameter limits being relocated to the COLR by this amendment have not been changed from the values presently required by the TS, and a requirement to operate the plant within the bounds of the limits specified in the COLR is retained in the individual specifications. Future changes to the calculated values of these limits by the licensee may only be developed using NRC-approved methodologies, must remain consistent with all plant safety analysis limits addressed in the Final Safety Analysis Report (FSAR), and are further controlled by the 10 CFR 50.59 process. As discussed in Generic Letter 88-16, the administrative controls established for the values of cycle specific parameters using the guidance of that letter assure conformance with 10 CFR 50.36. Safety analysis acceptance criteria are not being altered by this amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: M. S. Ross, Attorney, Florida Power & Light, 11770 US Highway 1, North Palm Beach, Florida 33408

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, Docket No. 50-335 St. Lucie Plant Unit 1, St Lucie County, Florida

Date of amendment request: December 20, 1996

Description of amendment request: The licensee proposed to delete a footnote associated with TS 2.1.1, ''Reactor Core Safety Limits,'' which requires reactor thermal power to be limited to 90% of 2700 Megawatts thermal for Cycle 14 operation beyond 7000 Effective Full Power Hours [EFPH]. The thermal power limit was required pending completion of a Small Break Loss of Coolant Accident (SBLOCA) reanalysis that demonstrated acceptable results using input assumptions corresponding to an increased number of steam generator tubes being plugged. The SBLOCA reanalysis was completed and included with the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow full Cycle 14 operation at 100% of rated power (2700 MWth), by deleting the requirement to

derate to 90% of rated power prior to exceeding 7000 EFPH. This restriction was imposed in the NRC transmittal letter for License Amendment 145 for SBLOCA considerations when considering the increased SGTP [steam generator tube plugging]

level of 30% plus or minus 7%. All Final Safety Analysis Report (FSAR) events, other than SBLOCA were evaluated at 100% of rated thermal power and showed no significant increases in the probability or consequences of accidents previously evaluated.

The SBLOCA was reanalyzed to demonstrate continued compliance with 10 CFR 50.46 criteria. There is no impact of the proposed change on any FSAR accident initiator. The plant configuration and systems remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment removes the requirement in the Technical Specifications to derate to 90% of 2700 MWth for Cycle 14 operation beyond 7000 EFPH. There will be no change to the modes of operation of the plant. The plant configuration and the design functions of all the safety systems remain unchanged.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The impact of the proposed change on available margin to the acceptance criteria for Specified Acceptable Fuel Design Limits (SAFDL), primary and secondary over-pressurization, peak containment pressure, potential radioactive releases, 10 CFR 50.46 requirements for the large break LOCA, and existing limiting conditions for operation has been evaluated and addressed in the reduced RCS [reactor coolant system] flow operating license Amendment No. 145. A requirement to derate to 90% of 2700 MWth was imposed based on the SBLOCA analysis. The small break LOCA analysis with 30% plus or minus 7% SGTP

supported operation up to 7000 EFPH at 100% of rated thermal power. A reanalysis of SBLOCA with the limiting end-of-cycle conditions at 100% of rated power, demonstrates continued compliance with 10 CFR 50.46 criteria.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: M. S. Ross, Attorney, Florida Power & Light, 11770 US Highway 1, North Palm Beach, Florida 33408

NRC Project Director: Frederick J. Hebdon

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island, Unit 1, Dauphine County, Pennsylvania

Date of amendment request: December 3, 1996

Description of amendment request: This amendment will incorporate certain improvements from the Standard Technical Specifications for B&W Plants (NUREG-1430).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

GPU Nuclear has determined that this Technical Specification Change Request involves no significant hazards consideration as defined in 10 CFR 50.92 because:

1. Operation of the facility in accordance with the proposed amendment would not

involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment deletes limiting condition for operation (LCOs) from the TMI-1 Technical Specifications that are no longer required to be addressed in Technical Specifications per 10 CFR 50.36(c)(2)(ii). The proposed amendment also deletes a Surveillance requirement from the TMI-1 Technical Specifications. This surveillance requirement has no corresponding LCO and is formatted in the typical LCO format. These items are addressed in licensee controlled documents. This proposed amendment incorporates relaxation of selected timeclocks and surveillances frequencies consistent with NUREG 1430 and adds a timeclock to a unique LCO. The proposed changes do not modify the operation, limits or controls of systems, structures or components relied upon to prevent or mitigate the consequences [of] accidents previously evaluated. Also, the reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, this change does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure modes are created by the proposed changes.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment does not change any operating limits for reactor operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: October 25, 1996

Description of amendment requests: The proposed amendments would incorporate the requirements of 10 CFR Part 50, Appendix J, Option B for containment leakage tests. In addition, the amendments would add a new section to Technical Specifications, which establishes the requirements of the containment leakage rate testing program, consistent with the Improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide a mechanism within the TS for implementing a performance-based leakage rate test program which was promulgated by the revision to 10 CFR Part 50 to incorporate Option B to Appendix J. The proposed changes do not involve any physical or operational changes to structures, systems or components. The current safety analyses and safety design basis for the accident mitigation functions of the containment, the airlocks, and the containment isolation valves are maintained. Since the allowable containment leakage is still maintained within the analyzed limit assumed in the accident analysis, there is no adverse effect on either onsite or offsite dose consequences. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve any physical or operational changes to structures, systems or components. No new failure mechanisms beyond those already considered in the current plant safety analyses are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Extending containment leakage rate test intervals from those currently provided in the Technical Specifications to those provided for in 10 CFR (Part) 50 Appendix J, Option B may slightly increase the risk due to an increased likelihood of containment leakage corresponding to the increased testing intervals. However, this is somewhat compensated by the corresponding risk reduction benefits received from the reduction in component cycling, stress, and wear associated with the increased intervals. When considering the total integrated risk, which includes all analyzed accident sequences, the possible additional risk associated with increasing test intervals is negligible.

The NRC letter to NEI (Nuclear Energy Institute) dated November 2, 1995, recognizes that changes similar to the proposed changes at PINGP (Prairie Island Nuclear Generating Plant) are required to implement Option B of 10 CFR (Part) 50, Appendix J. In NUREG-1493, ''Performance-Based Containment Leak-Test Program'', dated September 1995, which forms the basis for the Appendix J revision, the NRC concludes that adoption of performance-based testing will not significantly reduce the margin of safety. The containment leak rate data and component performance history at PINGP are consistent with the conclusions reached in NUREG-1493 and NEI 94-01. Thus, the proposed license amendments do not involve a significant reduction in a margin of safety and will continue to support the regulatory goal of ensuring an essentially leak-tight containment boundary.

Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the USAR or the Technical Specification Bases.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 18, 1996

Description of amendment request: The amendments would amend the Technical Specifications for Susquehanna Steam Electric Station (SSES), Units 1 and 2 by increasing the maximum isolation times for the reactor core isolation cooling inboard warm-up line isolation valves (HV129F088 and HV249F088) from 3 seconds to 12 seconds, the high pressure core

injection inboard warm-up line isolation valves (HV-155F100 and HV-255F100) from 3 seconds to 6 seconds and the reactor recirculation process sample line (RRPSL) isolation valves (HV143F019 and HV243F019) from 2 seconds to 9 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Chapters 6,9, and 15 of the FSAR [final safety analysis report], current operating cycles Reload Summary Reports for Units 1 and 2, Design Basis Document DBD046 (Seismic and Hydrodynamic Loads), and NUREG-0776 (Safety Evaluation Report for SSES), were reviewed to determine if the proposed action has an effect on the spectrum of analyzed anticipated operational transients or postulated design basis accidents.

The proposed modifications involve replacing the pilot solenoid valves on the Reactor Recirculation Loop ''B'' Process Sample Line Isolation Valve (HV1/243F019) and the inboard RCIC [reactor core isolation cooling] and HPCI [high pressure core injection] Steam Warm-Up Line Isolation Valves (HV-1/249F088 and HV-1/255F100). They do not alter any system operation or control logic other than to increase the time it takes for the associated containment isolation valve to close. As discussed above, the effects of the increased isolation times for RCIC and HPCI impacted lines are bounded by the larger parallel lines with isolation times much greater than the new isolation times for the smaller lines. In the case of the Reactor Recirculation Loop ''B'' Process Sample Line, the worst case scenario for a line of that size is addressed in FSAR Section 15.6.2 and the results have been found acceptable. In fact, the line breakage event analyzed in the FSAR section postulates a break outside containment that is not isolable and that does not require operator action for up to 10 minutes.

The modifications enhance isolation valve performance by ensuring proper operation in the event of a degraded air system.

Failures within the Process Sampling, RCIC or HPCI systems or their components are not postulated as causes of accident scenarios nor is increasing the stroke time of the subject containment isolation valves [HV-1/243F019]. These systems provide safety features utilized to mitigate the consequences of the accidents. However, the failure mode of the replacement solenoid valve is similar in each case to that of the solenoid valve being replaced in that it closes upon loss of power or loss of air supply. The current ability of the plant design to meet the single failure criterion is unchanged by this modification.

Based on the above discussion, the proposed action does not involve a significant increase in the probability or consequences of an accident as previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Chapters 6, 9, and 15 of the FSAR were reviewed to determine if the proposed action [valve replacement with increased isolation times for associated HPCI, RCIC, RRPSL valves] has the potential of creating a postulated initiating event which is different than the analyzed anticipated operational transients or postulated design basis accident addressed. The review did not identify a postulated initiating event which would create the possibility for an accident of a different type due to replacing the pilot solenoid valves of the affected Reactor Recirculation LOOP ''B'' Process Sample Line or RCIC or HPCI Steam Warm-Up Line isolation valves.

Also, the Reactor Recirculation Process Sample Line, as part of the Process Sampling System described in FSAR section 9.3.2.3, does not perform any safety functions. It is simply an alternate means for in line reactor water chemistry monitoring upon the loss of the RWCU system, and its loss does not create any possibility for unevaluated accidents or malfunctions.

Thus, replacing the pilot solenoid valves on the affected Reactor Recirculation Process Sample Line, RCIC Steam Warm-Up Line, and HPCI Steam Warm-Up Line isolation valves as well as relocating the Process Sample Line solenoid valve for EQ [equipment qualification] purposes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed action involves replacing existing pilot solenoid valves on containment isolation valves for the Process Sampling, RCIC, and HPCI Systems, as listed above, with direct acting solenoid valves to ensure proper valve operation in the event of a degraded air or gas system as well as relocating the Process Sampling pilot solenoid valve for EQ purposes.

a. Reactor Recirculation Loop ''B'' Process Sample Line

The limiting condition for the operation of the Reactor Recirculation Loop ''B'' Process Sample Line Inboard Isolation Valve (HV-1/243F019) is governed by Technical Specification Section 3/4.6.3 and its Bases which presently requires this valve to close within 2 seconds as defined in Technical Specification Table 3.6.3-1. The proposed modifications involve replacing the pilot solenoid valve of the normally open isolation valve (HV-1/243F019) with a direct acting pilot solenoid valve as well as relocating the pilot solenoid valve to assure an EQ life which supports a 24 month operating cycle. The combined effects of a lower flow coefficient and relocating the solenoid valve will require an increase in the Technical Specification Table 3.6.3-1 isolation time from 2 seconds to 9 seconds.

This increase in isolation time does not reduce the margin of safety as defined in the Technical Specification Section Basis, because breakage of lines of this size is addressed in the Susquehanna SES [steam electric station] FSAR Section 15.6.2 and the results found acceptable. In fact, the line breakage event analyzed postulates a break outside containment that is not isolable and that does not require operator action for up to 10 minutes. Also, it is noted that the outboard isolation valve, HV-1/243F020, also closes on the same containment isolation signal, and its Technical Specification isolation time limit remains 2 seconds.

The failure mode of the affected Reactor Recirculation Loop ''B'' Process Sample Line Inboard isolation valve is to close on loss of power or air supply, therefore, the proposed modifications do not affect the operability of the isolation valve or reduce the margin of safety.

b. RCIC

The limiting condition for operation of the RCIC system is governed by Technical Specification Section 3/4.7.3 and its Bases which requires RCIC to be operable as the primary non-ECCS source of emergency core cooling. The proposed modifications involve replacing the pilot solenoid valve of the normally closed Steam Warm-Up Line Isolation Valve (HV-1/249F088). This valve can be manually opened in the absence of an isolation signal to permit steam from the reactor to pressurize and warm the steam supply line downstream of the HV-1/249F007 valve.

Installation of the direct acting solenoid valve will require an increase in the Technical Specification Section 3/4.6.3 isolation time for the RCIC Steam Warm-Up Line Isolation Valve (HV-1/249F088) from 3 seconds to 12 seconds but does not reduce the margin of safety as defined in the Technical Specification Section Basis. The increase in closure time for the HV-1/249F088 isolation valve does not compromise the overall line isolation due to the fact that the impact of these 1'' warm up line valves is enveloped by the impact of the much larger 4'' RCIC inboard and outboard isolation valves (HV-1/249F007 and HV-1/249F008), which remain open an additional 8 seconds before isolating. The 4'' valves are the limiting components for providing containment isolation for this line.

The failure mode of the affected RCIC Steam Warm-Up Line Isolation Valve is to close, if open, on loss of power or air supply, therefore, the proposed modifications do not affect the operability of the isolation valve or reduce the margin of safety.

c. HPCI

The limiting condition for operation of the HPCI system is governed by Technical Specification Section 3/4.5.1 and its Bases which requires HPCI to be operable for proper Emergency Core Cooling System operation. Operability includes the HPCI pump and a flow path capable of taking suction from the suppression pool and delivering the water to the reactor vessel. The proposed modifications involve replacing the pilot solenoid valve of the normally closed Steam Warm-Up Line Isolation Valve (HV-1/255F100). This valve can be manually opened in the absence of an isolation signal, to permit steam from the reactor to pressurize

and warm the steam supply line downstream of the HV-1/255F002 valve.

Installation of the direct acting solenoid valve will require an increase in the Technical Specification Section 3/4.6.3 isolation time for the HPCI Steam Warm-Up Line Isolation Valve (HV-1/255F100) from 3 seconds to 6 seconds but does not reduce the margin of safety as defined in the Technical Specification Section Basis. The increase in closure time for the HV-1/255F100 isolation valve does not compromise the overall line isolation due to the fact that the impact of these 1'' warm up line valves is enveloped by the impact of the much larger 10'' HPCI inboard and outboard isolation valves (HV-1/255F002 and HV-1/255F003) which remain open an additional 44 seconds before isolating. The 10'' valves are the limiting components for providing containment isolation for this line.

The failure mode of the affected HPCI Steam Warm-Up Line Isolation Valve is to close, if open, on loss of power or air supply, therefore, the proposed modifications do not affect the operability of the isolation valve or reduce the margin of safety.

Thus, based on a review of the Technical Specification, their Bases, the FSAR and NUREG 0776 (Safety Evaluation Report for SSES), the replacement of the pilot solenoid valves does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: December 18, 1996

Description of amendment request: The amendment would change the Susquehanna Steam Electric Station Unit 2 Technical Specifications to reflect the use of a 24-month operating cycle and the use of the ATRIUM-10 fuel design. The amendment includes changes to two definitions in Section 1, inclusion of new minimum critical power ratio safety limits in Sections 2.1.2 and 3.4.1.1.2, changes in Section 5.3.1 to reflect the new fuel design, and the listing of Siemens Power Corporation topical reports in Section 6.9.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The applicable sections of the FSAR [Final Safety Analysis Report] are Chapters 5,6.3,9, and 15 of the FSAR. Chapter 5 discusses the results of the ASME overpressure analyses for the reactor pressure boundary. Chapter 6.3 discusses the LOCA [loss-of-coolant accident]. Chapter 9 discusses fuel storage and handling. Chapter 15 describes the transient and accident analyses, a majority of which have been generically dispositioned to be non-limiting. A discussion of the impact of the Technical Specification changes is provided below.

The change to Definitions 1.2 and 1.3 makes the definitions applicable to ATRIUM-10. There are no effects on safety functions from this change.

A cycle specific MCPR [minimum critical power ratio] Safety Limit analysis was performed for PP&L [Pennsylvania Power & Light Company] by SPC [Siemens Power Corporation]. This analysis used NRC approved methods described in Technical Specification Reference 13 (ANF-524(P)(A), Revision 2 and Supplement 1 Revision 2.). The SAFETY LIMIT MCPR calculation statistically combines uncertainties on feedwater flow, feedwater temperature, core flow, core pressure, core power distribution, and the uncertainty in the Critical Power Correlation. The SPC analysis used cycle specific power distributions and calculated MCPR values such that at least 99.9% of the fuel rods are expected to avoid boiling transition during normal operation or anticipated operational occurrences. The resulting two-loop and single-loop values (Technical Specification sections 2.1.2 and 3.4.1.1.2) are included in the proposed change. Thus, the cladding integrity and its ability to contain fission products is not adversely affected.

The change to the Design Features (Section 5.3) increases the allowable enrichment. Analyses have demonstrated that the ATRIUM-10 fuel will remain subcritical (k-effective<0.95) in both the spent fuel pool and the new fuel vault. Thus, the change to allowable enrichment has no impact on safety functions. The description of a fuel assembly (Section 5.3) is also revised to reflect the ATRIUM-10 central water channel, and reference to an active fuel length of 150 inches was deleted. This change reflects the physical characteristics of the ATRIUM-10 fuel and has no impact on the probability or consequences of an event.

Included in the revised Technical Specifications via reference (Section 6.9.3.2) are additional NRC approved methodology reports. The NRC approved topical reports contain methodology which is used to assure safe operation of Unit 2 with ATRIUM-10 fuel. These methodologies assure that the core meets appropriate margins of safety for all expected plant operational conditions ranging from refueling and cold shutdown of the reactor through power operation. Thus, the results obtained from the analyses will provide assurance that the reactor will perform its design safety function during normal operation and design basis events.

The BASES changes for Section 2.1.1 (THERMAL POWER,Low Pressure or Low Flow) reflect that the Safety Limit is valid for both 9x9-2 and ATRIUM-10.

Therefore, the proposed action does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the Unit 2 Technical Specifications (Definitions, MCPR safety limits, Design Features, and inclusion of methodology references) to allow use of ATRIUM-10 fuel do not require any physical plant modifications, physically affect any plant components, or entail significant changes in plant operation. Thus, the proposed change does not create the possibility of a previously unevaluated operator error or a new single failure. The referenced methodology added to Section 6.9.3.2 contains NRC approved acceptance criteria. The consequences of transients and accidents will remain within the criteria approved by the NRC. Therefore, the proposed change does not create the possibility or a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The applicable Technical Specification Sections include 1.0, 2.0, 3/4.4, 5.3, and 6.9.3.2.

The changes to the Unit 2 Technical Specifications discussed in Item 1 above (Definitions, MCPR Safety Limits, Design Features, and inclusion of methodology references) to allow use of ATRIUM-10 fuel do not require any physical plant modifications, physically affect any plant components, or entail significant changes in plant operation. Therefore, the proposed change will not jeopardize or degrade the function or operation of any plant system or component governed by Technical Specifications. The NRC approved methods detailed in the references added to Section 6.9.3.2 maintain an equivalent margin of safety as currently defined in the bases of the applicable Technical Specification sections.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library,

Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, BrownsFerry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: December 11, 1996 (TS 386)

Description of amendment request: The proposed amendment changes the as-found tolerance for the main steam system safety/relief valves (S/RV) from plus or minus 1% to plus or minus 3%. The licensee states that the proposed change is consistent with methodology submitted by the Boiling Water Reactor Owners Group (BWROG) and approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA [the Tennessee Valley Authority, the licensee] is proposing a change to the ''as-found'' tolerances for the S/RV set points. This proposed TS [technical specification] amendment does not alter the frequency of verifying the S/RV lift set points, or the number of S/RVs required to be operable. The amendment does not involve physical changes or modifications to the S/RVs, or change the operating mode or safety function of the S/RVs. The safety lift set points will still be required to be set within a tolerance of plus or minus 1% following testing.

S/RV actuation is not a precursor to any design basis accident analyzed in the BFN [Browns Ferry Nuclear Plant] UFSAR [Updated Final Safety Analysis Report]. Therefore, this change does not increase the probability of any previously evaluated accident.

Generic considerations related to the set point tolerances were addressed in NEDC-31753P [BWROG In-Service Pressure Relief Valve Technical Specification Licensing Topical Report] and previously reviewed by NRC. In accordance with the NRC SER [Safety Evaluation Report, see letter from A. C. Thadani, NRC to C. L. Tully, BWROG, dated March 8, 1993] on utilizing the NEDC results, certain plant specific evaluations were performed to support the proposed change. Specifically, the current Unit 2 reload licensing report includes the transient analyses for the anticipated operational occurrences and the limiting overpressurization transient utilizing the plus or minus

3% S/RV set point tolerance and were performed in accordance with NRC approved methods. The alternate operating modes were also included in the reload licensing report. These analyses concluded there is adequate margin to design core thermal limits and pressure limits for the reactor vessel. The corresponding Unit 3 core reload licensing report for the next operating cycle (starts in March 1997) is in progress and will also use the plus or minus 3% S/RV set point tolerance. Prior to the return of Unit 1 to service, the same reload analysis will be performed. Similar results to those for Unit 2 are expected.

The operation of high pressure injection systems have been determined not to be adversely affected by the proposed change. LOCA [loss of coolant accident] response, containment hydrodynamic loads, pump and valve performance, and instrumentation performance were likewise satisfactorily evaluated. Therefore, this proposed change does not significantly increase the consequences of any previously evaluated accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a modification to plant equipment. No new failure modes are introduced. Plant systems will continue to function and no new system interactions are introduced by this proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change has been analyzed in accordance with NRC approved methodology and the margins of safety for the design basis accidents and transients analyzed in Chapter 14 of the BFN UFSAR have not been significantly reduced. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: December 11, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 1.0, ''Definitions,'' TS Table 1.2, ''Frequency Notation,'' TS Section 3/4.3, ''Instrumentation,'' and TS Section 3/4.5, ''Emergency Core Cooling Systems.'' Surveillance requirements would be modified to account for the increase in the fuel cycle, consistent with Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-month Fuel Cycle,'' dated April 2, 1991. Administrative changes consistent with the fuel cycle change are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to increase the surveillance test intervals from 18 to 24 months for the subject Technical Specifications (TS) 3.4.3.1.1, Reactor Protection System Instrumentation; TS 3/4.3.2.1, Safety Features Actuation System Instrumentation; TS 3/4.3.2.2, Steam and Feedwater Rupture Control System Instrumentation; TS 3/4.3.3.1, Radiation Monitoring Instrumentation; TS 3/4.3.3.5.2, Remote Shutdown Instrumentation; TS 3/4.3.3.6, Post-Accident Monitoring Instrumentation, TS 3/4.5.1, Emergency Core Cooling Systems (ECCS), Core Flooding Tanks; and TS 3/4.5.2, Emergency Core Cooling Systems, ECCS Subsystems - T_{avg} greater than or equal to 280°F. Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report.

These revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

Review results of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because little, if any, potential for an increase in a failure rate of a system or component was identified during these reviews.

These proposed revisions are consistent with NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an

''R'' frequency notation to an ''E'' frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not affect previously evaluated accidents.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy is not being changed by these proposed changes. Existing system and component operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the DBNPS Updated Safety Analysis Report are not invalidated.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an ''R'' frequency notation to an ''E'' frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not affect previously evaluated accidents.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these revisions do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated.

Review results of historical 18 month surveillance data and maintenance records support an increase in the surveillance test intervals from 18 to 24 months (and up to 30 months on a non-routine basis) because little, if any, potential for an increase in a failure rate of a system or component was identified during these reviews. No changes are being proposed to the type of testing being performed, only to the length of the surveillance test interval.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an ''R'' frequency notation to an ''E'' frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not affect the manner in which systems and components are being operated or tested.

3. Not involve a significant reduction in a margin of safety because the review results of the historical 18 month surveillance data and maintenance records identified little, if any, potential for an increase in a failure rate of a system or component due to increasing the surveillance test interval to 24 months. Existing system and component redundancy is not being changed by these proposed changes.

The proposed revision to Technical Specification Table 1.2, Frequency Notation, and the related proposed revision from an ''R'' frequency notation to an ''E'' frequency notation for Technical Specification Surveillance Requirements that are remaining on an 18 month frequency, are administrative in nature, do not change current actual Technical Specification requirements, and do not reduce the margin of safety.

There are no new or significant changes to the initial conditions contributing to accident severity or consequences, therefore there are no significant reductions in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Notice of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 1, 1996, as supplementedNovember 26, 1996.

Brief description of amendment: The proposed amendment will modify Table 3.1.1, ''Reactor Protection System (SCRAM) Instrumentation Requirement,'' Table 3.2.C.1, ''Instrumentation That Initiates Rod Blacks,'' and Technical Specification 3/4.4, ''Standby Liquid Control.''

Date of issuance: December 27, 1996

Effective date: December 27, 1996

Amendment No.: 169

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (61 FR 28606) The November 26, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 27, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: July 26, 1996, as supplemented on September 3, 1996, September 18, 1996, two submittals dated October 14, 1996, October 22, 1996, two submittals dated November 8, 1996, and December 17, 1996.

Brief description of amendments: The amendments allow Commonwealth Edison Company to control the reactor coolant system pressure and temperature limits for heatup, cooldown, low temperature operation and hydrostatic testing. They also revise the reactor vessel material surveillance program specimen withdrawal schedule

such that the Unit 2 removal of capsule X is delayed until 19 Effective Full Power Years.

Date of issuance: December 20, 1996

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 177 and 164

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1996 (61 FR 50341). The September 3, 1996, September 18, 1996, two submittals dated October 14, 1996, October 22, 1996, two November 8, 1996, and December 17, 1996, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 20, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 25, 1996 (NRC-96-0003)

Brief description of amendment: The amendment revises the testing requirements used to determine the operability of the charcoal in the engineered safety feature systems.

Date of issuance: December 23, 1996

Effective date: December 23, 1996, with full implementation within 45 days

Amendment No.: 110

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40014) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: December 11, 1996, as supplemented December 17, 19, and 26, 1996

Brief description of amendments: The amendments approve changes to the Updated Final Analysis Report (UFSAR), and require that the changes be submitted with the next update of the UFSAR pursuant to 10 CFR 50.71(e). The associated Safety Evaluation delineates the staff's review and findings regarding the one-time emergency power engineered safeguards functional test.

Date of issuance: January 2, 1997

Effective date: January 2, 1997

Amendment Nos.: 220, 220, 217

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Updated Final Safety Analysis Report. Public comments requested as to proposed no significant hazards consideration: Yes. (61 FR 66699 December 18, 1996) The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 2, 1997, as corrected to read January 17, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The December 17, 19, and 26, 1996, letters provided additional information that did not change the scope of the December 11, 1996, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated January 2, 1997.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 31, 1996

Brief description of amendment: The amendment revises the technical specifications to increase the amount of trisodium phosphate (TSP) dodecahydrate located in the containment sump storage baskets.

Date of issuance: December 30, 1996

Effective date: December 30, 1996

Amendment No.: 179

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40025) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: August 1, 1996

Brief description of amendment: This amendment revised the Technical Specifications Section 3/4.4.6 (i.e., Figure 3.4.6.1-1) to reflect the addition of two hydrotest curves, effective for 6.5 and 8.5 Effective Full Power Years (EFPY), to the existing Pressure-Temperature Operating Limit (PTOL) curves for LGS Unit 2.

Date of issuance: December 30, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 80

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1996 (61 FR 57490) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Notice Of Issuance Of Amendment To Facility Operating License And FinalNo Significant Hazards Consideration Determination

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the

amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: December 6, 1996

Brief description of amendment request: The amendment would revise Technical Specification (TS) Section 2.1 and its associated TS Basis to reflect the change in the Minimum Critical Power Ratio Safety Limit due to the use of GE13 fuel product line and the cycle-specific analysis performed by General Electric Company (GE), for Limerick Generating Station, Unit 2, Cycle 5.

Date of publication of individual notice in Federal Register: December 23, 1996 (61 FR 67582)

Expiration date of individual notice: January 22, 1997

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Dated at Rockville, Maryland, this 8th day of January 1997.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 97–848 Filed 1–14–97; 8:45 am]

BILLING CODE 7590–01–F

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of Information Collection, OPM Form 805 Series

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that OPM will submit a request to the Office of Management and Budget for reclearance of the OPM Form 805 Series that collects information from the public. OPM Form 805, Application to be Listed Under the Voting Rights Act of 1965, is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. The requirements for voter eligibility vary from State to State; therefore, OPM Form 805 is a blanket number covering a number of forms which conform to the individual State's requirements. For a number of years, there have been forms for 10 States: Alabama, Arizona, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas (English and Spanish language versions), and Utah. Because OPM has never been asked to list voters in Arizona, New Mexico, North Carolina, and Utah, the approval of these four forms is being permitted to lapse at the request of the Voting Rights Section in the Civil Rights Division of the Department of Justice. The form requires 20 minutes to complete. Approximately 10 individuals complete the form annually for a total public burden of 4 hours. For copies of this proposal call James M. Farron on (202) 418–3208 or e-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before March 17, 1997.

ADDRESSES: Send or deliver comments to—Steven R. Cohen, Assistant Director for Merit Systems Oversight, Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: P. Kaziah Clayton on (202) 606–2531 or e-mail to pkclayto@opm.gov.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 97–993 Filed 1–14–97; 8:45 am]

BILLING CODE 6325–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Sunshine Act Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, January 23, 1997, and Friday, January 24, 1997, at the Washington Marriott, 1221 22nd Street NW., Washington, DC, in the DuPont Salon. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. In preparation for its March 31 report, the Commission expects to discuss such issues as vulnerable populations, academic health centers, quality of care, and federal premium contributions. It will also review draft chapters on PSOs, access in Medicare managed care, Medicare PPOs, risk adjustment, secondary insurance for Medicare beneficiaries, consumer protections in managed care, and Medicare Fee Schedule issues. Final agendas will be mailed on January 17, 1997 and will be available on the Commission's web site (WWW.PPRC.GOV) at that time.

ADDRESS: 2120 L Street NW., Suite 200, Washington, DC 20037. The telephone number is 202–653–7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, at 202–653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202–653–7220 after January 16, 1997.

Lauren LeRoy, Ph.D.,

Executive Director.

[FR Doc. 97–1129 Filed 1–13–97; 3:08 pm]

BILLING CODE 6820–SE–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: January 6, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENTS: 61 FR 65092, December 10, 1996; and 61 FR 68081, December 26, 1996.

CHANGE: At its meeting on January 6, 1997, the Board of Governors the United States Postal Service voted unanimously to add two items to the agenda of its closed meeting held on that date:

4. Consideration of Personnel and Compensation Issues.

5. Changes to the FY 1997 Advertising Budget.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

Certified to be a true copy of the original document.

Neva R. Watson,

Alternate Certifying Officer.

[FR Doc. 97–1057 Filed 1–10–97; 4:41 pm]

BILLING CODE 7710–12–M

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

Existing collection in use without an OMB Number:

Rule 15c2–1
SEC File No. 270–418
OMB Control No. 3235-new

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 15c2–1 (17 CFR 240.15c2–1) prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. See Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer account in contravention of the rule, issue and retain copies of notices of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 258 respondents per year (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 4,805 hours to comply with the rule. Each of these approximately 258 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 11,610 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,805 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondents of $116,100 (5,805 hours @ $20 per hour).

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, N.W., Washington, D.C. 20549 and 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, D.C. 20503.

Dated: January 6, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–903 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No 22455; 811–6513]

The BFM Institutional Trust Inc.; Notice of Application

Janaury 8, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The BFM Institutional Trust Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on September 27, 1996, and amended on December 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 2, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Staff Attorney, at (202) 942–0552, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, organized as a Maryland corporation, is an open-end management investment company. Applicant consists of three separate portfolios: the Short Duration Portfolio, the Core Fixed Income Portfolio, and the Multi-Sector Mortgage Securities Portfolio III (''Mortgage Portfolio'') (collectively, ''BIT Portfolios''). Applicant registered under the Act and filed a registration statement on Form N–1A on December 20, 1991. The registration statement was declared effective on July 2, 1992, upon which applicant commenced its initial public offering.

2. On September 28 1995, applicant's board of directors (''Board'') approved entry into an Asset Purchase Agreement (''Reorganization Agreement'') between applicant and The PNC Fund, which subsequently changed its name to Compass Capital Funds (''Acquiring Fund''). The Reorganization Agreement provided for the transfer of all of the assets and liabilities of applicant to the Acquiring Fund solely in exchange for ''Institutional'' class shares (''Institutional Shares'') of corresponding portfolios of the Acquiring Fund (''Acquiring Fund Portfolios''). The Board determined that the interests of applicant's securityholders would best be served by the reorganization because of (i) the broader array of investment options available to its securityholders; (ii) the maintenance of all then existing investor features; and (iii) potential economies of scale in portfolio management resulting from a larger asset size.

3. Pursuant to rule 17a–8 under the Act,[1] the Board, including a majority of the directors who are not ''interested persons'' of applicant, found that the transaction was in the best interests of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of the shares held at that time by applicant's shareholders.

4. At the time of the reorganization, the Acquiring Fund offered several classes of shares at the time of the reorganization, including Institutional Shares, Service Shares, Investor A Shares and Investor B Shares. Applicant's shareholders were offered

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common director, and/or common officers.

Institutional Shares because (a) applicant's shareholders were institutions and/or investors meeting the minimum investment requirements for this class and (b) the expense ratios of the Institutional Shares for each Acquiring Fund Portfolio most nearly matched the expense ratios of the corresponding BIT Portfolio.

5. On October 11, 1995, preliminary proxy materials were filed with the SEC. On November 9, 1995, definitive proxy materials were filed with the SEC and distributed to applicant's shareholders on or about that date. At a special meeting of applicant's shareholders on December 20, 1995, applicant's shareholders approved the Reorganization Agreement.

6. On January 13, 1996, the Core bond Portfolio and the Short Government Portfolio of the Acquiring Fund acquired all of the assets and liabilities of the Core Fixed Income Portfolio and the Short Duration Portfolio, respectively, in exchange for Institutional Shares of the corresponding Acquiring Fund Portfolio. On April 26, 1996, the Multi-Sector Mortgage Securities Portfolio III of the Acquiring Fund (''Acquiring Mortgage Portfolio'') acquired all of the assets and liabilities of the Mortgage Portfolio in exchange for Institutional Shares of the Acquiring Mortgage Portfolio. Shareholders of each BIT Portfolio received Institutional Shares having a net asset value equal to that of the shares held by them as of the time of that portfolio's reorganization, in liquidation of such BIT Portfolio.

7. Expenses incurred in connection with the sale of assets of applicant, totalling $75,000, were assumed by the Acquiring Fund. These expenses consisted of proxy/prospectus preparation, filing, printing and mailing costs, audit and legal fees and expenses, and miscellaneous expenses. No brokerage commissions were incurred in connection with the reorganization.

8. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant will file articles of dissolution with the Maryland State Department of Assessments and Taxation to effect its dissolution.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–900 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Ducommun Incorporated, Common Stock, $.01 Par Value) File No. 1–8174

January 9, 1997.

Ducommun Incorporated (''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'') and Pacific Stock Exchange, Inc. (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security began trading on the New York Stock Exchange, Inc. (''NYSE'') on November 15, 1996. In order to avoid direct and indirect costs and the division of the market resulting from dual listing on Amex, PSE and NYSE, the Company's Board of Directors directed that the Security be delisted from the Amex and PSE.

Any interested person may, on or before January 31, 1997, 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. 97–898 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Epitope, Inc., Common Stock, No Par Value) File No. 1–10492

January 9, 1997.

Epitope, 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'') for 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 October 14, 1996 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Tier of the Nasdaq Stock Market (''Nasdaq/NMS'').

The decision of the Board followed a presentation made by the Company's investment advisor, Vector Securities International, Inc. and the Board's discussion and consideration of the matter. The Board's decision was based on the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's shareholders than the present listing on the Amex because:

(a) The Nasdaq/NMS system of competing market makers should result in greater visibility and sponsorship for the Security of the Company than is currently the case under the single specialist system on the Amex;

(b) Greater liquidity and less volatility in prices per share when trading volume is light might be expected as a result of listing on the Nasdaq/NMS than is presently the case on the Amex;

(c) Listing on the Nasdaq/NMS system might be expected to result in there being a greater number of market makers in the Security of the Company and expanded capital base available for trading in such stock; and

(d) Because it might be expected that a larger number of firms will make a market in the Security, it might also be expected that there will be a greater interest in information and research reports respecting the Company and as a result there may be an increase in the number of institutional research and advisory reports reaching the investment community with respect to the Company.

Any interested person may, on or before January 31, 1997 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. 97–899 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (North Star Universal, Inc., Common Stock, $.25 Par Value) File No. 1–10134

January 9, 1997.

North Star Universal, Inc. (''NSU'' or ''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 Pacific Stock Exchange, Inc. (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company approved resolutions on November 25, 1996, to withdraw the Company's Security from listing on the PSE. The delisting is a condition to consummation of a merger between the Company and Michael Foods, Inc. (''Michael'') pursuant to an Agreement and Plan of Reorganization, dated December 21, 1995, between NSU and Michael, as amended as of September 27, 1996, whereby: (i) Michael will be merged into a wholly owned subsidiary of NSU; (ii) NSU will change its name to Michael Foods, Inc. and will continue the business previously conducted by Michael; and (iii) the outstanding common stock of another wholly owned subsidiary of NSU, ENStar Inc., will be distributed pro rata to the shareholders of NSU.

Any interested person may, on or before January 31, 1997, 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. 97–897 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38140; File No. SR–Amex–96–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to Independent Contractors

January 8, 1997.

I. Introduction

On September 27, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposal adopts Exchange Rule 341B, ''Independent Contractors,'' which provides that the Amex will not object to the assertion of independent contractor status by a natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.[3]

Notice of the proposed rule change and Amendment Nos. 1, 2, and 3 to the proposed rule change were published for comment in the Federal Register on November 5, 1996.[4] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

According to the Amex, several member organizations recently have begun to utilize independent contractors to perform duties traditionally performed by registered employees. To date, the Exchange has required member organizations who utilize independent contractors to provide a written acknowledgement that the member organization will supervise and otherwise be responsible for the independent contractor in the same manner as if he were an employee. In order to clarify the Exchange's requirements and to ensure that independent contractors are appropriately subject to the Exchange's jurisdiction, the Amex proposes to adopt new Exchange Rule 341B.

Proposed Amex Rule 341B provides that the Amex will not object to the assertion of independent contractor status by a natural person who is a (i) registered representatives, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex. Under the proposal, the natural person asserting independent contractor status and the member organization must agree that the natural person is subject to the organization's direct, detailed supervision, control and discipline and, if required by Amex Rule 330, ''Fidelity Bonds,'' is covered by its fidelity bond. Once a member organization approves a registered person's independent contractor status, the following conditions must be satisfied:

- The member organization provides written assurances to the Exchange that it will supervise and control all activities of the independent contractor effected on its behalf, to the same degree

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–(4) (1996).

[3] On October 2, 1996, the Amex amended its proposal to submit the proposal pursuant to Section 19(b)(2) under Act. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 2, 1996 (''Amendment No. 1''). On October 23, 1996, the Amex amended its proposal to eliminate inconsistencies between Amex Rule 341(a) and Amex Rule 341, Commentary .01. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Katherine England, Assistant Director, Division, Commission, dated October 23, 1996 (''Amendment No. 2''). Specifically, Amendment No. 2 deletes language indicating that only officers of a member must be approved and provides that registered representatives, securities lending representatives, securities traders, and direct supervisors of those persons must be registered and approved. Amendment No. 2 also includes a technical change which clarifies proposed Amex Rule 341B, ''Independent Contractors.'' On October 24, 1996, the Exchange replaced an incorrect reference to Amex Rule 342 with a reference to Amex Rule 320. See Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to Yvonne Fraticelli, Attorney, Division, Commission, dated October 24, 1996 (''Amendment No. 3'').

[4] Securities Exchange Act Release No. 37884 (October 29, 1996), 61 FR 56981.

and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320, ''Offices—Approval, Supervision, and Control;'' [5]

- The member organization submits to the Exchange a copy of a written agreement between the independent contractor and the member organization which provides that the independent contractor will engage in securities related activities solely on behalf of the member organization (except as otherwise explicitly may be permitted by the member organization in writing), that such securities related activities will be subject to the direct detailed supervision, control and discipline of the member organization, that such person is not subject to a statutory disqualification as defined in Section 3(a)(39) of the Act, and that nothing therein will negate any of the foregoing;
- The independent contractor agrees in writing to be subject to the Exchange's jurisdiction; and
- The member organization provides the Exchange with assurances that, if required by Amex Rule 330, the independent contractor is covered by the organization's fidelity insurance and is in compliance with applicable state Blue Sky provisions.[6]

Written notice of the cessation of independent contractor status must be given to the Amex. Proposed Rule 341B does not apply to persons delegated supervisory functions (*e.g.*, branch office manager, registered representative-in-charge), nor does it permit the incorporation of a registered persons. The Amex notes that the New York Stock Exchange (''NYSE'') has comparable requirements for independent contractors.[7]

The Amex also proposes to amend Definition six, ''Registered Employee,'' to provide a definition for ''Registered Person.'' Under Definition six, as amended, a registered person will mean not only a branch office manager or a registered representative, but also a securities lending representative, a securities trader, and a direct supervisor of a securities lending representative or a securities trader.

In addition, the Amex proposes a amend Amex Rule 340, Commentary .03, to require that a securities lending representative and his or her direct supervisor must pass any applicable qualification examination.[8]

The Amex proposes to amend Exchange Rule 341 to require that securities traders and securities lending representatives [9] (and their direct supervisors), as well as registered representatives, must be registered with and approved by the Exchange and, as applicable, must pass a qualification examination acceptable to the Exchange. Amex Rule 341, Commentary .01, as amended, will provide that a natural person who is an independent contractor and who performs the duties of a registered representative, securities lending representatives, or securities trader is subject to Amex Rule 341.

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(6), in particular, in that it is consistent with the Exchange's regulatory responsibilities and will promote just and equitable principles of trade and protect investors and the public interest.

III. Findings and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) [10] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[11] Specifically, proposed Amex Rule 341B will help to provide for adequate supervision of persons asserting independent contractor status by requiring members to provide direct, detailed supervision, control and discipline of independent contractions.[12] In addition, the proposed amendments to Amex Rules 340 and 341 will help the Amex to monitor securities traders and securities lending representatives, as well as direct supervisors of registered representatives, securities traders, and securities lending representatives, by requiring such persons to register with and be qualified and approved by the Amex.

According to the Amex, several member organizations recently have begun to utilize independent contractors to perform duties traditionally performed by registered employees. To date, the Exchange has required member organizations who utilize independent contractors to provide a written acknowledgment that the member organization will supervise and otherwise be responsible for the independent contractor, in the same manner as if he were an employee. This position is consistent with the 1982 Letter. The Commission believes that the proposal will protect investors and the public interest by codifying the Amex's policies governing supervision of independent contractors in new Amex Rule 341B. In addition, the Commission believes that Amex Rule 341B will facilitate compliance with the Exchange's rules and the federal securities laws by providing a clear statement of the Amex's policy regarding supervision of independent contractors and by requiring members to provide direct, detailed supervision, control and discipline of independent contractors.

Amex Rule 341B provides that the Amex will not object to the assertion of independent contractor status by a

[5] See Amendment No. 3, *supra* note 3.

[6] The Amex notes that these requirements do not apply to the traditional practice of a firm using an independent floor broker to execute a transaction on the floor of the Amex.

[7] See NYSE Interpretations and Guidance Handbook, 345(a)/02.

[8] Currently, there is no qualification exam for securities lending representatives.

[9] Exchange Rule 341, as amended, defines a securities lending representatives as a person who has the discretion to commit a member or member organization with which he is associated to any contract or agreement involving securities lending or borrowing activities with any other person. Amex Rule 341, as amended, defines a securities trader as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated and who does not transact any business with the public. The Amex proposes amend definition six, ''Registered Employee,'' to provide that a ''registered person'' will include a securities lending representative, a securities trader, and a direct supervisor of a securities lending representative or a securities trader, in addition to a branch officer manager or a registered representative.

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] In approving this rule, the Commission has considered the proposed rule's impact an efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] In 1982, the Division issued a letter restating the Division's policy toward independent contractors. See Letter from Douglas Scarff, Director, Division, Commission, to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 (''1982 Letter''). In its 1982 Letter, the Division noted that the Act requires that a person selling securities be registered with the Commission as a broker-dealer under Section 15(a) unless he is an associated person as defined in Section 3(a)(18) of the Act. With regard to securities salespersons designated as independent contractors, the Division stated that unless an independent contractors's activities are subject to control by the broker-dealer within the scope of Section 3(a)(18) of the Act, the salesperson must be registered individually as a broker-dealer. The Division noted that an independent contractor salesperson whose activities are subject to control by a broker-dealer must be registered with a self-regulatory organization and should be covered by the employer broker-dealer's fidelity bond. Finally, the Division stated that a firm a responsible for ensuring either that an independent contractor is registered as a broker-dealer or assuming the supervisory responsibilities attendant to a relationship with an associated person. The Commission believes that the Amex's proposal is consistent with the 1982 Letter.

natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.[13] The independent contractor and the member must agree that the independent contractor is subject to the member's direct, detailed supervision, control and discipline. In addition, Amex Rule 341B requires a member to assure the Exchange in writing that it will supervise and control all activities of the independent contractor effected on the member's behalf to the same degree and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320.

Amex Rule 341B further provides for supervision of independent contractors by requiring the member to submit to the Amex a copy of a written agreement between the member and the independent contractor which provides that: (1) The independent contractor will engage in securities related activities solely on the member's behalf (except as otherwise permitted by the member); (2) the independent contractor's securities related activities will be subject to the direct, detailed supervision, control and discipline of the member; and (3) the independent contractor is not subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act. In addition, the proposal requires a member to assure the Exchange that, if required by Amex Rule 330, the individual is covered by the organization's fidelity insurance and has complied with applicable state Blue Sky provisions. Amex Rule 341B also requires an independent contractor to subject himself to the Amex's jurisdiction.[14]

The Commission believes that these requirements should help to ensure that members employ qualified persons as independent contractors and provide adequate supervision of their securities related activities, as required by the Act. In addition, Amex Rule 341B will make clear to independent contractors that they are subject to the Amex's jurisdiction and, accordingly, are subject to disciplinary proceedings by the Amex for violations of the Exchange's rules. The Commission also believes that the provision requiring an independent contractor to be covered by the member's fidelity insurance, if required under Amex Rule 330, will help to protect the member against losses resulting from dishonesty by an independent contractor and is consistent with the proposal's general requirement that independent contractors be treated as employees for purposes of the Exchange's Constitution and rules. The Commission notes that the provisions of Amex Rule 341B are similar to the NYSE's requirements for independent contractors.[15]

The Commission finds that the proposed amendments to Amex Rules 340 and 341 are appropriate and consistent with the Act. Specifically, the Commission believes that the proposed amendments to Amex Rule 341 requiring securities lending representatives and securities traders, as well as direct supervisors of registered representatives, securities lending representatives, or securities traders, to register with and be qualified and approved by the Amex will protect investors and the public interest by allowing the Amex to evaluate persons who seek to perform these functions.[16]

The Commission believes, as it has concluded previously, that it is consistent with the Amex's regulatory responsibility to monitor the activities of securities traders and securities lending representatives.[17] In addition, the Commission continues to believe that requiring securities lenders and securities traders to register with the Amex and assuring that they have adequate qualifications ultimately will protect investors and the public interest. The Commission believes that the proposal also protects investors by applying Amex Rule 341 to an independent contractor who performs the duties normally performed by a registered representative, securities lending representative, or a securities trader.

Finally, the Commission believes that the examination requirements contained in Amex Rule 340, Commentary .03, will help to ensure that only a person with an understanding of the applicable rules acts as a securities trader, securities lending representative, or as a direct supervisor of a securities trader or securities lending representative.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–96–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–902 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[13] As noted above, only a natural person who is a registered representative, securities trader or securities lending representative may assert independent contractor status. Telephone conversation between Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996. Persons with supervisory functions may not assert independent contractor status. In addition, Amex Rule 341B does not permit the incorporation of registered persons.

[14] Registered persons submit to the authority of the organizations to which they apply for registration on the Uniform Application for Securities Industry Registration or Transfer (''Form U–4''). Accordingly, the independent contractors discussed in the proposal become subject to the Amex's jurisdiction when they apply for registration with the Exchange.

[15] See note 7, *supra.*

[16] Registered representatives, securities traders, and securities lending representatives apply for registration with the Exchange through the Form U–4. To approve a registered representative, securities trader, securities lending representative, or his or her direct supervisor, the Amex reviews the Form U–4, which contains a registered person's disciplinary history and information concerning whether he or she is subject to a statutory disqualification as defined in Section 3(a)(39) of the Act. The Amex also reviews the Form U–4 to determine whether another exchange has approved or rejected the registered person's application to register with that exchange. Telephone conversation between Robert Klein, Managing Director, Membership Services, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996.

[17] See Securities Exchange Act Release No. 25312 (February 4, 1988), 53 FR 4089 (February 11, 1988) (order approving File No. SR–NYSE–86–22).

[18] As noted above, there currently is no qualification examination for securities lending representatives. The provision relating to securities lending representatives will apply if a qualification examination for securities lending representatives is developed.

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–38138; File No. SR–BSE–96–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapter 11, Section 34A (''Trading Halts Due to Extraordinary Market Volatility'')

January 8, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 1996, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange submitted to the Commission Amendment No. 1 to its proposal on January 7, 1997,[3] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Karen A. Aluise, Assistant Vice President, BSE, to Holly Smith, Associate Director,

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 Exchange proposes to amend its Rule—Chapter 11, Section 34A (Trading Halts Due to Extraordinary Market Volatility ''circuit breakers'')—to increase the trigger levels for its circuit breakers. The existing circuit breakers would be triggered if the Dow Jones Industrial Average (''DJIA'')[4] declines by 250 and 400 points, respectively, from its previous day's close. The Exchange proposes establishing new thresholds of 350 and 550 points decline in the DJIA before the respective one-half hour and one hour circuit breakers are triggered.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries of the most significant aspects of such statements set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise the circuit breaker levels from 250 points to 350 points and from 400 points to 550 points to account for the overall rise in market values since the rules were first adopted on a pilot basis. These levels have not been changed since the inception of the pilot program in 1988. At that time, a 250 point drop in the Dow Jones Industrial Average (''DJIA'')[6] represented approximately a 12% decline, and a 400 point drop represented a decline of about 19%. Today, these values represent roughly a 3.8% and 6.2% decline respectively. The proposed 350 and 550 points trigger levels would respectively represent around a 5.4% and 8.5% decline in the DJIA.

Chapter II, Section 34A currently provide that if the DJIA falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one-half hour. It further provides that, if on the same day the DJIA drops 400 or more points from its previous trading day's close, trading on the Exchange will halt for one hour. The Exchange seeks to amend this section to provide that if the DJIA falls 350 points or more below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one-half hour; and, if on that same day, the DJIA drops 550 points or more from its previous trading day's close, trading on the Exchange will halt for one hour.

The circuit breaker rules are a coordinated effort by the equities and futures markets to halt trading in all stocks, stock options, stock index options, stock futures, and options on stock futures when the DJIA reaches certain established trigger values. As such, these changes are intended to mirror the rules of the New York Stock Exchange (''NYSE'') that would become applicable during periods of extraordinary market conditions.

The Exchanges's circuit breaker rules were originally approved by the Commission for a one-year pilot on December 14, 1988,[7] and were extended for a two year pilot on October 23, 1989,[8] October 28, 1991,[9] October 29, 1993,[10] and October 25, 1995.[11] The 1995 pilot program is due to expire on October 31, 1997, and the Exchange seeks to adopt these amendments to coincide with the current pilot program.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Chapter II, Section 34A are consistent with these objectives in that the proposed trading halt requirement during periods of significant market stress can be expected to provide market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating in an orderly manner the maintenance of an equilibrium between buying and selling interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of 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 it 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

Division of Market Regulation, SEC, dated January 7, 1997 (''Amendment No. 1''). For a description of Amendment No. 1, *see infra* note 5 and accompanying text.

[4] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[5] In Amendment No. 1, the BSE corrected a typographical error which would have left the existing second circuit breaker level at 400 points. Amendment No. 1 clarifies the BSE's proposal that, if the DJIA declines by 550 or more points from its previous trading day's closing value, trading on the Exchange will halt for one hour.

[6] ''Dow Jones Industrial Average'' is a service mark of Dow Jones and Company, Inc.

[7] *See* Securities Exchange Act Release No. 26357 (December 14, 1988), 53 FR 51182.

[8] *See* Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881.

[9] *See* Securities Exchange Act Release No. 29868 (October 28, 1991), 56 FR 56535.

[10] *See* Securities Exchange Act Release No. 33120 (October 29, 1993), 58 FR 59503.

[11] *See* Securities Exchange Act Release No. 36414 (October 25, 1995), 60 FR 55630.

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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–12 and the submitted by February 5, 1997.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–901 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38132; File No. SR–NASD–96–08]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 1 to the Proposed Rule Change Relating to Quotation and Reporting Requirements of Direct Participation Programs

January 7, 1997.

I. Introduction

On March 12, 1996, the National Association of Securities Dealers, Inc. (''NASD'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the quotation of Direct Participation Programs (''DPPs'') on the OTC Bulletin Board Service (''OTCBB'' or ''OTC Bulletin Board'') and require all transactions in DPPs to be reported through the Automated Confirmation Transaction Service (''ACT'').

The proposed rule change was published for comment in the Federal Register on April 25, 1996.[3] The Commission received seven comment letters concerning this proposal.[4] The NASD initially responded to these comments in a letter dated October 16, 1996.[5] On November 26, the NASD submitted Amendment No. 1 to the proposed rule change.[6] After careful consideration of all of the comments, the Commission has decided to approve the proposal, including Amendment No. 1 on an accelerated basis.

II. Background

In response to findings by the NASD's Direct Participation Programs Committee (''DPP Committee'' or ''Committee'') and recently issued Internal Revenue Service (''IRS'') regulations, the NASD submitted a proposed rule change to permit the quotation of DPPs[7] on the OTCBB by NASD members and, subject to a few exceptions, require that all transactions in DPPs be reported through ACT.

A. NASD Study of DPPs

The NASD has contemplated the implementation of a system that facilitates the dissemination of information concerning DPPs for quite some time. In fact, the NASD began examining this issue as early as 1980 when it solicited its members' opinions on this topic in the form of a voluntary questionnaire mailed to all of its members.[8] The positive reaction to the questionnaire prompted the NASD to design the ''Electronic Bulletin Board'' system, draft the necessary rules, and solicit comments from its members regarding these rules and ''the overall concept of such a system.''[9] The NASD received eighteen comment letters, most of which supported the concept.[10] After considering these comments, the NASD filed a proposed rule change with the Commission on January 20, 1983.[11] After notice of this proposed rule change was published by the Commission, additional comment letters were received.[12] Subsequently, the NASD decided to further analyze the issues raised in the comment letters and withdrew the proposal on August 21, 1985.[13]

The NASD revisited this issue in 1990. At the direction of the DPP Committee, NASD staff undertook a study of the nature and operation of the secondary market for limited partnership securities.[14] This study indicated that approximately $90 billion was invested in public DPPs in the 1970s and 1980s by more than ten million investors. The programs were organized to invest in a variety of

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37131 (Apr. 19, 1996), 61 FR 18452.

[4] See letter from James Frith, Jr., President, Chicago Partnership Board, Inc. (''CPB''), to Jonathan G. Katz, Secretary, SEC, dated May 14, 1996 (''CPB Letter No. 1''); letter from James F. Fotenos, Attorney, Fotenos & Suttle, P.C., to Jonathan G. Katz, Secretary, SEC, dated May 22, 1996 (''Fotenos & Suttle Letter''); letter from James Frith, Jr., President, CPB, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 (''CPB Letter No. 2) (concentrating primarily on the Qualified Matching Service Safe Harbor); letter from James Frith, Jr., President, CPB, to Jonathan G. Katz, Secretary, SEC, also dated June 10, 1996 (''CPB Letter No. 3) (focusing on the NASD's standardized Distribution Allocation Agreement form); letter from George E. Hamilton, President, NAPEX, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 (''NAPEX Letter''); letter from Gregory S. Paul, President, American Partnership Services (''APS''), to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 (''APS Letter''); letter from Laura J. Lacey, President, Nationwide Partnership Marketplace Inc. (''NPM''), to Jonathan G. Katz, Secretary, SEC, dated June 26, 1996 (''NPM Letter'').

[5] See letter from Joan Conley, Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 16, 1996 (''NASD Response'').

[6] See letter from Joan Conley, Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 26, 1996 (''Amendment No. 1''). Amendment No. 1 explained when a DPP trade needs to be reported, made technical corrections to the proposal so that it now conforms with the NASD Manual's new format, clarified the implementation schedule for these new rules, and extended the time period for Commission action.

[7] The NASD defines a DPP as a program that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agriculture programs, condominium securities, Subchapter S corporate offerings and all other programs similar in nature, regardless of the industry represented by the program, or any combination thereof. Excluded from the definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that code, tax sheltered annuities pursuant to Section 403(b) of the Internal Revenue Code, and any company including separate accounts, registered pursuant to the Investment Company Act of 1940. Proposed NASD Rule 6910(a); NASD Rule 2810(a)(4).

[8] Dennis C. Hensley, A Study of the NASD ''Electronic Bulletin Board'' for Limited Partnerships in American Bar Association, Section of Corporation, Banking and Business Law, Committee on Partnerships and Unincorporated Business Organizations, Publicly Traded Limited Partnerships IV–25 (Aug. 2, 1983). Nearly 20% of the NASD membership responded. *Id.* of those members, 68% favored the development of such a system. *Id.* Among those members who dealt in DPPs, the percentage of those in favor of the idea rose to be over 80%. *Id.*

[9] NASD Notice to Members 82–13.

[10] Although most of the concerns raised by the commenters were specific to that proposal, some of the comments focused on issues that are pertinent to the current rule proposal (*e.g.*, potential tax law implications, appropriate level of general partner involvement, and costs). See File No. SR–NASD–83–1 (comment letters attached as Exhibit 2 to the Form 19b–4).

[11] File No. SR–NASD–83–1.

[12] Securities Exchange Act Release No. 19675A (May, 9, 1983), 48 FR 21693 (publishing notice of File No. SR–NASD–83–1).

[13] Letter from Frank J. Wilson, then-Executive Vice President, Legal and Compliance, NASD, to Stuart J. Kaswell, then-Branch Chief, Over-the-Counter Regulation, SEC, dated August 20, 1985.

[14] See NASD Notice to Members 91–69 (''NTM–91–69'') (publishing the Committee's findings and noting that the primary concern of the study was to determine how the market currently operates, whether it functions efficiently, and whether NASD members are in compliance with the applicable securities laws and rules).

industries including, but not limited to, real estate, oil and gas, cable television, commodities, and equipment leasing. Although these securities were not intended to be liquid and tradeable, the study found that a secondary market in DPP securities nevertheless had developed.[15]

In addition, the Committee found that some market participants were miscalculating markups, markdowns, spreads, and expenses in the DPP market; were making little effort to determine an investor's suitability to purchase DPP securities; had no knowledge as to the applicability of transaction reporting requirements; and were violating NASD rules concerning predatory pricing practices, best execution, and due diligence on behalf of customers.[16] The Committee also found that some members were not complying with the requirement to file sales literature with the NASD and were improperly doing business with nonmember broker-dealers. In addition, some members were not properly disclosing expenses being charged in connection with the purchase or sale of a DPP, conflicts of interest the broker-dealer may have with a customer, and the basis on which the member was recommending the price at which the securities were being bought or sold.

B. Tax Status of DPPs

In formulating a response to the Committee's findings, the NASD was aware that facilitation of a more centralized means for the quotation of DPPs could cause these securities to be deemed ''publicly traded partnerships'' under the Internal Revenue Code (''IRC'' or ''Code'').[17] This would lead to the unintended result of DPPs being treated as corporations for federal tax purposes.[18] To assist partnerships wishing to avoid this result, the IRS issued regulations in December 1995 that clarified the circumstances under which interests in partnerships may be quoted without negatively affecting their tax status.[19]

For tax purposes, a publicly traded partnership is defined as a partnership whose interests are traded on an established securities market, a secondary securities market, or the substantial equivalent of a secondary market.[20] An established securities market includes: national securities exchanges registered pursuant to Section 6 of the Act; national securities exchanges exempt from registration because of the limited volume of transactions conducted thereon; foreign securities exchanges; and interdealer quotation systems that regularly disseminate firm quotations by identified brokers or dealers by electronic means or otherwise.[21] A secondary market or the substantial equivalent thereof is an entity or arrangement that, based on all of the facts and circumstances, readily permits partners to buy, sell, or exchange their partnership interests in a manner that is economically comparable to trading on an established securities market.[22]

The broad reach of this expansive definition is tempered by five nonexclusive safe harbor provisions.[23] These safe harbors include transfers not involving trading (private transfers);[24] redemption or repurchase agreements meeting certain requirements;[25] transfers through a qualified matching service (''QMS'');[26] certain private placement transactions;[27] and a 2% *de minimus* rule.[28] Transfers that qualify for one of the safe harbors are disregarded when determining whether interests in a partnership are readily tradable on a secondary market or substantial equivalent thereof.

III. Description of the Proposal

The NASD believes the majority of DPP resale transactions are necessitated by events that force the sale of the partnership unit upon the limited partner. Such events include estate sales by trustees due to the death of a limited partner, liquidation of IRA accounts, divorce, and unexpected or extraordinary expenses such as major medical procedures or a post-secondary education. From this, the NASD concludes that the inefficiencies of the fragmented secondary market for DPPs tend to disproportionately affect investors who need liquidity, rather than investors who are merely seeking liquidity.

According to the NASD, the proposed changes to its rules concerning ACT and the OTCBB address this concern and the concerns raised in the DPP Committee's report. Moreover, the NASD believes the changes reflect the requirements contained in the IRS regulations so that the quotation of DPPs on the OTC Bulletin Board would not, by itself, have negative tax status consequences for the issuers or the holders of these securities.

A. Quotes on the OTC Bulletin Board

Generally, the treatment of DPPs quoted on the OTC Bulletin Board will be similar to that of foreign securities and ADRs currently—no firm prices will be displayed. NASD members will be permitted to insert only nonfirm prices or unpriced indications of interest (''bid wanted'' or ''offer wanted'' and ''name only'' entries). These nonfirm prices or indications of interest will provide the

[15] The NASD estimated at the time that approximately two dozen participants acted as principal or agent for customers in a fragmented secondary market that, in the aggregate, transferred ownership of an estimated $250 to $300 million worth of limited partnership securities annually. *Id.*

[16] See also William Power, Market for Limited Partnerships Is Rife with ''Predatory Pricing,'' NASD Finds, Wall St. J., Nov. 18, 1991, at C1 (discussing the DPP Committee's findings).

[17] 15 U.S.C. 1–9602.

[18] I.R.C. Section 7704(a) providing that a publicly traded partnership is treated as a corporation for federal tax purposes unless the partnership meets the 90% qualifying income test of Section 7704(c) or qualifies as an ''existing partnership'' as defined in Treas. Reg. § 1.7704–2).

[19] See 60 FR 62026 (Dec. 4, 1995) (adopting Treas. Reg. § 1.7704–1 and discussing the definition of a publicly traded partnership under Section 7704(b) of the Code).

[20] I.R.C. Section 7704(b); Treas. Reg. § 1.7704–1(a)(1).

[21] Treas. Reg. § 1.7704–1(b).

[22] *Id.* Section 1.7704–(c)(1). For example, a partnership interest is readily tradable if it is regularly quoted by persons such as brokers or dealers who are making a market in the partnership interests; the holder of the partnership interest has a readily available and ongoing opportunity to sell or exchange the partnership interest through a public means of obtaining or providing information of offers to buy, sell, or exchange the partnership interest; or prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange the partnership interest in a time frame and with the requisite regularity and continuity described above. *Id.* Section 1.7704–1(c)(2).

[23] *Id.* Section 1.7704–1(c)(3).

[24] *Id.* Section 17704–1(e) (listing transfers not involving trading). Among the types of transfers included on this list are transfers at death, including transfers from an estate or testamentary trust; transfers between members of a family; and transfers involving distributions from a qualified retirement plan or an individual retirement account.

[25] *Id.* Section 1.7704–1(f) (listing the necessary qualifications for a redemption or repurchase agreement).

[26] *Id.* Section 1.7704–1(g) (detailing the requirements that a QMS must abide by).

[27] *Id.* Section 1.7704–1(h) (exempting partnership interests issued pursuant to certain private placement transactions).

[28] *Id.* Section 1.7704–1(j). Under this safe harbor provision, there is no actual trading in a partnership's interests if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership does not exceed 2% of the total interests in partnership capital or profits. Private transfers, transfers pursuant to redemption and repurchase agreements meeting the specified requirements, and transfers pursuant to a QMS are disregarded for purposes of applying the 2% rule.

For partnerships that were actively engaged in an activity before December 4, 1995, this rule applies for taxable years beginning after December 31, 2005. Until then, these partnerships may continue to rely on Notice 88–75, 1988–2 C.B. 386, including its 2%–5% safe harbor. This transitional relief expires, however, if the partnership adds a substantial new line of business within the meaning of Treas. Reg. § 1.7704–2. *Id.* § 1.7704–1(*1*)(2).

basis for the negotiations that will take place in order to complete a transaction in a DPP security. The OTCBB display screen will reflect the inside market, last sale, previous close, volume and, if available, distribution information.

In addition, only NASD members will be permitted to apply to place unpriced entries or indicative quotes on the OTC Bulletin Board. The requirements of Rule 15c2–11 will apply and, thus, firms generally will be required to submit Form 211 prior to initiating a quotation of a DPP on the OTC Bulletin Board, unless an exemption applies.[29] Finally, there is no provision for any automatic executions of DPPs on the OTCBB.

B. ACT Trade Reporting

Subject to certain limited exceptions,[30] all secondary market transactions in DPPs will be required to be reported to the NASD, without regard to whether the DPP was the subject of a quotation on the OTCBB.[31] Firms will report the transaction on ''T+1,'' [32] designate it ''as of'' the previous day, and include the time of execution. Member firms that have the operational capability to report transactions within ninety seconds of execution, however, may do so. The NASD has prepared a symbol directory to facilitate transaction reporting in DPPs.

The transactions will be reported through ACT for reporting purposes only.[33] Thus, ACT will not be used to facilitate clearance and settlement of these securities notwithstanding the possibility that a particular DPP eligible for inclusion on the OTCBB also may be eligible for clearing with a clearing agency. Moreover, the OTCBB will not assist parties in completing the transfer documents and other forms necessary to clear and settle a transaction in a DPP security.

The NASD recognizes that some member firms who participate in this market may not have the capability to report transactions through ACT. Members without direct access to ACT may report such transactions through the ACT Service Desk if the member averaged a limited number of transactions per day during the previous calendar quarter.[34] Alternatively, such members may consider obtaining a computer-to-computer interface (''CTCI'') or a Nasdaq Workstation.

IV. Summary of Comments

The Commission received seven comment letters concerning this proposal. Although the commenters discussed a number of different topics, their comments generally addressed one of two categories: tax issues and clearing issues. The NASD responded to these comments in letters dated October 16, 1996 and November 26, 1996.

A. Tax Issues

1. IRS Private Letter Ruling

Several commenters noted that the NASD did not obtain a ruling from the IRS assuring the NASD that the proposal would not run afoul of Section 7704 of the IRC and the regulations promulgated thereunder.[35] The commenters stated that this is particularly important in light of the fact that the NASD sought such a ruling from the IRS on a prior occasion concerning a similar five percent safe harbor as set forth in IRS Notice 88-75, 1988-2 C.B. 386. Without such a ruling, they claimed that the liquidity and efficiency of the market would be reduced.[36] Therefore, the commenters maintained that, due to the importance of the proposal to the secondary market, its approval should be conditioned upon the NASD obtaining a favorable ruling from the IRS.

In response, the NASD asserted that the IRS regulations were clear and unambiguous in that the inclusion of quotations on the OTCBB would not constitute an established securities market, a secondary securities market, or the substantial equivalent thereof and, therefore, a ruling from the IRS was not necessary to approve the proposal. Nevertheless, the NASD obtained a private letter ruling from the IRS to gain absolute certainty regarding the impact of this proposal on the tax status of DPPs. Specifically, the IRS ruled that: (1) the OTCBB is not an established securities market for purposes of Section 7704(b) of the IRC and Section 1.7704–1(b) of the Income Tax Regulations; (2) a partnership whose interests are displayed on the OTCBB will not be considered to be publicly traded solely by reason of being displayed on the OTCBB because the OTCBB undertakes to display partnership interests in compliance with Example 2 of Treasury Regulation 1.7704–1(j)(2); (3) such partnerships may rely on this ruling provided it is not revoked and the OTCBB continues to operate in a manner consistent with the facts represented; (4) calculations relating to qualification for any applicable safe harbor in Treasury Regulation 1.7704–1 or in IRS Notice 88–75 remain the responsibility of the partnerships whose interests are traded and are not the responsibility of the NASD, The Nasdaq Stock Market Inc., NASD Regulation, Inc., or the OTCCBB; and (5) notwithstanding that the OTCBB does not meet the requirements to be a QMS under Treasury Regulation 1.7704–1(g), matching services eligible for participation in the OTCBB may utilize the OTCBB to display nonfirm prices and unpriced indications of interest without disqualifying themselves as a QMS, provided that they otherwise meet all of the requirements for a QMS under Treasury Regulation 1.7704–1(g).[37] Compliance with the requirements for a QMS will be the sole responsibility of the matching service, not the NASD, The Nasdaq Stock Market, Inc., NASD Regulation, Inc., or the OTCBB.

2. Procedural Safeguards

One commenter requested that the NASD provide additional information concerning the procedures the NASD would employ to reasonably assure general partners that the DPP securities of the partnerships they manage would not afoul of the safe harbors in Treasury

[29] See 17 CFR 240.15c2–11 (governing the initiation or resumption of quotations by a broker-dealer for over-the-counter securities in a non-Nasdaq interdealer quotation medium).

[30] The proposed reporting requirements do not apply to (1) transactions made in reliance on Section 4(2) of the Securities Act of 1933, (2) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the DPP (*e.g.* gifts), or (3) transactions executed on a registered national securities exchange or through Nasdaq. See proposed NASD Rule 6920(g).

[31] Certain minor changes have been made to the definition of the term ''ACT eligible security'' to clarify that transactions in Nasdaq SmallCap and certain other OTC securities must be reported through ACT as well.

[32] The date of the trade plus one.

[33] The NASD's understanding is that members who effect transactions in DPPs predominately act in the capacity of agent. For reporting purposes, the concepts of agency and principal have the same meaning as those terms are commonly used or understood, unless otherwise noted in proposed NASD Rule 6900.

[34] As proposed, NASD Rule 6920 provides that a member may use the ACT Service Desk if it averaged five fewer trades per day during the previous calendar quarter. In calculating the average number of trades per day, transactions in any security must be included, not just transactions in DPPs.

[35] See Fotenos & Suttle Letter, *supra* note 4; CPB Letter No. 2, *supra* note 4; APS Letter, *supra* note 4.

[36] See CPB Letter No. 2, *supra* note 4 (asserting that an IRS ruling is required to allow QMSs to participate in the OTCBB without affecting their status as a QMS); APS Letter, *supra* note 4 (claiming that certain general partners will use the absence of such a ruling as an excuse to restrict the trading of their DPPs).

[37] See letter from William P. O'Shea, Chief, Branch 3, Office of the Assistant Chief Counsel, IRS, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated October 7, 1996 and attached as Exhibit 3 to the NASD Response (''IRS Ruling'').

Regulation 1.7704–01.[38] The NASD addressed this comment by noting that virtually all partnership agreements require that general partners first approve all transfers of partnership interests and grant the general partner the authority to reject transfers that may jeopardize the tax status of the partnership. The NASD explained that the proposal would not affect the fiduciary responsibility currently born by general partners of ensuring the tax status of their DPPs. Thus, the monitoring of the safe harbor threshold levels would continue to be the responsibility of the general partners.[39]

3. Qualified Matching Services

One comment letter discussed the potential impact the proposal might have on the QMS safe harbor.[40] The commenter alleged that a shadow of uncertainty would be cast on the status of QMSs that also wished to publish quotes on the OTCBB because the OTCBB was not a QMS. The commenter claimed that such dual participation would jeopardize the QMS status of those members. In order to protect their QMS safe harbor status, the commenter predicted that QMSs would not publish quotes on the OTCBB and thereby lead to further fragmentation of the DPP market. In addition, the commenter asserted that this uncertainty would disadvantage those firms that made the investment in becoming qualified as a QMS because some general partners will simply suspend all trading at the 2% level, regardless of who is involved in the trades. To avoid these problems, the commenter suggested that the NASD modify the rules of the OTCBB to accommodate different turnover levels and obtain a private letter ruling from the IRS that specified that publishing nonfirm quotes on the OTC Bulletin Board would not disqualify a system as a QMS.

The NASD responded by noting that the proposal would have no effect whatsoever on the application of the QMS safe harbor because a QMS could maintain its status by simply complying with that safe harbor's requirements while utilizing the OTCBB.[41] Moreover, the NASD asserted that QMSs may actually enjoy some advantages over non-QMS participants utilizing the OTCBB because QMSs could continue to utilize the OCTBB until the 10% QMS safe harbor level was reached, while other OCTBB participants will be effectively capped by the IRS regulations at the 2% *de minimis* level.

B. Clearing Issues

1. Timing of Trade Reports

The commenters requested further guidance concerning the timing of DPP trade reporting.[42] The commenters explained that transfers in the DPP secondary market differ significantly from transfers in other secondary securities markets in that these contracts are subject to a number of unique contingencies.[43] These contingencies often cause significant delays in the transfer process. As a result, many ''trades'' fail. Therefore, the commenters requested that the NASD reconsider when a trade takes place for ACT reporting purposes.

The NASD explained that an obligation to report a transaction in a DPP security is triggered on the day following the ''date of execution.'' [44] Once an agreement to trade has been reached, the NASD expects the appropriate member to report the transaction. The NASD believes delaying the transaction report until a later date when the transfer actually occurs could mislead market participants and regulators who need to access the current value of a DPP.

In addition, the NASD does not believe it is necessary for the reporting member to submit a correction or fail to notice if a transfer does not take place after a transaction is reported. The NASD maintained that the subsequent events that may impair the process of transferring a DPP do not negate the circumstances surrounding the events that initially gave rise to the intent to trade the security.

2. OTC Bulletin Board Symbols

The commenters questioned the ability of the NASD's current six digit symbol format to sufficiently service all of the DPPs in existence, inquired whether it would be necessary to report a DPP transaction through ACT if a NASD symbol did not exist, and requestd that the NASD provide a symbol directory at least sixty days prior to the final implementation of this proposal so that NASD members would have ample time to input this information into their computer systems.[45]

In response to these comments, the NASD assured the Commission that it will announce the effective date of the proposed rule change in a Notice to Members no later than forty-five days following commission approval of the proposed rule change and, in no event, will that effective date be sooner than forty-five days after Commission approval of the proposal.[46]

3. Associated Costs

One commenter asserted that the proposal would increase its costs and reduce its allowable compensation.[47] The commenter attributed the increase in costs to the proposal's reporting requirement, the need for additional equipment, and reduced spreads.

4. Standardized Transfer Forms

Several commenters contended that the NASD's standardized transfer forms, including the standardized distribution allocation agreement, contain flaws that render them useless.[48] The commenters maintained that distribution terms are extremely material to the quoted price and, therefore, quotations on the OTC Bulletin Board should not be allowed until this matter is resolved.

In response, the NASD emphasized the importance of the standardized forms, but also acknowledged the difficulty of bringing total uniformity to every transfer in this market.[49] As a result, the NASD has filed a proposed amendment to NASD Rule 11580 that would permit members to modify the forms after receiving authorization from NASD Regulation staff.[50]

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[38] See Fotenos & Suttle Letter, *supra* note 4.

[39] See Amendment No. 1 *supra* note 6; IRS Ruling, *supra* note 37. To assist the general partners with such compliance, the NASD will make transaction reporting information available for a nominal fee.

[40] See CPB Letter No. 2, *supra* note 4.

[41] See Amendment No. 1 *supra* note 6. *See also* IRS Ruling *supra* note 37.

[42] See Fotenos & Suttle Letter, *supra* note 4; NAPEX Letter, *supra* note 4.

[43] For example, transfers in the DPP secondary market are subject to the approval of the general partner(s), which often impose informational requirements. In addition, the prior consent of a state regulator may be required under certain circumstances. See Dudley Muth et al., *Transferring Limited Partnership Interests, Real Est. Sec. J.* Winter 1981, at 51 (detailing the transfer process of a DPP).

[44] See Amendment No. 1, *supra* note 6. Proposed NASD Rule 6910(e) defines the ''date of execution'' as ''the date when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of units to be traded.''

[45] See CPB Letter No. 1, *supra* note 4; NAPEX Letter, *supra* note 4.

[46] See Amendment No. 1, *supra* note 6. The NASD also indicated that the effective date will be no later than 90 days following the publication of that Notice to Members. should this schedule need to be revised, the NASD stated that it will immediately notify the Commission.

[47] See NAPEX Letter, *supra* note 4.

[48] See CPB Letter No. 3, *supra* note 4; NAPEX Letter, *supra* note 4; APS Letter, *supra* note 4. For example, one commenter asserted that it is often necessary to prepare two sets of transfer documents to effect transactions because many general partners refuse to honor the NASD's forms. NAPEX Letter, *supra* note 4.

[49] NASD Response, *supra* note 5.

[50] See Securities Exchange Act Release No. 38042 (Dec. 11, 1996), 61 FR 66339 (publishing notice of

Continued

V. Discussion

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposed rule change is consistent with Section 15A(b)(6)[51] because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In making this finding, the Commission notes that the proposal should promote more efficient regulation of the DPP market, as well as enhance transparency, liquidity, and competition in that market.[52] The Commission also believes the proposed rule change is consistent with Section 15A(b)(2)[53] because it improves the NASD's ability to regulate the DPP market by increasing its surveillance capabilities.[54]

During the 1980s, over $150 billion of public limited partnership interests were sold to approximately eleven million U.S. investors, most of whom were retail investors with an average investment of ten thousand dollars.[55] Investors usually purchased these securities with the understanding that they were long-term, illiquid investments to be held until the holding period expired and the partnership was liquidated.[56] The holding period of many of these securities, however, had to be extended beyond the originally anticipated five to ten year holding period due to weakness in the underlying value of many partnership assets. This extended holding period has contributed to the development of a viable secondary market for DPP securities.[57] Given the size and nature of this market, it is important that it operate efficiently and fairly. In this regard, the proposal represents a positive, evolutionary change in the DDP market.[58] It increases transparency without adversely affecting the tax status of the quoted securities or inhibiting the clearance and settlement process.

A. Benefits of the Proposal

By increasing transparency, the proposed rule change should enhance investor protection and increase the actual and perceived fairness of the DPP market. The proposal should benefit investors by improving their ability to secure better prices in DPP transactions and by making it easier for them to monitor the quality of executions they receive from their intermediaries. Moreover, the increased transparency should assist regulators by expanding their market oversight capabilities and their ability to monitor member handling of DPP transactions and markups. Finally, the increased transparency should assist NASD members to fulfill their regulatory responsibilities and help prevent overreaching by certain members of other, previously less informed members.

In addition, the proposal should promote liquidity in the DPP market by encouraging greater investor participation.[59] For example, a more transparent market can reduce trading costs by decreasing spreads and, as noted previously, facilitate the investors' ability to monitor the quality of executions they receive. This should foster investor confidence in the DPP market and, as a result, investors should be more willing to participate.[60] This increased participation should elevate the level of liquidity in the DPP market.[61]

File No. SR–NASD–96–42). Currently, NASD Rule 11580 does not allow NASD members to modify the NASD's standardized forms concerning limited partnership interests.

[51] 15 U.S.C. 78O–3(b)(6).

[52] 15 U.S.C. 78c(f) (as added by the ''National Securities Markets Improvement Act of 1996'').

[53] 15 U.S.C. 78O–3(b)(2).

[54] The Commission notes that the proposal also promotes many of the same policy considerations Congress found appropriate for the development of the National Market System. For example, the proposal should improve the efficiency of DPP market operations, broaden the distribution of market information, enhance the NASD's market oversight capabilities, and foster competition among market participants through the use of new data processing and communications techniques. See 15 U.S.C. 78k–1(a)(1).

[55] *Senate Comm. on Banking, Housing, and Urban Affairs, Limited Partnership Rollup Reform Act of 1993, S. Rep. No.* 121. 103d Cong., 1st Sess., 4 (1993). *See also* Deborah A. DeMott, *Rollups of Limited Partnerships: Questions of Regulation and Fairness*, 70 *Wash. U. L.Q.* 617 (1992) *in Limited Partnerships: Hearings on H.R. 617 Before the Subcomm. on Telecommunications and Finance of the House Committee on Energy and Commerce,* 103d Cong., 1st Sess., 114–15 (1993) (classifying the limited partnership interests sold by broker-dealers as an overwhelmingly ''retail'' product because 8 million of the 11 million purchasers of these securities were individual investors).

[56] *House Comm. on Energy and Commerce, Limited Partnership Rollup Reform Act of 1993, H.R. Rep. No.* 21, 103 Cong., 1st Sess., 7 (1993); Securities Exchange Act Release No. 29883 (Oct. 30, 1991), 56 FR 57237 (adopting rules intended to enhance the quality of information provided to investors in connection with transactions involving rollups of limited partnerships). *See also C. David Chase, Mugged on Wall Street* 195 (1987) (espousing the author's personal opinion that it is easier to divorce one's spouse than to separate from a partnership).

[57] The longer the holding period, the more likely an event requiring a limited partner to sell his interest will occur (*e.g.*, death, liquidation of an IRA account, divorce, or an extraordinary expense such as a major medical procedure or post-secondary education). See also NASD Response, *supra* note 5 (asserting that, in the aggregate, this market transfers an estimated $250 to $300 million worth of DPP securities annually).

[58] One commenter suggested that the Commission delay its consideration of the proposed rule change until it had rendered a decision regarding two pending NASD petitions for rulemaking. See NPM Letter, *supra* note 4 (discussing the NASD's pending rulemaking petitions concerning the applicability of Rules 10b–17, 17Ad–2, 17Ad–3, 17Ad–4, and 17Ad–6 to the DPP market). The NASD withdrew its request concerning the modification of SEC transfer agent rules under Section 17A of the Act on December 23, 1996. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 20, 1996 (File No. 4–387) Although the pending rulemaking petition addresses important issues, the Commission believes the issues presented in the proposed rule change may be addressed independently of those matters.

[59] See Securities Exchange Act Release No. 37619A, 61 FR 48289 n.58, n.122 (Sept. 12, 1996) (adopting the ''Order Execution Obligation Rules'' and noting that past Commission enhancements to transparency have resulted in improved liquidity). One commenter claimed that the proposal will harm liquidity because it will reduce spreads which, in turn, will decrease members' compensation and, ultimately, cause market participants to reevaluate the services that they wish to provide. NAPEX Letter, *supra* note 4. The Commission recently addressed a similar concern in connection with its adoption of the Order Execution Obligation Rules. By mandating the display of customer limit orders under most circumstances, the Commission recognized that increased transparency may reduce market maker profits through the narrowing of spreads and, as a result, may force less efficient competitors to stop making markets in some of the securities that they then quoted. Nevertheless, the Commission did not believe the Order Execution Obligation Rules would have a significant negative impact on the market because customers are the ultimate source of liquidity for the markets. Order Execution Obligation Rules, *supra* note 59, at n.118. See also ''Why Protect Investors?'' Remarks by SEC Chairman Arthur Levitt Before the Commonwealth Club, San Francisco, California (May 17, 1996) available on SEC World Wide Web site at ''www.sec.gov/news/spchindx.htm#chair'' (noting that a market can exist without brokers, but it cannot exist without investors). Similarly, the Commission believes the proposal's benefits of increased investor protection, elevated liquidity, and improved efficiency outweigh its associated costs, including the potential loss of liquidity provided by market makers.

[60] One commenter expressed concern that approval of the proposal will cause the volume of DPP transactions to explode and unduly exacerbate certain clearance and settlement issues that currently exist in this market. See NPM Letter, *supra* note 4. So also Muth et al., *supra* note 43 (detailing the complicated clearance and settlement process). The Commission disagrees. Although more investors, traders, and dealers may be willing to participate in a fairer, more transparent, more competitive DPP market, any potential increase in the volume of transactions that may occur in this market is limited by the applicable IRC provisions and the rules and regulations promulgated thereunder. Furthermore, this inhibition on volume should prevent these long-term investments from being converted into short-term speculative securities and minimize any potential effect on the primary market for DPPs.

[61] SEC, Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments IV–3 (Jan. 1994) (''Market 2000

The proposal also fosters market efficiency by helping unite the extremely fragmented DPP market. The current structure of this market requires the DPP securities be traded ''in the dark'' (*i.e.,* with little or not transparency for those trades). This prevents investors from assessing the overall supply and demand for a particular DPP security and, consequently, hampers their ability to determine that security's optimal price. Furthermore, this opaque trading makes price competition difficult and inefficient.[62]

The proposal addresses both of these inefficiencies. First, by requiring that all transactions in DPP securities be reported through ACT[63] and permitting quotes and market information to be disseminated via the OTC Bulletin Board, the proposal provides investors with valuable information that enhances their ability to accurately determine the current value of a DPP, discern the direction of recent trading activity, and determine whether significant trading is occurring between, or outside of, the displayed nonfirm quotes. Second, the proposed rule change fosters price competition in this market[64] because pricing information will be more readily available.[65]

In sum, the increased transparency should reduce the effects of fragmentation and encourage competition.[66] Thus, the Commission believes that proposal's benefits of increased transparency for the DPP market outweigh its potential costs.[67]

B. Tax Issues

Although most of the commenters' concerns[68] are explicitly addressed in Treasury Regulation 1.7704–1,[69] the NASD obtained a private letter ruling that, among other things, specifically addresses each of their tax concerns.[70] In that ruling, the IRS explained that (1) the OTCBB is not an established securities market, a secondary securities market, or the substantial equivalent thereof and (2) the calculations relating to qualification for any applicable safe harbor in Treasury Regulation 1.7704–1 or IRS Notice 88–75 are the sole responsibility of the partnerships whose interests are traded.[71] Thus, there is no need for the NASD to make any additional modifications to the OTCBB.[72]

The IRS also clarified that a QMS may utilize the OTCBB without jeopardizing its status as a QMS, as long as the QMS continues to comply with all of the applicable safe harbor provisions.[73] Hence, a member that has made the capital investment to become a QMS may enjoy an advantage over those members that are not a QMS because the IRS regulations permit QMSs to facilitate transactions until the 10% QMS safe harbor threshold is met, while members relying on the *de minimis* safe harbor are capped at 2%.[74] This advantage should promote competition and increase the market's liquidity by encouraging other NASD members to become QMSs.

C. Clearing Issues

1. Trade Reporting

Notwithstanding the unique contingencies that exist in a DPP transaction, the Commission believes it is appropriate for the NASD to require its members to report transactions in DPP securities as soon as an agreement to trade has been reached. By reporting transactions by T+1, the member will be reporting the current trading interest in a particular DPP. If the reporting requirement were postponed until the date the transfer actually takes place, investors would be receiving information that was several weeks, or possibly months, old. The usefulness of such information to parties attempting to ascertain the current value of a DPP

Study''); Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438 (noting that the depth and liquidity of any particular security is dependent on numerous variables, including the degree of customer buying and selling interest in the security and the quality and capitalization of the issuer).

[62] American Bar Association, Committee on Partnerships and Unincorporated Business Organizations, Publicly Traded Limited Partnership, 39 Bus. Law. 717–18 (1984) (explaining that secondary sales of limited partnership often result in a ''haphazard search'' to find a buyer for the unit).

[63] See *supra* note 30 (listing the limited exemptions from the reporting requirement).

[64] One commenter asserted that utilizing nonfirm quotes and unpriced indications of interest will encourage market participants to place unrealistic bids to attract sellers. *See* NAPEX Letter, *supra* note 4. This assertion, however, overlooks at least three policing mechanisms inherent in a competitive market.

First, the existence of other quotes limit the ability of a market participant to place an unrealistic quote to attract interest and then move away form this quote once negotiations begin. Assume, for example A, B, and C each place a bid on the OTCBB for a particular DPP at $1050, $1025, and $1000 respectively. Naturally, a prospective seller would begin negotiating with the most favorable bidder, in this case A. If A attempts to reduce its bid lower than $1025, A risks losing the transaction because A does not know B's intentions—B may be willing to pay $1025.

Second, members are under a duty to provide their customers with best execution as to price. NTM–91–69 points out that this requires a member to obtain quotations from at least three dealers to determine the best interdealer market price for a non-Nasdaq security. For example, if W, X, Y, and Z each place a bid on the OTCBB for a particular DPP at $1050, $1025, $1000, and $975 respectively, the seller's broker would contact, at a minimum, W, X, and Y. If W, X, and Y are only willing to trade at prices below Z's bid, the broker should contact Z as well.

Third, the Commission notes that NASD Rule 3310 prohibits members from publishing any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation and is not published for any deceptive or manipulative purpose.

[65] This information will be accessible from almost 6,000 Nasdaq Workstations and an additional 290,000 market data vendor terminals. NASD Repsonse, *supra* note 5.

[66] Market 2000 Study, *supra* note 61, at IV–1.

[67] One commenter claimed that the reporting requirement would increase members' costs by requiring them to procure additional equipment. *See* NAPEX Letter, *supra* note 4. The Commission does not believe the proposal will have a significant impact on the NASD's membership as a whole because this justifiable cost will be limited to a relatively small group of members. *Cf.* NTM–91–69, *supra* note 14 (finding that the DPP market was consisted primarily of two dozen participants acting as principal or agent); CPB Letter No. 2, *supra* note 4 (claiming to have effectuated one-third of all transactions reported to independent sources since 1992); NASD Response, *supra* note 5 (noting that the NASD interviewed all identifiable participants in the secondary market for DPPs). Moreover, the Commission notes that members that average five or fewer trades per day for the previous calendar quarter will not need to acquire any additional equipment because they may utilize the ACT Service Desk to report their trades. Proposed NASD Rule 6920. Thus, of this already limited group, only active members who do not already possess the necessary equipment will be affected. See also *supra* note 59 and accompanying text (discussing the costs associated with increased transparency).

[68] As noted above, the commenters raised several concerns regarding the potential tax implications they believed the proposed rule change could have. Specifically, the commenters requested that: (1) the NASD obtain a private letter ruling from the IRS stating that the inclusion of a DPP on the OTCBB would not, by itself, transform that DPP into a publicly traded partnership; (2) the NASD detail what procedural protections were going to exist to ensure that the IRS safe harbor provisions were not exceeded; and (3) the NASD consider the potential impact the proposal could have on QMSs.

[69] See Treas. Reg. § 1.7704–1(j)(2) (setting forth in Example 2 a hypothetical situation that is virtually identical to the NASD's proposed rule change).

[70] IRS Ruling, *supra* note 37.

[71] IRS Ruling, *supra* note 37.

[72] Nevertheless, the NASD has indicated that it will assist general partners by making transaction data available to them for a nominal fee. The Commission notes, however, that the NASD's rules currently do not contain the formula by which such charges will be calculated. Therefore, the NASD must submit a proposed rule change to the Commission pursuant to Section 19 of the Act before charging such a fee. Moreover, given that this fee will be imposed on non-NASD members, it must be submitted for full notice and comment because it does not qualify for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act. See 15 U.S.C. 78s(b); Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692 (amending Rule 19b–4 and stating that, as a matter of general policy, a proposed rule change that establishes or changes a fee applicable to nonmembers must be filed under Section 19(b)(2) of the Act for full notice and comment).

[73] IRS Ruling, *supra* note 37.

[74] Certain transactions, such as those not involving trading, are not subject to a strict, predetermined cap. *See supra* notes 23 to 28 and accompanying text (providing a general explanation of the IRS safe harbor provisions).

is minimal when compared to information reported by T+1. Moreover, reporting a trade when the agreement occurs, rather than waiting until the transfer actually takes place, is consistent with current industry practice for other securities.

The Commission also does not believe it is necessary for members to submit a notice at a later date if a trade fails due to the unique post-trade contingencies that exist in the DPP market.[75] Ultimately, the price of a security is determined by two factors: the amount of money a buyer is willing to spend to acquire a certain amount of a particular security and the amount of money a seller is willing to accept to sell the same amount of that security. It is this information that investors value the most. The fact that a transaction fails at a later date because a general partner refuses to acknowledge the trade does not disparage the quality of the previously reported information concerning current market interest.[76]

2. Implementation

The Commission believes the NASD's implementation plan adequately addresses the commenters' concerns. The NASD intends to announce the effective date of the proposed rule change in a Notice to Members within forty-five days following the date of this order. This effective date will be no later than 90 days following the publication of that Notice to Members but, in no event, will the effective date be sooner than forty-five days after the date of this order.[77] This implementation schedule should provide the NASD's members with ample time to procure any necessary equipment and enter any essential data into their computer systems.

To facilitate transaction reporting, the NASD has compiled a comprehensive list of symbols that will be utilized by members when reporting a transaction through ACT.[78] If a symbol does not exist for a particular DPP, a member simply calls the ACT Service Desk before reporting the transaction, and a symbol will be assigned.[79]

D. Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 simply updates the proposal's internal citations to conform with the new rule numbering system that was implemented by the NASD after it filed SR–NASD–96–08 with the Commission. Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 15A and Section 19(b)(2) of the Act.[80]

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, 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 at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–08 and should be submitted by February 5, 1997.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[81] that the proposed rule change (SR–NASD–96–08) is approved, including Amendment No. 1 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[82]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–896 Filed 1–14–97; 8:45 am]

BILLING CODE 8010–01–M

[75] Of course, members must correct inaccurate trade reports. For example, a member must correct a trade reported at $680 if, in fact, the trade price was $860.

[76] The Commission assumes that the parties are bargaining in good faith when they reach an agreement that is subsequently reported through ACT. *Cf.* NASD Rule 3310 (prohibiting members from publishing the notice of a purchase or sale of any security without having reasonable cause to believe that such transaction was a bona fide purchase or sale).

[77] Amendment No. 1, *supra* note 6.

[78] This list will automatically be incorporated into the Nasdaq Workstation's on-line symbols directory when the proposed rule change becomes effective. If members would like a copy of this list prior to the proposal's implementation, however, they simply have to contact the Nasdaq Market Operations staff in Trumbull, Connecticut, and an electronic or paper copy will be provided.

[79] The Commission believes the current six digit format is sufficient to service the DPP market. *Contra* NAPEX Letter, *supra* note 4. After polling the major market participants, the NASD represented that it anticipates approximately 2,000 DPP securities to be quoted on the OTCBB. Telephone conversation between Andrew S. Margolin, Senior Attorney, The Nasdaq Stock Market, Inc., and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Jan. 3, 1996). Notwithstanding that the NASD intends to utilize the prefixes of ''xx,'' ''yy,'' and ''zz'' to indicate DPP securities, the remaining four digits still provide ample capacity because a surplus of approximately 86,000 symbols will exist to accommodate unanticipated or new DPP securities. In addition, the Commission does not believe the expense associated with mandating an entirely new, expanded symbol format to ensure the symbols assigned clearly indicate the issuer of a particular DPP outweighs the potential benefits such a convenience would confer upon NASD members.

[80] 15 U.S.C. 70*o*–3, 78s(b)(2).

[81] 15 U.S.C. 78s(b)(2).

[82] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2499]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Dangerous Goods, Solid Cargoes and Containers; Notice of Meeting

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on January 31, 1997, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, S.W., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Second Session of the DSC Subcommittee of the International Maritime Organization (IMO) which is scheduled for February 24–28, 1997, at the IMO Headquarters in London.

The agenda items of particular interest are:

a. Amendment 29 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the UN Recommendations on the Transport of Dangerous Goods.

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

c. Development of measures complementary to the Irradiated Nuclear Fuel (INF) Code.

d. Amendments to SOLAS chapters VI and VII.

e. Bulk carrier safety: need for fitting water level alarms in cargo holds.

f. Revision of the format of the IMDG Code.

g. Loading and unloading of bulk cargoes.

h. Cargo securing manual.

i. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

j. Evaluation of properties of solid bulk cargoes.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 26, 1996.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–885 Filed 1–14–97; 8:45 am]

BILLING CODE 4610–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on the Negotiation of a Bilateral Trade Agreement Between the United States and Laos

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the United States is in the process of negotiating a bilateral trade agreement with the Lao People's Democratic Republic (Laos). USTR invites comments from the public on concerns or goals of U.S. persons and businesses with respect to trade with Laos, and the extent to which the bilateral trade agreement can address those concerns or help promote those goals. Comments in particular might address current Lao practices that affect (a) market access for U.S. exports, such as tariffs and non-tariff measures, (b) trade and investment in services; and (c) any other measure that impedes trade in goods and services with the United States. Comments received will be considered in developing U.S. positions and objectives in the process of negotiating the bilateral trade agreement.

DATES: Comments should be submitted on or before noon on Monday, February 17, 1997.

ADDRESSES: Comments may be submitted to Joseph Damond, Director for South-East Asian Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Damond, Director for Southeast Asia, at (202)395–6813, or Thomas Robertson, Associate General Counsel, at (202)395–6800.

SUPPLEMENTARY INFORMATION: The United States is currently in the process of negotiating a bilateral trade agreement with Laos. One of the central elements of that agreement would be a bilateral commitment to extend non-discriminatory, most-favored-nation treatment to the products of the other country. We expect legislative action to fulfill this obligation on the part of the United States. The agreement may also address a wide range of other issues, including: (1) Suspension or termination for national security reasons; (2) safeguard arrangements; (3) the protection of intellectual property rights; (4) the settlement of commercial differences and disputes; (5) the promotion of trade; (6) consultations; (7) the grant of national treatment to the products of the other country; (8) the grant of trading rights; (9) the elimination of market access barriers (e.g., tariffs, import and export restrictions, quotas, licensing requirements, customs valuation, and fees and charges); (10) the transparency of legal and regulatory regimes; (11) state trading and industrial subsidies; (12) government procurement; (13) trade-related investment measures; (14) trade in services; and (15) investment restrictions.

USTR invites written comments from the public on market access and any other issues to be addressed in the course of the negotiations with Laos on the bilateral trade agreement. All comments will be considered in developing U.S. positions and objectives during these negotiations on each of the issues noted above or otherwise raised by the public. Issues of interest might include, but are not necessarily limited to: (a) Comments on possible tariff reductions and the removal of border measures such as quotas or import licensing requirements; (b) uniform application of the trading system; (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws concerning trade-related issues, such as protection and enforcement of intellectual property rights (IPR) and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements; (g) subsidies and domestic supports and incentives; (h) safeguard and unfair trade practice procedures applied to imports; (i) plant, animal, and human health and safety requirements; (j) food standards and other technical barriers to trade; (k) activities of state trading enterprises, including restrictions and other trade-distorting practices; (l) price controls and policies; (m) government procurement practices; and (n) the trade-related aspects of investment policies and the protection and enforcement of IPRs. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the ability to provide services on a cross-border basis, and the ability of persons to enter temporarily to provide services. Information on products or practices subject to these negotiations should include, whenever appropriate, the relevant import or export tariff classification number used.

Public Comment: Requirements for Submissions

Comments must be in English and provided with fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as privileged or confidential business information must certify that such information is privileged or business confidential and would not customarily be released to the public by the commenting party. Privileged or confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy. Persons are encouraged to provide a non-confidential summary of the information designated as privileged or business confidential.

A person requesting that information or advice contained in a comment submitted by that person, other than privileged or business confidential information, be treated as confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155)

(1) Must so designate that information or advice;

(2) Must clearly mark the material as ''CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

USTR will maintain a file containing the public versions of comments, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments made to USTR from the public with respect to the proceeding. An appointment to review the public file may be made by calling Brenda Webb, (202) 395–6186. The

USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Robert Cassidy,

Assistant U.S. Trade Representative for Asia and the Pacific.

[FR Doc. 97–1018 Filed 1–14–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–15, Small Airplane Certification Compliance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–15, Small Airplane Certification Compliance Program. The principal certification activity of general aviation airplanes for the past two decades has been directed toward sophisticated products, i.e., pressurized single-engine airplanes, twin-engine turboprop airplanes, and commuters. These programs necessitated the development of advanced means of compliance. Over time, these more sophisticated procedures became the standard and threatened to obscure simpler means of compliance that are essential for economical development of simple low performance airplanes. A team of industry personnel, Designated Engineering Representatives, and Aircraft Certification Office personnel, who were either directly involved or had access to files related to certification of low performance airplanes during the 1950–1970 era, was assembled to document the most appropriate past practices. This AC is the result of the teams' effort.

DATES: Advisory Circular 23–15 was issued on January 2, 1997, by the Manager of the Small Airplane Directorate, Aircraft Certification Service, in Kansas City, Missouri.

How to Obtain Copies: A copy of AC 23–15 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Kansas City, Missouri, on January 2, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1020 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burlington Regional Airport, Burlington, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burlington Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 14, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael R. Salamone, Executive Director, at the following address: Burlington Regional Airport, 2515 Summer Street, Burlington, Iowa 52601–3330.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Southeast Iowa Regional Airport Authority, under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Burlington Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 27, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Burlington, Iowa, was not substantially complete within the requirements of § 158.25 of Part 158. The Southeast Iowa Regional Airport Authority submitted supplemental information on November 4, 1996, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than March 4, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July, 1997.

Proposed charge expiration date: February, 2003.

Total estimated PFC revenue: $460,000.

Brief description of proposed project(s): Install security fencing; install lighting, signage and reflectors on Runways 18/36 and 12/30; acquire aircraft rapid intervention firefighting vehicle; update the airport master plan; acquire Tracts 601, 602, and 603 in the runway protection zone; replace existing airfield generator; rehabilitate and narrow Runway 12/30; conduct a feasibility study for Runway 12/30 edge drains; acquire snow removal equipment; construct joint-use (airport/city) aircraft rapid intervention firefighting equipment building; conduct new terminal feasibility study; rehabilitate taxilane and hangar taxilane road.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burlington Regional Airport.

Issued in Kansas City, Missouri on December 2, 1996.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 97–1019 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Sequoyah and LeFlore Counties, OK

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 Sequoyah and LeFlore Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Erickson, Division Administrator, Federal Highway Administration, 715 South Metropolitan Avenue, Suite 700, Oklahoma City, Oklahoma 73108, Telephone: (405) 945–6173.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve US Route 59 (US59) from a two-lane to a four-lane facility from its intersection with State Highway 9 (SH 9), also known as Sunset Corner, north to Interstate 40 (I–40).

This facility has been identified as a Transportation Improvement Corridor (TIC) in the Statewide Intermodal Transportation Plan and improvements to the corridor are considered necessary to meet TIC policy as well as present and future traffic demands. Alternatives under consideration include (1) improve the existing alignment, (2) improve the existing alignment with a new roadway alignment over Wild Horse Mountain, and (3) a new alignment corridor from Sunset Corner north to I–40 just east of Sallisaw.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings and/or public hearings will be held in the vicinity of the proposal in the future. Public notice will be given of the time and place of the meetings and/or hearings.

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 Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: January 6, 1997.

Jim Erickson,

FHWA, Division Administrator, Oklahoma City, Oklahoma.

[FR Doc. 97–917 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Docket No. RSGM–96–5]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Beech Mountain Railroad Company (BMRR)

[Waiver Petition Docket Number RSGM–96–5]

The BMRR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223.9 (a), certified glazing) for its two locomotives, ALCO S2 1,000 HP #113 and #115, built in the early 1950s.

BMRR is a Class III railroad operating within Randolph and Upshur counties in the state of West Virginia. According to the requesting railroad, the crew consists of five men comprised of one supervisor, one engineer, one brakeman, and two track servicemen. The BMRR is privately owned by Carter-ROAG Coal Company (CRCC). The purpose of the BMRR's operations is to provide transfer service between the CSX Transportation, Incorporated's interchange located in Alexander, West Virginia, and the CRCC's Preparation Plant located in Star Bridge, West Virginia. The BMRR's line transverses—without instances of broken glass due to projectiles—a remote and isolated area. The railroad states that locomotives are early 1950 models, and installation of the safety glazing would require extensive and expensive refacing of the locomotive cabs. The BMRR also states that all employees are aware of this request for waiver and support it without exception.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings 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 RSGM–96–5) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA 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 (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–958 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

[FRA Docket No. LI–96–2]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railroad

[Waiver Petition Docket Number LI–96–2]

The Canadian National Railroad (CN) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards, 49 CFR 229.27 (a)(2) and 229.29 (a), concerning the time interval provisions of the periodic cleaning, repairing, and testing of locomotive air brake components for all of their locomotives operating in the United States equipped with 26L type brake equipment. FRA currently permits railroads to operate locomotives equipped with 26L type brakes for periods not to exceed 1,104 days, before performing the testing and inspection required by 49 CFR 229.27 (a)(2) and 229.29 (a).

Transport Canada has now authorized CN to operate its locomotives equipped with 26L braking equipment on 48-month cleaning intervals. The only exceptions are two valves in the system (P2A and H5) which will remain on a 36-month interval until future

evaluations establish that desired improvements with the valves have been achieved. According to CN, during the extensive testing period, which began in 1987 and involved approximately 1,200 locomotives, the reliability of the braking systems was never an issue, therefore, train operating safety is not at risk. With the high number of locomotives operating in international service, CN states that managing two different braking system maintenance intervals would be both problematic and costly. Further, to revert to a 36 month cleaning interval after almost ten years of successful testing at 48 month intervals, would not provide any additional safety benefits. CN would like the 48-month maintenance interval to be accepted for all of their locomotives that operate in the United States.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings 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 LI–96–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA 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 (9:00 a.m.—5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–957 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

[FRA Docket No. H–92–3]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for an extension of a waiver of compliance with certain provisions of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Westinghouse Air Brake Company

[Waiver Petition Docket Number H–92–3]

In 1992, the Westinghouse Air Brake Company (WABCO) was granted a waiver for their EPIC microprocessor-based locomotive braking equipment. Specifically, the waiver excludes 1000 locomotives equipped with EPIC braking equipment from the requirements of 49 CFR 229.29 by extending the required time interval for cleaning, testing, and inspecting locomotive air brake valves from 736 calendar days to five years. WABCO requests that the waiver condition which limits the number of locomotives permitted to be equipped with EPIC microprocessor-based braking equipment, be adjusted to include *all* locomotives in the United States that are equipped with EPIC 3102 and EPIC II electronic brake equipment. The EPIC 3101 series electronic brake equipment is *not* included in this request.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings 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–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA 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.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–959 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

[BS–AP–No. 3393]

The New Orleans Public Belt Railroad; Public Hearing

The New Orleans Public Belt Railroad has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of 15 signals (No.'s 48, 47, 46, 45, 40, 39, 38, 37, 33, 2, 14, 16, 18, 20, and 22) on the two Running tracks, between Lampert Junction, milepost J.O.2 and East Bridge Junction, milepost J.3.0, in New Orleans, Louisiana.

This proceeding is identified as FRA Block Signal Application Number (BS–AP–No.) 3393.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. on Wednesday, February 19, 1997, in the New Orleans Union Passenger Terminal, Room 201, located at 1001 Loyola Avenue, New Orleans, Louisiana. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on January 8, 1997.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 97–960 Filed 1–14–97; 8:45 am]

BILLING CODE 4910–06–P

Surface Transportation Board

[STB No. MC–F–20903]

Greyhound Lines, Inc.; Acquisition of Control; Los Rapidos, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Greyhound Lines, Inc. (GLI or applicant), has filed an application under 49 U.S.C. 14303(a) to acquire control of Los Rapidos, Inc. (LRI). Persons wishing to oppose the transaction must follow the rules at 49 CFR 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative grant of authority will be deemed vacated, and the Board will consider the comments and any replies and will issue a further decision on the application.

DATES: Unless opposing comments are filed, this notice will be effective March 3, 1997. Comments are due by March 3, 1997, and, if any are filed, applicants may reply by March 17, 1997.

ADDRESSES: Send original and 10 copies of any comments referring to STB No. MC–F–20903 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. Also, send one copy of comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: GLI (MC–1515) is a nationwide motor common carrier of passengers over regular routes that controls the following regional interstate motor passenger carriers: Texas, New Mexico & Oklahoma Coaches, Inc.; Continental Panhandle Lines, Inc.; and Vermont Transit, Inc. LRI (MC–293638) is a motor passenger carrier operating in California in interstate and foreign commerce over regular routes between: Los Angeles and Calexico, at the Mexican border; and between Fresno and San Ysidro, at the Mexican border. As a result of this control transaction, LRI will become a wholly owned subsidiary of GLI that will be controlled indirectly through Sistema Internacional de Transporte de Autobuses, Inc. (SITA), GLI's wholly owned noncarrier subsidiary. [1]

GLI states that its aggregate gross operating revenues, and those of its affiliates, exceed the $2 million jurisdictional threshold of 49 U.S.C. 14303(g). It asserts that acquisition of control will stimulate competition and improve the quality and adequacy of motor passenger service available to the Hispanic segment of the traveling public. Additionally, it maintains that the transaction will not cause an increase in fixed charges and that no employees will be adversely affected.

Applicant certifies that: (1) Both it and LRI hold satisfactory safety ratings from the U.S. Department of Transportation; (2) they both have sufficient insurance to cover the services they intend to offer; (3) no party to the transaction is either domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. We tentatively find, based on the application, that the proposed transaction is consistent with the public interest and should be authorized.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is Ordered

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. This notice will be effective on March 3, 1997, but will be deemed vacated if opposing comments are filed on or before that date.

3. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

Decided: January 6, 1997.

[1] SITA on December 2, 1996, entered into a voting trust to permit it to acquire LRI's stock prior to a decision on the merits of this application.

By the Board, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 97–955 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33325]

Lewis & Clark Railway Company, Lease and Operation Exemption; in Clark County, WA

Lewis & Clark Railway Company, a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Clark County, Washington 3.62 miles of rail line from milepost 3.62 at Rye to milepost 0.0 at Vancouver Junction, in Clark County, WA. Consummation was expected to occur on or after December 24, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33325, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005.

Decided: January 8, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–954 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33330]

Union County Industrial Railroad Company; Corporate Family Transaction Exemption; West Shore Railroad Corporation

Union County Industrial Railroad Company (UCIR) and West Shore Railroad Corporation (WSRC),[1] Class III

[1] UCIR and WSRC are owned and controlled by Richard D. Robey. UCIR owns and operates approximately 3.9 miles of rail line in the Commonwealth of Pennsylvania, which will be acquired by WSRC in *West Shore Railroad Corporation—Acquisition Exemption—Union County Industrial Railroad Company,* STB Finance Docket No. 33329 (STB served Jan. 15, 1997). WCRC

Continued

railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of WSRC into UCIR.

The earliest the transaction could be consummated was December 30, 1996, the effective date of the exemption (7 days after the exemption was filed).

UCIR will provide continuing rail common carrier service on the lines to be acquired by WSRC in STB Finance Docket No. 33329 and those previously operated by WSRC. The merger will improve the overall efficiency of rail operations and reduce costs associated with two corporate entities.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33330, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 6, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–952 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

operates approximately 8.965 miles of rail line in the Commonwealth of Pennsylvania.

[STB Finance Docket No. 33320]

Union Pacific Railroad Company; Corporate Family Exemption; Missouri Pacific Railroad Company

Union Pacific Railroad Company (UP) and Missouri Pacific Railroad Company (MP), Class I railroad affiliates in the Union Pacific System, have filed a joint notice of exemption to undertake a corporate family transaction. Under the Agreement and Plan of Merger, MP will merge with and into UP. UP will be the surviving corporation, and the corporate existence of MP will cease. The proposed transaction was to be consummated on or about January 1, 1997.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside applicants' corporate family. The purpose of the transaction is to avoid duplicate reporting requirements, and to achieve cost efficiencies which will result through corporate simplification.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33320, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Robert T. Opal, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: January 8, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–956 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33329]

West Shore Railroad Corporation; Acquisition Exemption; Union County Industrial Railroad Company

West Shore Railroad Corporation (WSRC), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire approximately 3.9 miles of rail line from the Union County Industrial Railroad Company (UCIR) between New Columbia, PA (MP 169.7), and Milton, PA (MP 173.6). UCIR will continue to provide rail common carrier service on behalf of WSRC.

The transaction was expected to be consummated on or after December 31, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33329, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Richard R. Wilson, Esq., Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 6, 1997.

By the board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–951 Filed 1–14–97; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Wednesday
January 15, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 101, 111, and 310

Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 111, and 310

[Docket Nos. 91P–0186 and 93P–0306]

Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to require label warning statements on products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes, and unit dose packaging for iron-containing products that contain 30 milligrams (mg) or more of iron per dosage unit. FDA is taking these actions because of the large number of acute iron poisonings, including deaths, in children less than 6 years of age attributable to accidental overdoses of iron-containing products. FDA is temporarily exempting one form of elemental iron, carbonyl iron, from the packaging requirements of this final rule. The temporary exemption will automatically expire 1 year from the effective date of this final rule. If, during the temporary exemption period, FDA receives animal data that establish that carbonyl iron is significantly less toxic than at least one commonly used iron salt, FDA will consider permanently exempting carbonyl iron from the packaging requirements of this final rule.

DATES: The regulation is effective July 15, 1997. For compliance dates see §§ 111.50(b)(1) and (b)(2) and 310.518(b)(1) and (b)(2).

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of October 6, 1994 (59 FR 51030), FDA published a proposed rule (the iron proposal) to require label warning statements for products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes. The proposal did not cover liquid or powder forms of iron and did not bear in any way on conventional foods containing naturally occurring or added iron. FDA also proposed regulations to require unit-dose packaging[1] for iron-containing products[2] that contain 30 mg or more of iron per dosage unit.[3]

FDA proposed these regulations because of the acute iron poisonings, including deaths, in children less than 6 years of age attributable to accidental overdoses of iron-containing products. The intent of these proposed regulations was to reduce the risk of accidental iron poisonings of young children by utilizing FDA's authority in conjunction with the existing requirements of the U.S. Consumer Product Safety Commission (CPSC) for child-resistant packaging for household substances. Since the publication of the iron proposal, FDA has obtained information from the American Association of Poison Control Centers (AAPCC) that indicates that accidental overdose of iron-containing products continues to be a problem in young children (Refs. 1 and 2). In 1994, at least 3,210 children under 5 years of age were treated in emergency rooms for exposure to iron-containing products, and two children are known to have died following such accidental overdose.

The iron proposal responded to citizen petitions submitted by AAPCC (the AAPCC petition) (Docket No. 91P–0186/CP1) (Ref. 3); the Attorneys General of 34 States, Commonwealths, and Territories (the AG petition) (Docket No. 93P–0306/CP1) (Ref. 4); and the Nonprescription Drug Manufacturers Association (the NDMA petition) (Docket No. 93P–0306/CP2) (Ref. 5). These petitions requested that FDA take action to ensure that products containing iron or iron salts do not pose a health hazard to young children and infants.

In the Federal Register of February 16, 1995 (60 FR 8989), in response to the Dietary Supplement Health and Education Act of 1994 (DSHEA), FDA published a supplemental proposed rule reflecting a shift in the agency's authority to establish regulations for dietary supplements.

[1] For the purposes of this document ''unit-dose packaging'' means a method of packaging a product into a nonreusable container designed to hold a single dosage intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units.

[2] Throughout this document, the term ''iron-containing products'' refers to solid oral dosage forms of both dietary supplement and drug products.

[3] In this document, the term ''dosage unit'' is used to denote the individual physical units of the iron-containing product such as tablets, capsules, caplets, or other physical forms, irrespective of whether one or more than one of these physical units comprises the recommended dose.

The agency received over 100 responses to the iron proposal and the supplemental proposal with one or more comments each from dietary supplement, drug, and packaging trade associations; consumers; Federal and State Government agencies; State attorneys general; poison control centers; the international community; health care providers; and dietary supplement and drug manufacturers and packers. Comments on the proposed requirement for a warning statement on iron-containing products were generally supportive, although many comments disagreed with the specifics of the agency's proposed text and requirements for prominence and placement. Several comments stated that firms already are including a voluntary warning statement on the label of iron-containing products. Comments on the proposed requirement for unit-dose packaging for iron-containing products that contain more than 30 mg of iron per dosage unit were divided on whether the proposed requirement was needed to ensure the safety of these products, and several comments challenged FDA's authority to establish such regulations.

II. Warning Statement for Iron-Containing Products

A. The Proposed Warning Statements

FDA proposed to require label warning statements on iron-containing dietary supplements and drug products. FDA tentatively concluded that the warning statements should incorporate elements from both the AG petition and the NDMA petition, as well as other elements that are designed to ensure that the statements perform their function.

FDA proposed two warning statements—one statement for use on iron-containing products packaged in unit-dose packaging and a slightly different statement for use on iron-containing products packaged in other than unit-dose packaging, e.g., a container with a child-resistant closure (CRC).

The proposed warning statement for use on iron-containing products packaged in unit-dose packaging reads as follows:

WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

The proposed warning statement for use on iron-containing products packaged in other than unit-dose packaging reads as follows:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

Each of these proposed warning statements included a handling instruction (e.g., ''Close tightly and keep away from children''), an informational statement (''Contains iron, which can harm or cause death to a child''), a provisional statement (''If a child accidentally swallows this product''), and an instructional statement (''Call a doctor or poison control center immediately'').

B. Focus Group Findings

In order to determine the effectiveness of the proposed warning statements in alerting consumers to the danger that an accidental overdose of iron poses to young children, FDA contracted with Macro International, Inc., to test several different potential warning messages for iron-containing products in a total of eight focus groups. A notice of the availability of the focus group report was published in the Federal Register of May 23, 1995 (60 FR 27321). The notice invited the public to comment on this report. This focus group research supported the agency's tentative conclusion, explained in the iron proposal, that many adults are not aware of the danger that an accidental overdose of iron poses to young children.

In the focus groups, all participants were presented with an information piece detailing the danger that an accidental overdose of iron poses to young children. The information piece contained statistics that showed that accidental overdoses of iron-containing products are a leading cause of poisoning deaths in children under the age of 6, that illness can result from the ingestion of as little as 250 mg of iron in a child weighing 10 kilograms (kg) or less (22 pounds (lb) or less) and that ingestion of 600 mg of iron has been reported to be fatal to children weighing 10 kg or less. Half of the eight groups (''pre-evaluation groups'') received the information piece before they evaluated the warning messages, and the other half (''postevaluation groups'') received the information piece after they evaluated the warning messages. Participants in the postevaluation groups initially heard only a brief statement about the need for a standardized warning statement on iron-containing products and heard nothing about the nature of the hazard posed by an accidental overdose of iron-containing products or about the number of children who had died. The postevaluation groups subsequently were given the opportunity to reevaluate the warning messages after hearing the longer, more detailed information piece.

Participants in the postevaluation groups found warning messages such as ''iron can harm or cause death to a child'' to be unnecessarily severe, to the point that they considered the messages to be bizarre and unbelievable. The postevaluation groups tended to like a short generic message that did not identify a specific hazard. In contrast, participants in the pre-evaluation groups were more accepting of stronger statements of the hazard and tended to prefer statements that used the terms ''death'' or ''fatal''—the same statements that the postevaluation groups thought were unacceptably severe. When participants in the postevaluation groups were given information on the nature and magnitude of the hazard subsequent to their evaluation of the various statements, they evaluated the messages in the same way as did the pre-evaluation groups. Finally, when asked for their own suggestions, groups were virtually unanimous in recommending that the general public be better informed about the dangers of iron-containing products to young children.

Most participants in the research expressed the opinion that a good warning statement includes at least three elements: (1) A handling instruction that the product should be kept out of the reach of or away from children; (2) an informational statement that the product contains iron, and that excess or large doses of iron can harm or cause death to a child; and (3) an instructional statement to call a doctor or poison control center immediately in case of overdose. Participants' choices reflected their desire for a concise and unambiguous message with some degree of quantification about the amount of iron that must be ingested to be dangerous. Participants differed over the exact contents and order of the wording for a warning message but agreed that, regardless of what is eventually contained in the message, it should be worded as succinctly and efficiently as possible.

The focus group research also provided information on the language of the handling instruction in the warning statement. The focus group participants did not recognize a strong connection between the informational statement and the specific handling instruction that they were asked to evaluate and were not very positive toward statements such as ''Keep in original container'' and ''Close tightly.'' They were generally confused about how to interpret ''Keep in original package until each use'' with respect to blister-packaged products. Participants did not know whether the statement meant that they should keep the product in its original box or in its blister package. The ''Close tightly'' language was seen as too obvious, intended for products without child-resistant caps or related to product freshness.

The consumer research thus suggests that information about the nature and magnitude of the danger that accidental overdose of iron-containing products poses to young children is essential to the consumer's understanding of the warning statement. It also suggests that the first sentence of a warning statement is likely to influence a consumer's decision as to whether to continue reading the rest of the statement, and that package-specific handling instructions are more likely to confuse consumers than provide a measure of safety. Finally, it evidences that consumers will handle these products appropriately (i.e., by keeping the products in the original package or by keeping a bottle tightly closed) if they are provided with information on the nature and magnitude of the hazard.

C. Comments on the Utility and Scope of the Proposed Warning Statements

Several comments suggested that the warning statement should appear on all iron-containing dietary supplement and drug products rather than only on solid dosage forms. One comment from a State department of health services advised the agency that in September, 1993, a 5-year old child was hospitalized for a serious, though nonfatal, iron poisoning. The iron involved was in the form of a syrup prescribed for the victim. The comment stated that the department of health services did not know how many other children may have suffered injury as the result of ingesting liquid iron supplements.

The agency appreciates receiving the information about the accidental ingestion of a liquid iron-containing product. In the iron proposal, the agency stated that it was not aware of incidents of poisoning being caused by iron-containing products in liquid or powder form, and thus, it did not propose to cover liquid or powder forms of iron-containing products. The agency stated, however, that it would consider what regulatory action is appropriate to take with regard to iron-containing products in liquid or powder form if it becomes aware of information indicating that these products have caused or can cause poisonings in children.

The report of a single case in which a child was hospitalized for a serious, but not fatal, iron poisoning does not justify a change in the agency's tentative view concerning the need for a Federal regulation mandating labeling for liquid forms of iron-containing products. A Federal regulation is appropriate and necessary to protect the public health when safe use of a product cannot be ensured absent such a regulation. No regulation, however, will guarantee zero risk from products regulated by FDA. The existence of a single case report of a serious poisoning does not establish that illness or injury is likely to continue to occur. Rather, this single case report creates some ambiguity. It is not clear based on this report whether poisoning from liquid iron-containing products is an accident of low frequency or one that bears careful monitoring. Therefore, in this final rule, the agency is not including iron-containing products in liquid or powder form within the coverage of the labeling requirement. However, the agency would consider extending the coverage of the labeling and packaging requirements if it receives persuasive information that shows that accidental pediatric ingestion of liquid or powder iron-containing products is a problem, and that a warning statement or some special packaging requirement is necessary to ensure safe use of products that contain either of these forms of iron.

One comment questioned the usefulness of a warning statement because children cannot read. One comment stated that dietary supplement bottles are small, and there is other information competing for attention. Another comment stated that consumers have become accustomed to warning statements, implying that warning statements have become so common that their usefulness is diluted. A comment from a dietary supplement manufacturer stated that a warning statement on all products is not necessary and noted that the firm puts warning statements on products most likely to be attractive to children.

FDA does not agree that a warning statement is not useful because children cannot read. The warning statement is intended to be read by adults so that the adults will understand the nature and magnitude of the problem and the importance of keeping the product out of reach of children. FDA agrees that some dietary supplement and drug bottles are small, and that there is other information competing for attention. Nonetheless, the public health significance of accidental iron overdose compels that manufacturers overcome limitations in package size, if any there be. Therefore, FDA expects that industry will make appropriate revisions to labels on small product containers to provide appropriate space for the warning statement.

FDA does not agree that a warning statement on iron-containing products would be diluted because consumers have become accustomed to such statements. The focus group research shows that consumers want a strong warning on these products, and that consumers will heed the warning if provided with information describing the nature and magnitude of the hazard. FDA disagrees that a warning statement on all products is unnecessary or only useful on products that are attractive to children because the seriousness of the consequences of accidental overdose compel that all products bear the warning. Thus, FDA finds no merit in these comments.

D. Comments on the Text of the Proposed Warning Statement

FDA received a number of comments requesting modification of the wording of the proposed warning statements. The comments objected to the proposed warning statement in three main respects: (1) Failure to include the concept of ''overdose;'' (2) use of the term ''death;'' and (3) use of the phrase ''keep away from children.'' In response to these comments, FDA is revising the text of the wording statement. Table 1 of this document provides a side-by-side comparison of the text of the warning statement in the proposed and final rules.

TABLE 1—COMPARISON OF THE TEXT OF THE WARNING STATEMENT IN THE PROPOSED AND FINAL RULES [1]

Element of the Statement	Text of the Warning Statement in the Proposal	Text of the Warning Statement in the Final Rule
	Warning	Warning
Informational statement	Contains iron, which can harm or cause death to a child.	Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6.
Handling instruction	Keep away from children. Keep in original package until each use.[2].	
	[or]	
	Close tightly and keep away from children.[3]	Keep this product out of reach of children.
Provisional statement	If a child accidentally swallows this product * * *	In case of accidental overdose * * *.
Instructional statement	* * * call a doctor or poison control center immediately	* * * call a doctor or poison control center immediately.

[1] The order of the statements in this table is the order of the statements as they appear in the final regulation.
[2] For use on unit-dose packages.
[3] For use on non-unit packages.

1. Informational Statement

Several comments requested that the wording of the warning statement be changed to refer to ''large doses'' of iron or ''excessive consumption'' of iron. These comments maintained that the proposed wording of the warning statements implies that iron is toxic at any level of intake, even though iron is only dangerous when consumed in excess. Other comments stated that the warning statements as proposed may frighten and discourage appropriate use of iron-containing products. Several comments stated that the essence of the message should be that ''an overdose of iron could be harmful'' because this would be more consistent with FDA's stated objective for the warning statement, which is to ensure that products containing iron or iron salts do not pose a health hazard to young children and infants. Another comment cited § 330.1(g) (21 CFR 330.1(g)) as an example of a regulation that uses the term ''overdose.''

One comment stated that the proposed warning statements appear to be too general and are misleading to the consumer as to the actual danger. This comment stated that it would be sufficient to mention that the products could have the negative effects only in cases of overdose.

FDA has reevaluated the proposed wording of the warning statements in

response to these comments and concludes that the proposed wording implies that iron is inherently toxic and does not inform consumers about the actual nature of the hazard, i.e., an accidental overdose of an iron-containing product. Iron itself is an essential nutrient and is not harmful or fatal unless consumed in large quantities, as may occur in accidental overdoses. Therefore, a statement informing the consumer of the dangers of an accidental overdose is a more appropriate informational statement than those in the proposed warning statements.

The findings of the focus group research support this conclusion. The focus group participants' preferences reflect a desire for some degree of quantification about the amount of iron that must be ingested to be dangerous. The term ''overdose'' conveys a degree of quantification that makes it unlikely that consumers will mistakenly infer that usual or prescribed dosages of iron-containing products are dangerous. For these reasons, the agency is revising the informational statement to clarify that the hazard is from an accidental overdose of an iron-containing product.

Several comments requested that the agency not use the term ''death'' in the warning statement because it is unduly alarming and too harsh and may cause avoidance of iron supplementation by patient populations already at risk for low iron intake. One comment stated that ''death'' may frighten or inflame. Another comment stated that use of the word ''death'' is a departure from most FDA warnings and from warnings recommended in the citizen petitions.

Some comments suggested replacing the term ''death'' with the phrase ''harmful or fatal'' because this phrase conveys the danger of excessive iron while not unduly alarming the general population. A few comments noted that ''fatal'' is the term in the NDMA voluntary warning in use on many product labels. One comment cited the agency's regulations in 21 CFR 101.17(b)(1) (warnings for foods in self-pressurized containers with hydrocarbon and halocarbon propellants), 21 CFR 201.314 (warning statement on over-the-counter (OTC) drugs containing salicylates), and 21 CFR 201.319(b) (warning labels on OTC drugs containing water soluble gums) as precedent for use of the word ''fatal.''

FDA has reevaluated the use of the word ''death'' in this warning statement in light of these comments. FDA sees no reason to maintain the term ''death'' if, as the comments contend, it will unduly alarm consumers, because the term ''fatal'' means ''cause death'' (Webster's New Riverside University Dictionary, 2d ed., 1988). Therefore, FDA is revising the informational statement to remove the term ''death'' and add the term ''fatal.''

As a result of the changes that the agency is making in response to this and the preceding comment, the revised informational statement reads: ''Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6.''

The comments that requested that FDA clarify that the hazard was associated with an accidental overdose of iron-containing products, rather than consumption of iron-containing products under intended conditions of use, made clear that information about the nature and the magnitude of the danger that accidental overdose of iron-containing products poses to young children is essential to consumer understanding of the warning statement. This concept was reiterated by the consumers who participated in FDA's focus group research. Although participants in the consumer research were divided over the order of the elements (informational, handling, provisional, and instructional statements) of the warning statement, the consumer research supported a conclusion that the first sentence of a warning statement is likely to influence a consumer's decision as to whether to continue reading the rest of the statement. Therefore, in this final rule FDA is changing the sequence of the sentences in the warning statement so that the informational statement, which states the nature and magnitude of the danger that accidental overdose of iron-containing products poses to young children, precedes the handling instruction.

2. Handling Statement

FDA proposed two different handling instructions based on whether the iron-containing product was in a unit-dose package or a non-unit-dose package. FDA has reevaluated the need for, and utility of, different warning statements depending on the type of packaging. As already discussed, one of the findings of the focus group research was that package-specific handling instructions are more likely to confuse consumers than provide a measure of safety. Moreover, FDA believes that consumers will handle these products appropriately (i.e., by keeping the product in the original package or by keeping a bottle tightly closed) if they are provided with the information on the nature and magnitude of the hazard. Therefore, in this final rule the agency is removing the proposed package specific element of the handling instruction, which necessitated a different warning statement for products in unit-dose packaging than for products in other than unit-dose packaging. FDA is revising proposed § 101.17(e)(1) and proposed § 310.518(b) (now § 310.518(c)) (21 CFR 310.518(c))) to provide a single required warning statement for all iron-containing supplement and drug products in solid oral dosage form regardless of the type of packaging.

A few comments objected to the phrase ''Keep away from children'' and suggested as an alternative the use of the phrase ''Keep out of reach of children.'' These comments argued that it would be confusing and inappropriate to say ''Keep away * * *'' on iron-containing products intended for children, and that the term ''Keep out of reach * * *'' is a targeted, well understood statement that clearly conveys the message that children should not be given free access to the product.

FDA has reevaluated the proposed language of the handling statement ''Keep away from children'' and agrees that this statement may imply that the product is inherently toxic to children. Thus, the statement would be confusing to consumers when used on a bottle of tablets used by children. The statement ''Keep out of the reach of children'' states the proper handling of the product without implying that the product is inherently toxic under intended conditions of use. Therefore, FDA is revising the proposed text of the handling instruction to read ''Keep this product out of reach of children'' rather than ''Keep away from children.''

Some comments suggested that FDA should require two types of warning statements based on the level of iron in each dosage unit of the product. These comments suggested that products containing higher doses of iron (such as products that contain 30 mg or more of iron) be required to bear a warning statement, such as the industry voluntary warning statement, and that products containing lower doses of iron (such as multivitamin products) be required to bear a more general warning, such as: ''WARNING: Keep out of reach of children. In case of accidental overdose, contact a physician or Poison Control Center immediately.'' The comments asserted that products containing higher levels of iron are associated with a greater risk than multivitamin-mineral products. In contrast, most participants in the agency's consumer research felt that a single warning message should be used on all iron-containing products regardless of the iron dose.

Iron-containing products cause injury, including serious injury and death, when children gain uncontrolled access to them. As discussed in the iron proposal (59 FR 51030 at 51036), children's vitamins were the type of product ingested in the majority (45 of 80 or 56 percent) of the cases of nonfatal pediatric iron ingestion reported to the CPSC from 1986 to 1993. Further, the amount of iron that may produce symptoms of iron poisoning (i.e., 25 mg/kg of iron) for a 10 kg child would be provided by as few as 25 tablets containing 10 mg of iron each or approximately 14 tablets containing 18 mg of iron each (59 FR 50130 at 51041). Ten and eighteen mg of iron are the amounts typically contained in children's and adult multivitamin supplements with iron, respectively.

Ingestion of as little as 650 mg of iron has resulted in death (Ref. 6). This amount of iron would be supplied by 65 tablets containing 10 mg of iron or 37 tablets containing 18 mg of iron.

Based on these data, FDA concludes that the potential for poisoning exists with all iron-containing products in solid oral dosage form, regardless of the iron content, and that label warning statements are necessary on all these products. Therefore, the agency is making no changes in the warning statements in response to these comments.

3. Provisional Statement

As already discussed, several comments maintained that the proposed wording of the warning statements implies that iron is toxic at any level of intake, even though iron is only dangerous when consumed in excess.

The proposed provisional statement: ''If a child accidentally swallows this product, * * *'' implies that iron, rather than an overdose of iron, causes the harm. Therefore, FDA is revising the provisional statement to read: ''In case of accidental overdose, * * *'' to convey that it is an accidental overdose of iron that requires attention, rather than an accidental swallowing of any amount of iron.

4. Instructional Statement

Several comments supported FDA's instructional statement to ''call a doctor or poison control center immediately.'' These comments concurred with FDA that medical personnel are best equipped to determine the significance of the dose a child has ingested, and that, thus, the label should include this instruction.

One comment challenged FDA's proposed instructional statement to ''call a doctor'' and suggested that the instructional statement provided in the voluntary industry warning to ''seek professional assistance'' was more appropriate because it was already understood and accepted when used on OTC products. The comment expressed the opinion that use of the term ''call a doctor'' would limit the assistance options for consumers by suggesting that only a doctor could help them. The comment pointed out that consumers in FDA's focus groups did not express a strong opinion either in favor of, or in opposition to, the substitution of the phrase ''call a doctor'' for the common phrase used on OTC products to ''seek professional assistance.''

FDA realizes that a professional health care provider other than a doctor could provide assistance to a consumer in the event of accidental overdose. FDA disagrees, however, that the word ''professional'' accurately conveys the meaning ''medical.'' The information that the instructional statement must convey is that consumers should seek medical assistance in the event of accidental overdose. FDA sees no reason to replace the phrase ''call a doctor'' with the phrase ''seek medical assistance'' because consumers will understand that ''call a doctor'' implies that they should seek medical assistance, regardless of whether their customary health care provider is a doctor or other medical professional, and because ''call a doctor'' is a more succinct phrase than ''seek medical assistance.'' Therefore, FDA is retaining unchanged the proposed instructional statement that describes the appropriate action to take when a child accidentally consumes multiple tablets (''call a doctor or poison control center immediately'').

5. Comments on the Consumer Research

FDA received only a few comments on the agency's consumer research. These comments maintained that the consumer research showed that the agency's proposed warning statement was ineffective.

FDA agrees that the consumer research showed that the proposed wording of the warning statement was ineffective because the proposed warning statement did not provide adequate information about the nature and magnitude of the hazard and did not provide such information before the handling, provisional, and instructional elements of the warning statement. However, the revised language of the warning statement (see Table 1 and discussion below) adequately responds to all the concerns raised by the comments and the consumer research.

6. Revised Text of the Warning Statement

Based on the findings of the agency's focus group research, the comments on those findings, and the comments on the proposal, FDA is: (1) Revising the proposed warning statement by changing the sequence of the sentences so that the informational statement precedes the handling instruction; (2) modifying the informational statement so that it better describes the nature of the hazard; (3) eliminating the two different handling instructions based on whether the iron-containing product is in a unit-dose package or a non-unit-dose package; (4) modifying the handling instruction informing the consumer that children should not have free access to the product; and (5) including a reference to overdose in the provisional statement regarding the instruction on appropriate action in instances where a child accidentally consumes multiple tablets. FDA is taking this action to provide consumers with clear and appropriate information on the nature and magnitude of the hazard and to clarify that the hazard is not associated with use of iron-containing products under normal conditions. The revised warning statement reads:

WARNING: Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

7. Other Comments on the Text of the Warning Statement

Several comments suggested that FDA adopt the language of the industry voluntary warning and stated that it is not apparent that FDA's proposed warning statements provide an additional consumer benefit over the voluntary NDMA warning statement. One comment expressed the opinion that FDA's consumer research supported the positions taken by NDMA regarding labeling of products containing iron and did not support the warning statements proposed by FDA. The NDMA voluntary warning statement reads as follows:

WARNING: Close tightly and keep out of reach of children. Contains iron, which can be harmful or fatal to children in large doses. In case of accidental overdose, seek professional assistance or contact a Poison Control Center immediately.

FDA has reviewed the language of the suggested NDMA voluntary warning statement in light of the focus group research. FDA agrees that none of the versions of warning statements tested in

the focus groups performed any better than the industry voluntary warning statement. However, none of the messages that were tested, including the industry voluntary warning, performed satisfactorily. The focus groups perceived the industry voluntary warning statement to be a standard kind of warning about product toxicity. Because such warnings are seen frequently on many different kinds of products and provide little new or useful information, they fail to command much consumer attention (Ref. 7). The consumer research did not show that the industry voluntary warning statement effectively conveys to consumers the nature of the hazard to young children presented by careless handling and storage of iron-containing products.

The agency's modified warning statement remedies the deficiencies identified by the consumer research in the tested warning statements, including the NDMA voluntary warning statement, in two ways. First, the agency's modified informational statement stresses the nature and magnitude of the hazard as one of accidental overdose. Second, by placing the informational statement before the handling instruction, the modified informational statement will command consumer attention. In contrast, the key concept of overdose appears at the end of the informational statement of the NDMA voluntary warning statement: ''Contains iron, which can be harmful or fatal to children in large doses,'' which diminishes its impact. In addition, the NDMA voluntary warning statement places the informational statement after the handling instruction: ''Close tightly and keep out of reach of children,'' where it will not command as much consumer attention. FDA therefore is not revising §§ 101.17 and 310.518 to codify the language of the NDMA voluntary warning statement.

Several comments provided variations of the agency's proposed warning statement or the voluntary NDMA warning statement or their own versions of a suitable warning statement. Examples of these proposed variations include:

WARNING: Keep all containers of iron-containing products away from children at all times. Reclose the child resistant cap completely *every time* after use. Keep in original package until each use. Iron-containing products can harm or cause death to a child. Should you suspect a child has accidentally swallowed an iron-containing product call a doctor or Poison Control Center immediately.

WARNING: Keep out of reach of children. Contains iron which can harm or be fatal to a child in large doses. In case of accidental overdose, seek professional assistance or contact a poison control center immediately.

FDA is not accepting any of these suggested statements. All of them share one or more fundamental problems with FDA's original proposed statement and the industry warning. Specifically, all of these warning statements begin with a handling instruction rather than an information statement. Some fail to incorporate the concept that it is an overdose of product that is harmful and would therefore lead to the misconception that iron is inherently harmful. Because all of the suggested warnings contain one or more fundamental problems, FDA has rejected these suggested variations.

One comment requested that FDA strengthen the language of the warning so that it is clearly understood that iron may kill.

FDA has considered this comment and determined that the new informational statement that it has developed (i.e., ''Accidental overdose of iron-containing products is a leading cause of fatal poisonings in children under 6.'') clearly articulates and strengthens the wording compared to the wording in the proposal. Therefore, FDA concludes that the concern expressed by this comment is fully addressed.

A comment from 13 State Attorneys General stated that if the term ''warning'' and the treatment-oriented information (i.e., the instructional statement) are included on the label in a prominent manner, then it is not necessary to include a reference to the harm that can come from ingestion of large doses or reference to the specific consequences. Other comments stressed the importance of the term ''WARNING'' and the importance of providing the instructional reference to contact a poison control center.

FDA agrees that the term ''WARNING'' and the instructional statement advising that a doctor or poison control center be contacted are necessary to alert the consumer to the potential consequences of use of the product and the need to take immediate action. The agency disagrees, however, that the informational statement is not necessary when the term ''WARNING'' and the instructional statement are present. An informational statement provides consumers with the information they need to readily understand the serious consequences that may result if the warning is not heeded. Therefore, FDA is taking no action in response to these comments.

One comment raised the concern that the proposed warning statement ignores other potential toxicities, such as that caused by an overdose of vitamin A, and suggested replacing the proposed iron-specific warning statement with a general cautionary statement in bold print. The suggested wording of this general cautionary statement was ''KEEP OUT OF REACH OF CHILDREN. IN CASE OF ACCIDENTAL OVERDOSE, CONTACT A PHYSICIAN OR POISON CONTROL CENTER IMMEDIATELY.''

The agency is not adopting the suggestion to replace the iron-specific warning statement with a general warning statement. The agency has a longstanding policy of limiting the use of warning statements so that such statements do not become so common that they are ignored. The label warning statement required on solid oral dosage forms of iron-containing products is a response to an immediate public health hazard of large proportions, the deaths and injuries of children who accidentally consumed large doses of these products. Therefore, the warning statement is specifically worded to alert consumers to the presence of iron and to the danger that accidental overdose of iron poses to young children.

One comment requested that the label warning statement specifically state that all medicines should be stored in original containers.

As already discussed, FDA has concluded, based on the results of consumer focus groups, that such specific handling instructions are more likely to confuse consumers than to provide an additional measure of safety. Participants in the focus groups were confused about how to interpret ''Keep in original package until use'' with respect to blister-packaged products. They did not know whether the statement meant that they should keep the product in its original box or in its blister package. Therefore, the agency is taking no action in response to this comment.

One comment questioned the need for a specific warning message where general messages already state that supplements and drugs should be kept out of reach of children, or the packaging itself is child-safe. This comment added that, given these facts, a specific warning message would appear to be more trade-restrictive than necessary.

Dietary supplements marketed in the United States are not required to bear a general warning statement on the label. Drug product labels are required to bear warnings that are adequate to protect consumers. As stated in the response to a previous comment, general warning statements fail to describe the nature of the specific and immediate hazard of

accidental iron overdose in young children. Therefore, FDA has determined that the warning statement specified in this final rule responds to the known safety concerns associated with solid dosage form of iron-containing products. The warning statement will apply to both domestically produced and imported iron-containing products.

In the Agreement on Technical Barriers to Trade from the Uruguay Round of the multilateral trade negotiations, ''technical regulation'' is defined as a:

> Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.

Article 2.2 under Technical Regulations and Standards states: ''* * * technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of risks non-fulfillment would create. Such legitimate objectives are, inter alia * * * protection of human health or safety.''

The warning statement for iron-containing products is necessary to protect the public health by helping to prevent accidental poisoning of young children. Therefore, the agency concludes that the warning statement is neither trade restrictive nor a trade barrier.

One comment from a physician recommended placing a ''Mr. Yuk'' sticker or emblem on each bottle of iron-containing tablets because this label device is recognized by children as an indication of poison.

FDA disagrees with this comment. The ''Mr. Yuk'' sticker alerts children that the product is not safe to eat. Iron-containing products, when consumed in appropriate quantities, are safe to eat. Placing a ''Mr. Yuk'' emblem on a product such as a bottle of children's vitamins would mean that the label would present an inconsistent message that could confuse children about what is safe to eat and what is not. Therefore, FDA is not taking the action suggested in this comment.

A few comments requested that the warning statement be accompanied by a pictograph to readily depict the hazard and to ensure that it will be readily understood by illiterate or non-English-speaking consumers.

FDA recognizes that a pictograph can be useful to convey some information to consumers. However, no data were submitted to show that the message could not be communicated without a pictograph. Given this fact, FDA finds no basis to require the use of a pictograph. However, FDA would have no objection if manufacturers, in conjunction with the required message, used a pictograph (such as a slash line through a picture of a child with an open mouth reaching for something) in addition to the required warning statement.

One comment requested that FDA reconsider its position and include the physical consequences and symptoms that may result from an iron overdose on the product package or container. This comment stated that adults will readily understand consequences and take effective action to eliminate the risk of an accidental child poisoning based on this information.

In the iron proposal (59 FR 51030 at 51044), FDA stated that it feared that setting out this information could lead parents to conclude erroneously that the child is not in danger because he or she does not exhibit one of the listed symptoms. No information was submitted in this comment that would cause the agency to reach a different conclusion. Listing of symptoms is irrelevant because they may not be exhibited by a child, and the most important information is that an overdose may be fatal. Moreover, as discussed above, FDA has revised the warning statement to include an informational sentence describing the nature of the hazard and providing adults with information to motivate them to eliminate the risk. Therefore, FDA is taking no action in response to this comment.

One comment requested that FDA require that the labeling of all iron-containing products display the exact name of the iron ingredient instead of the equivalent amount of iron present in the product. The comment added that this information is extremely important to the medical professionals and emergency personnel who treat iron poisonings.

No action is necessary in response to this comment because this information is already required on the label of food products containing iron under 21 CFR 101.4(b), which requires that the ''name of an ingredient must be a specific name and not a collective (generic) name.'' For dietary supplements containing iron, the ingredient list must include the source of the iron (e.g., ferrous sulfate). In addition, the amount of iron must also be provided in the nutrition labeling.

For drug products containing iron, section 502(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)) and 21 CFR 201.10 require a label statement of a drug's established name and the established name and quantity of the product's active ingredients.

E. Appearance of the Warning Statement on the Label of Iron-Containing Products

FDA proposed in §§ 101.17(e)(2) and 310.518(b)(3) to require that the warning statement:

> * * * appear prominently and conspicuously on the immediate container labeling in such a way that the warning is intact until all of the dosage units to which it applies are used. In cases where the immediate container is not the retail package, the warning statement shall also appear prominently and conspicuously on the principal display panel of the retail package. In addition, the warning statement shall appear on any labeling that contains warnings.

1. Comments on Requiring the Warning Statement to Appear Prominently and Conspicuously on the Immediate Container Labeling

Several comments on the labeling aspects of the proposed rule opposed or questioned the agency's tentative conclusion that the warning statement should be placed on the principal display panel (the PDP) in order to be prominent and conspicuous. Many of these comments noted that warnings on consumer products are generally located together on the side or back panel, and that consumers are accustomed to finding warning information in these places. One comment argued that placing the warning statement on the PDP negates the purpose of the information panel (the IP) because the traditional location for warning statements is the IP, and consumers may overlook a warning statement that is not in the expected location.

One of the comments elaborated upon warning placement by noting that warnings for self-pressurized containers and self-pressurized containers with halocarbons, hydrocarbon propellants, or chlorofluorocarbon propellants are not mandated to appear on the PDP (§ 101.17 (a), (b), and (c)). The regulations for foods containing aspartame also do not require that the warning statement for phenylketonurics appear on the PDP (21 CFR 172.804(e)(2)).

Most of the participants in the focus groups believed that the warning statement should go on the back of the product rather than the front of the product. The participants reasoned that the front of the product was used for marketing purposes, and consumers

were used to looking at the back of the product for warnings. The focus groups also felt that the ''clutter'' on the front of the product label might dilute the warning message. Similarly, several comments pointed out that the placement of the warning statement on the PDP would overcrowd an already space-limited PDP and result in a diluted warning message, especially if a smaller type size was used.

The agency recognizes that the PDP space is often very limited, and that warnings plus other required information could crowd the PDP. Therefore, in deciding how to provide for placement of the warning, the agency reflected on two basic questions: (1) What is the intent of this regulation? and (2) Can the intent be met by placing the warning statement on a panel other than the PDP?

The agency's purpose in this rulemaking is to inform consumers of the dangers to small children from an accidental overdose of a product that contains iron. Because of the serious, life-threatening consequences of such an overdose, FDA tentatively concluded that warning statements are most likely to be read when they are placed on the PDP. This tentative conclusion followed the precedent established in the regulations requiring warning statements on the PDP of protein products (§ 101.17(d)), whose incorrect use can also result in dire health consequences.

However, after evaluating the above comments and the results of the focus groups, the agency agrees that the warning statement does not need to be placed on the PDP to be effective in informing consumers of the hazard associated with overdose. The intent of the regulation can be met by placing the warning statement on the IP. The IP is the traditional location for warning statements. Information on the IP is readily accessible to consumers, particularly when it is presented in accordance with graphical requirements that enhance its prominence (see discussion below). Therefore, in this final rule the agency is revising proposed §§ 101.17(e) and 310.518(b) (now § 310.518(c)) to require that the warning statement be placed on the IP of the immediate container label.

Several of the comments remarked that the proposal did not require that the warning statement be placed on the PDP of the immediate container if the immediate container was not the retail package.

In the iron proposal (proposed §§ 101.17(e)(2) and 310.518(b)(3)), the agency proposed to require that: (1) The warning statement appear on the immediate container labeling; (2) it appear in such a way that the warning is intact until all of the dosage units to which it applies are used; and (3) if the immediate container is not the retail package, the warning statement must appear on the PDP of the retail package. FDA proposed these requirements as a single regulation that would apply to products in unit-dose packaging, in which the immediate container labeling does not have a PDP, as well as products in other than unit-dose packaging, in which the immediate container label does have a PDP. The comments that deduced that the proposed regulation did not require that the warning statement be placed on the PDP of the immediate container label if the immediate container was not the retail package indicate that the language of that single regulation did not clearly articulate the agency's intent, i.e., that the warning statement be on both the PDP of the retail package and the immediate container label, if there is one.

Therefore, FDA is revising §§ 101.17(e) and 310.518(b) (now § 310.518(c)) to clarify where the warning statement must be placed. Specifically, FDA is splitting the applicable provisions into several subparagraphs, which are described below. In addition, the agency has revised the regulations, as already discussed, to require that the warning statement appear on the IP rather than on the PDP.

In this final rule, §§ 101.17(e)(2)(i) and 310.518(c)(2)(i) require that the warning statement for iron-containing dietary supplements and drugs appear ''on the information panel of the immediate container label.'' Sections 101.17(e)(2)(ii) and 310.518(c)(2)(ii) provide that if iron-containing supplements and drugs are packaged in unit-dose packaging, and if the immediate container bears labeling,[4] but not a label, the warning statement must appear ''on the immediate container labeling.'' Sections 101.17(e)(3) and 310.518(c)(3) require that, where the immediate container is not the retail package, the warning statement for all iron-containing dietary supplements and drugs (i.e., regardless of the manner in which the product is packaged) appear ''prominently and conspicuously on the information panel of the retail package label.''

These requirements are necessary to ensure that the warning statement is seen by adults with responsibility for proper storage of the product. The placement of the warning statement on the retail package label will make it likely that the warning statement will be seen at the time the product is purchased to inform the purchaser of the product's potential to cause poisoning and of the need to store the product properly when it is brought into the house. However, under customary conditions of use, the retail container is frequently disposed of, and individuals other than the purchaser may use the product. Therefore, FDA is providing that the immediate container also bear the warning if it bears any labeling at all.

In this final rule, §§ 101.17(e)(4) and 310.518(c)(4) provide that the warning statement shall also appear on any labeling that contains warnings. These requirements are unchanged from the proposal, but they have been moved to a separate subparagraph as part of the overall reorganization of §§ 101.17(e)(2) and 310.518(c)(2).

2. Comments on Prominence Through Graphical Requirements

Several comments discussed the use of graphic requirements to set the warning statement apart from the rest of the label information. One comment pointed out that a warning statement can be made prominent and conspicuous by graphics such as surrounding the warning statement with a box, printing the warning statement in capital letters, printing the warning statement in bold typeface, and using contrasting graphics. Several comments recommended that the agency set requirements for graphics and discussed the need for type size specifications. Another comment suggested that FDA let the manufacturers determine the elements of prominence and conspicuousness needed to call attention to the warning statement. One comment cited the saccharin warning requirements as an example of a warning statement with specific contrasting graphic requirements.

Most of the participants in the focus groups agreed that the warning statement should be in a boxed area to separate it from other information and to call attention to the warning. Many participants also felt that printing the warning statement in a color that contrasts with the predominant color of the packaging was eye-catching. Other graphical options considered by the focus groups included using contrasting

[4] FDA recognizes that the package liner of a unit-dose package that bears no printed material is not labeling and would not need to bear the warning statement. Given the importance of the warning, FDA hopes that this fact will not cause manufacturers to cease putting printed material on the package liner.

print and background, different sizes of print, and bolding of the message.

In the iron proposal, FDA tentatively concluded that graphical requirements were not necessary to ensure that a warning statement placed on the PDP is prominent and conspicuous, because no data were supplied by the petitioners to support the use of graphics in the warning statement, and because the protein products regulation that the agency used as a precedent did not mandate specific graphical requirements. However, as discussed above, in this final rule the agency is moving the location of the warning statement from the PDP to the IP. The agency agrees that use of certain graphical requirements is an effective approach to ensuring that the warning statement is prominent and conspicuous. Moreover, a warning statement that appears on the IP, rather than on the PDP, needs graphical enhancements to ensure that it is prominent and conspicuous because the IP generally is more crowded than the PDP.

Based on the comments and the results of the consumer research, the agency agrees that a box enclosing the warning statement will set the warning statement apart from the rest of the label. FDA has used this mechanism with the nutrition label in response to the directive in the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) that the label be readily observable (Pub. L. 101–535, section 2(b)(1)(A) of the 1990 amendments). Therefore, the agency is requiring, in §§ 101.17(e)(5) and 310.518(c)(5), that the warning statement for iron-containing products be separated from other information by a box. Manufacturers may use other graphics, in addition to the box, if they choose to do so.

Three comments suggested that the cap or the PDP of the product bear a symbol or statement informing consumers that a new warning has been placed on the IP. For example, a prominent flag or a short statement saying ''See Iron Warning'' or ''See New Warning'' could be printed prominently on the PDP.

FDA has decided not to require a flag or statement alerting consumers to the new warning label. The comments and the results of the consumer research have convinced the agency that consumers are already in the habit of looking at the IP for important information such as warnings, and the box around the warning statement will draw attention to it.

3. Comments on the Placement of the Warning Statement on Unit-Dose Packaging.

To reinforce the message of the warning after the product is in the home, FDA proposed (proposed §§ 101.17(e)(2) and 310.518(b)(3) (now § 310.518(c)(3))) to require that the mandatory warning statement appear on the immediate container labeling in such a way that it is intact until all of the dosage units to which it applies are used. This provision would have effectively required that unit-dose packaged products bear the warning either directly on each individual cavity of the unit-dose packaging or on some section of the unit-dose packaging in such a way that separating an individual cavity would not destroy the warning label.

FDA received several comments on this proposed requirement. Comments stated that the proposal was unclear as to whether the warning could appear along the full length of a strip of unit-dose packaging, or whether it must appear in its entirety on each unit dose (e.g., on each tablet in a blister pack). Several comments stated it would be physically impossible to place the entire lengthy warning proposed by FDA on each unit dose and still meet the minimum type size requirements of 21 CFR 101.2(c) or the requirements of 21 CFR 101.15(a)(6) that the labeling be prominent and conspicuous. One comment stated that the label space available for each cavity of a multipack blister type unit-dose package is usually less than 1/2 inch by 1/2 inch and if, as proposed, a firm is required to print the entire warning statement, the print size would be so small that it would require magnification to read.

Several comments suggested that the individual units of a unit-dose package be permitted to bear an abbreviated warning statement that alerts consumers to the hazard and preventive measures, such as: (1) ''WARNING—Contains Iron. Keep Away From Children;'' and (2) ''WARNING: Keep in Original Package Until Each Use. Keep Away from Children.'' One comment also suggested that it would be helpful to manufacturers if FDA specified that the abbreviated warning could be printed on a strip or tab either above or below the individual cavities.

FDA is requiring that the warning must appear on the immediate container of the product because, as discussed in the proposal in this proceeding, reports of 2,000 poisonings in children over approximately 7 years provides strong evidence that many adults are not aware of the potential for serious harm posed by iron-containing products. The agency understands that printing the entire warning statement on each unit dose of an iron-containing product, while necessary to ensure that the warning statement remains intact until all of the individual dosage units to which it applied are used, would present problems in making the warning ''prominent and conspicuous.'' FDA disagrees, however, that placing an abbreviated warning statement on each cavity of a unit-dose package would be effective in alerting consumers to the risk that iron-containing products poses to young children because, as discussed above, FDA has concluded that an informational statement that clearly communicates the nature and magnitude of the hazard is essential for the warning statement to be effective. Therefore, the agency has reconsidered how to achieve the intent of the proposed regulations without requiring that the warning statement remain intact until all of the dosage units to which it applies are used.

FDA notes that, if for example, the full warning statement were placed on any side of a package (i.e., above, below, or on either side of individual cavities) of iron-containing products in unit-dose packaging that contains multiple, individual unit-dose packages that are connected without physical delineations (e.g. perforations) between the individual unit-dose packages, would allow the warning to remain intact until all of the dosage units to which it applies are used. Similarly, for iron-containing products in any unit-dose packaging (i.e., with or without physical delineations between the individual unit-dose packages), multiple copies of the warning statement across the immediate container label would increase the likelihood that at least one complete warning statement will remain intact until most of the individual units have been used. Although this second option could not ensure that the warning statement would remain intact until all of the dosage units to which it applies have been used, it is clear that options such as this can approach, if not fully achieve, the desired outcome of the proposed regulations.

Therefore, in this final rule, FDA is revising § 101.17(e)(2)(ii) to read:

> If a product is packaged in unit-dose packaging, and the immediate container bears labeling, the statements required by paragraph (e)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

FDA also is revising § 310.518(c)(2)(i) to include a parallel requirement. The revised wording of these regulations makes clear that the manufacturer bears the responsibility to show diligence in designing labeling that will meet the agency's goal of informing consumers of the dangers to small children from an accidental overdose of a product that contains iron but provides the manufacturer with flexibility in determining how it will do so.

4. Comments Specific to Prescription Drug Products

One comment suggested that the warning statement on prescription drug products, if placed on a label, should contain a message to the pharmacist not to cover the warning with the prescription label so that the warning remains visible to the consumer.

FDA believes that the comment raises an important point. However, the agency expects that pharmacists will be aware that warnings should not be covered by anything, not by a price tag, a pharmacy label, or anything else. Therefore, FDA is taking no action in response to this comment.

III. Packaging of Iron-Containing Products

FDA also proposed to require unit-dose packaging of iron-containing drugs and dietary supplements with potencies of 30 mg or more of iron per dosage unit. FDA tentatively concluded that unit-dose packaging of such products would contribute in a significant way, over and above the protection provided by warning statements and CRP's, to reduce children's access to potentially fatal doses of iron.

A. FDA's Legal Authority to Establish Packaging Requirements for Iron-Containing Products

Several comments questioned FDA's legal authority to establish regulations requiring packaging of dietary supplements and drugs. The comments argued that Congress never authorized, and never intended, FDA to have such authority under the act. Moreover, these comments contended that even if FDA previously had such authority, Congress transferred this authority from the Secretary of Health, Education, and Welfare (HEW) (now Health and Human Services) to the CPSC under the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1471 *et seq.*) when that agency was created.

These comments argued that the language of both the PPPA and the act are clear in expressing Congress' intent that FDA was not granted authority over the packaging of foods or drugs to prevent childhood poisonings. These comments contended that through passage of the Consumer Product Safety Act (Pub. L. 92–573) (CPSA), Congress intended that CPSC have exclusive jurisdiction over packaging to limit child access to poisonous substances. These comments noted that in enacting the CPSA, Congress transferred from the Secretary of HEW to CPSC certain functions under the Federal Hazardous Substance Act (HSA) (15 U.S.C. 1261 *et seq.*) and the PPPA. In addition, in enacting the CPSA, Congress transferred the administrative and enforcement functions of the PPPA from the Secretary of HEW to CPSC (15 U.S.C. 2079).

FDA disagrees with the comments' interpretation of the provisions of the laws in question. As discussed in the iron proposal and the supplementary proposal, FDA's authority to require unit-dose packaging of iron-containing dietary supplements and drugs derives directly from sections 402(a)(4) and (g) and 501(a)(2)(A) and (a)(2)(B) of the act (21 U.S.C. 342(a)(4) and (g) and 21 U.S.C. 351(a)(2)(A) and (a)(2)(B)). The existence of other laws to which foods and drugs are subject does not limit FDA's authority to fulfill its responsibility under the act to help ensure that foods, including dietary supplements, and drugs are not injurious to health.

FDA disagrees with the comments that asserted that the agency has no authority over how food is packaged. This claim is belied by the act itself. Section 409 of the act (21 U.S.C. 348), although not applicable to this rulemaking, gives FDA authority to prescribe the conditions under which a food additive may be safely used, including packaging requirements deemed necessary to ensure the safety of such use (section 409(c)(1)(A) of the act). Section 721(b)(3) of the act (21 U.S.C. 379e(b)(3)) provides similar authority for color additives.

More relevant to this rulemaking, sections 402(a)(4) and 501(a)(2)(A) of the act provide that a food or a drug is adulterated if it has been packed under insanitary conditions whereby it may have been rendered injurious to health. Section 402(a)(4) has been read broadly (see *United States* v. *Nova Scotia Food Products, Corp.*, 568 F.2d 240, 247 (2d Cir. 1977)) as a grant of authority to ensure that foods are not packed in a manner, including process, package design, and packaging materials, that creates the possibility that the foods will cause harm under their reasonably foreseeable conditions of use. For example, parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) address the steps necessary to ensure that the packaging of low acid and acidified foods does not permit the outgrowth of botulism, whose presence in the food would render the food injurious to health. Part 110 (21 CFR part 110) defines current good manufacturing practice (CGMP) for food generally, and in § 110.80(b)(13) requires that packaging be done in a manner that protects the food against contamination and that ensures that safe and suitable packaging materials are used (see also § 110.5(a)(2)). These provisions provide authority for the agency to require the use of packaging that is designed to help ensure that dietary supplements that contain 30 mg or more of iron per dosage unit are not rendered injurious to health. FDA is aware of no reason why section 501(a)(2)(A) of the act, which contains virtually the same words as section 402(a)(4) of the act, should not be read equally as broadly.

Section 501(a)(2)(B) of the act provides that a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to, or are not operated in conformity with, CGMP to ensure that such drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics which it purports or is represented to have. The agency has determined that, under section 501(a)(2)(B) of the act, manufacturers are responsible for preventing certain foreseeable misuse of a drug product. A drug product may be safe and effective as manufactured, but used in an unsafe and ineffective manner. As discussed earlier, data demonstrate that the current manner of holding products that contain 30 mg or more of iron per dosage unit until their use by the intended consumer fails to ensure that the products will be safe (see 59 FR 51030 at 51033). Large numbers of children are ingesting such products and suffering serious injuries and death. Because unit-dose packaging technology is available and can reduce the danger of iron poisoning, CGMP dictates that such packaging be used for products containing more than 30 mg of iron per dosage unit.

FDA concludes that unit-dose packaging will significantly reduce the likelihood of serious injuries to young children. FDA finds that this will be the case because unit-dose packaging will limit the number of unit doses that a child may consume once it gains access to the product, not because unit-dose packaging will make it any more

difficult to open the package.[5] The fewer the number of tablets or capsules the child consumes, the smaller the dose of iron the child will ingest. The smaller the dose, the lower the risk that the child will suffer serious injury. Thus, FDA's unit-dose packaging requirement will significantly limit the likelihood that iron products containing 30 mg or more of iron per dosage unit may be injurious to health because the requirement that the child open each package unit will limit the amount of iron that the child can consume (see 59 FR 51030 at 51049). No comments provided any information to the contrary.

The CPSA, HSA, and PPPA do not prevent FDA from acting. Foods and drugs are neither consumer products (see 15 U.S.C. 2052(a)(1)(H) and (a)(1)(I)) nor hazardous substances (see 15 U.S.C. 1261(f)(2)). Thus, the CPSA and HSA are not relevant to this rulemaking. FDA's action is also not precluded by the PPPA because FDA is not establishing a special packaging performance standard for products that contain 30 mg or more of iron per dosage unit. As explained above, nothing in FDA's regulation is designed to define or modify what constitutes child-resistance for iron-containing products. In this rulemaking, FDA is defining the requirements of CGMP for these products to help ensure that they are not packed under conditions whereby they may be rendered injurious to health (sections 402(a)(4), 402(g)(2), and 501(a)(2) of the act). Such action is fully within FDA's authority under the act. Therefore, FDA finds no merit to these comments.

Several comments argued that section 402(f) of the act makes clear that FDA has the burden of demonstrating that any particular dietary supplement is adulterated or unsafe under the conditions of use recommended or suggested in the labeling, or in the absence of such labeling, under ordinary conditions of use. These comments contended that FDA cannot merely assert that a dietary supplement is no longer safe because of the form of packaging in which it is sold. Moreover, these comments contended that FDA must find, for each product, that under the recommended conditions of use, the product presents a significant or unreasonable risk of illness or injury.

FDA disagrees with these comments. The DSHEA, which added section 402(f) to the act, did not exempt dietary supplements that are foods (that is, e.g., that are not intended to prevent, cure, treat, or mitigate a disease) from the food provisions of the act (see section 201(ff) of the act (21 U.S.C. 321(ff))). Under the act as amended by the DSHEA, a dietary supplement that is a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health (section 402(a)(4) of the act). This situation is the one that FDA is addressing in this rulemaking. Moreover, section 402(g)(2) of the act specifically authorizes FDA to adopt good manufacturing practice regulations for dietary supplements. FDA is relying on this provision of the act, as well as sections 402(a)(4) and 701(a) of the act (21 U.S.C. 371(a)), in adopting the unit-dose packaging requirement for dietary supplements that are foods that contain 30 mg or more of iron per dosage unit.

The agency received a comment from the CPSC requesting that FDA amend its proposed regulations to clarify that iron-containing products conforming to FDA's regulation are subject to compliance with certain regulations issued by the CPSC.

In light of the desire of both the CPSC and FDA to ensure that manufacturers of iron-containing products comply with both CPSC's regulations for child-resistant special packaging and FDA's CGMP regulations for iron-containing products, in this final rule FDA is revising proposed §§ 111.50 (21 CFR 111.50) and 310.518(a) to make clear that products subject to these regulations are also subject to 16 CFR parts 1700, 1701, and 1702.

B. Effectiveness of Unit-Dose Packaging

The agency received a number of comments bearing on the effectiveness of unit-dose packaging to limit pediatric access to products. The majority of these comments expressed support for FDA's tentative conclusion that unit-dose packaging will effectively limit pediatric access to products. A few comments challenged this tentative conclusion. None of these comments provided data to support their views.

One comment expressed the view that unit-dose packaging would not be effective because such packaging is subject to compromise. Another comment contended that the child-resistant effectiveness of child-resistant unit-dose packaging is not absolute (i.e., because the CPSC specification is based on the number of units that a child is able to access in a period of time) in contrast to the effectiveness of CRC type packaging (i.e., in which the CPSC regulations specify that opening the closure within a period of time constitutes failure of the system).

FDA recognizes that unit-dose packaging, like all packaging, can be compromised, and that packaging in and of itself cannot make a product safe. However, based on information available to the agency (Refs. 8 and 9) and as discussed in the iron proposal (59 FR 51030 at 51049), unit-dose packaging, even conventional unit-dose packaging, limits pediatric access to multiple dosage units of product. Moreover, the effectiveness of unit-dose packaging to limit pediatric access to product is not dependent on proper reclosure of the packaging. In contrast, the effectiveness of closure type packaging to limit pediatric access is dependent on proper reclosure of the container. If the closure is compromised (i.e., opened, improperly reclosed, or damaged), all of the contents of the package are readily available for ingestion. FDA's concern is limiting the possibility that the product will be injurious to health. Unit-dose packaging, even conventional unit-dose packaging, will help to accomplish this end by limiting the amount of iron that a child can consume in a short period of time. Therefore, FDA finds that the comments provide no basis for modifying its approach to the problem of acute iron poisoning in young children.

C. Access to Products by Certain Persons

The agency received several comments bearing on the potential difficulty that some elderly and handicapped persons may have in gaining access to products in unit-dose packaging. For example, one comment noted that unit-dose packaging may limit access to products by persons with rheumatoid arthritis. Two comments expressed their view that unit-dose packaging is inconvenient. Another comment expressed the view that for adults with limited dexterity, conventional unit-dose packaging is not difficult to open. None of these comments provided any data or information to support their views.

A comment from CPSC noted the difficulty in assessing the extent to which elderly or handicapped persons may be hampered in accessing product packaged in conventional unit-dose packaging, because there are no ''accessibility'' standards for conventional unit-dose packaging. In their comment, CPSC provided a report of their study examining the accessibility of child-resistant and conventional unit-dose packaging with seniors, aged 60 to 75 years old. CPSC

[5] Given CPSC's child resistance requirements, FDA's action will have no effect on how difficult it is to open the package.

reported that all four child-resistant unit-dose package types passed the senior accessibility test criteria. Moreover, all 100 seniors tested were able to open the conventional unit-dose packaging.

In the iron proposal and the supplemental proposal, FDA anticipated the practical effect of the combination of new §§ 111.50 and 310.518(a) and CPSC's child-resistant packaging regulations for iron-containing drugs and dietary supplements, 16 CFR 1700.14(a)(12) and (a)(13), respectively. Manufacturers and distributors of drugs and dietary supplements containing 30 mg or more of iron per dosage unit and containing 250 mg or more of total iron per package will have two options. One option will be to package their product in child-resistant unit-dose packaging (e.g., child-resistant blisters, child-resistant pouches, or other child-resistant packaging that accomplishes the objective of making a single dosage unit available at a time). A second option will be to package their product in conventional unit-dose packaging through exercising their right to an exemption to CPSC's special packaging regulations as required by the PPPA.

FDA notes that since publication of the iron proposal, CPSC has amended its regulations in 16 CFR part 1700 (60 FR 37710, July 21, 1995) for testing the child-resistant effectiveness of packaging to require a senior adult use effectiveness of not less than 90 percent for a senior adult test panel consisting of 100 adults aged 50 to 70 years old. The intent of these amendments is to increase the use of child-resistant packaging by making it easier for adults to use them properly.

It is not FDA's intent to circumvent the aim of the PPPA to allow access by elderly and handicapped persons who may be unable to use household substances packaged in child-resistant packaging. However, in the absence of information to the contrary, FDA has no basis to conclude that iron-containing products packaged in conventional unit-dose packaging will unduly limit elderly or handicapped persons' access to such products. Therefore, FDA concludes that unit-dose packaging does not limit access to product by elderly or handicapped persons.

D. False Sense of Security

Two comments expressed their view that unit-dose packaging should not be required for products containing 30 mg or more of iron per dosage unit because such a requirement will provide a false sense of security and will not limit pediatric access to product.

FDA recognizes that no single approach is adequate to ensure the safe use of iron-containing products. However, a combination of educational programs, label warning statements, and packaging measures can reasonably be expected to be effective in reducing significantly the incidence of poisonings. As discussed in the iron proposal, FDA is sponsoring educational efforts to better inform health care providers and consumers of the risks presented by iron-containing products, and FDA is requiring label warning statements to provide information to consumers about the hazards to young children presented by iron-containing products. These two approaches will effectively alert health care providers and consumers to the hazards presented by iron-containing products. Moreover, contrary to the comments' contention that these measures, including unit-dose packaging, will provide a false sense of security, these measures more likely will support a heightened sense of concern. Persons informed of the pediatric hazard presented by iron-containing products will take extra measures to ensure that the products are handled appropriately, including ensuring that the unit-dose packaging is not compromised in any way. Therefore, FDA finds no merit in these comments.

E. CRC is Adequate

One comment expressed the view that CRC packaging is adequate for limiting pediatric access to a toxic amount of iron.

As discussed in the iron proposal, based on information available to the agency, misuse of CRC type packaging is one contributing factor to pediatric iron poisonings. For example, in 21 of the 26 pediatric iron poisoning deaths in which the type of packaging was reported, the product was packaged in CRC type packaging (Ref. 10). In the absence of information indicating that misuse of closure type packaging will no longer occur and in light of the potentially fatal consequences when a young child gains access to a lethal amount of iron, FDA is not persuaded that CRC type packaging is adequate to ensure that these products are packaged under conditions that are not injurious to health.

Another comment expressed the view that: ''FDA's current effort to go beyond the CPSC requirement for child-resistant closures with respect to iron-containing supplements should be viewed as an anomaly and not as a failure of the CRC system.''

The agency disagrees with the view that this rulemaking is an anomaly. Rather, FDA considers that this rulemaking is a special measure in response to a special circumstance, i.e., the large number of acute iron poisonings, including death in children less than 6 years of age, attributable to accidental overdoses of iron-containing products. FDA will continue to exercise its legal authority to fulfill its legislative mandate to ensure that foods, including dietary supplements, and drugs are not injurious to health.

Nonetheless, FDA agrees that this rulemaking should not be viewed as a failure of the CRC system. The agency notes that it is establishing additional packaging requirements only for products that contain 30 mg or more of iron per dosage unit because of the irreversible and potentially fatal consequences presented by these higher dose iron-containing products rather than because of a view that the CRC system has failed in any way.

F. Difficulty in Making Child-Resistant Unit-Dose Packaging

One comment stated that it is more difficult to make a child-resistant unit-dose package that is accessible and acceptable to adults than to make a conventional unit-dose package. The comment further noted that this difficulty was the reason why so few highly toxic products in the market were packaged in a unit-dose package.

FDA is not establishing packaging performance standards, child-resistant or otherwise, for iron-containing products in this rulemaking. Such standards are the responsibility of the CPSC. Rather, FDA is establishing these packaging requirements as a matter of good manufacturing practice to ensure that dietary supplements and drugs that contain 30 mg or more of iron per dosage unit are not packed under conditions whereby they may be rendered injurious to health. Therefore, FDA finds that the comment is not relevant to this rulemaking.

G. Alternative Approaches

Two comments recommended that all iron-containing drugs and dietary supplements be packaged in child-resistant unit-dose packaging to ensure that they are inaccessible to young children.

As discussed in the proposal, information available to FDA demonstrates that the iron-containing products presenting the greatest hazard to young children are those that contain 30 mg or more iron per dosage unit. As discussed above, FDA has concluded, based on the available evidence, that label warning statements and educational efforts are adequate to

address the problems with products containing less than 30 mg of iron per dosage unit, and that label warning statements, educational efforts, and unit-dose packaging are necessary to ensure that products containing 30 mg or more of iron per dosage unit are packaged under conditions that are not injurious to health. Therefore, the agency is rejecting this recommendation.

One comment recommended that, rather than requiring unit-dose packaging of products containing 30 mg or more of iron per dosage unit, FDA should limit the total number of dosage units allowed per package based on the amount of iron that is toxic. No specific upper limit on the total iron to be allowed per container was provided in this comment.

FDA notes that CPSC has taken an approach similar to that suggested by the comment by requiring child-resistant special packaging if the packaging contains more than 250 mg of total iron. In the iron proposal, FDA discussed the amount of ingested iron that is lethal to young children (i.e., to a 10 kg child) and noted that an acute ingestion of 25 mg/kg of iron may produce symptoms of poisoning, 60 mg/kg of iron may develop into clinically significant iron poisoning, and 250 mg/kg of iron may well be lethal for a young child. Because the comment did not specify an upper limit on the total iron to be allowed in the container, FDA will address the comment based on an upper limit of 250 mg of iron (i.e., the amount of iron that may produce symptoms of poisoning).

If FDA were to limit the total number of dosage units in a container based on 250 mg of iron, then a manufacturer would be able to provide up to 8 dosage units of a product containing 30 mg of iron per dosage unit (240 mg of total iron), or 3 dosage units of a product containing 65 mg of iron per dosage unit (195 mg of total iron), per container to meet this requirement. Because CPSC's child-resistant special packaging requirement has a threshold of 250 mg of total iron, such products could be packaged in conventional packaging and still be in compliance with CPSC's child-resistant special packaging regulations.

Packaging eight or fewer dosage units in closure-type packaging is impractical and actually is approaching a requirement of a ''unit-dose bottle.'' Moreover, iron-containing products frequently contain 90 to 100 dosage units per bottle, and consumers who currently purchase iron-containing products in such quantities would be likely to continue this practice, thereby purchasing 12 bottles of an iron-containing product that contains 30 mg of iron per dosage unit or 30 bottles of an iron-containing product that contains 65 mg of iron per dosage unit. Because all of the vials perform the same function, consumers are likely to store them in one place. The existence of multiple vials, particularly if the products are packaged with conventional-type closures, means that a child who discovers and gains access to one vial is likely to gain access to multiple vials. Further, to minimize the space needed for storage, consumers who bring multiple vials into the home may choose to repackage the product into as few bottles as possible, thereby defeating the intent of the regulations. Therefore, FDA concludes that limiting the total number of dosage units per container based on the total amount of iron per container will not contribute in a significant way to achieving the agency's goal of limiting pediatric access to a toxic amount of iron by ensuring that iron-containing products are packaged in a manner that will not render the product injurious to health.

The agency received two comments recommending that opaque packaging material be required for unit-dose packaging to provide additional safeguards to limit pediatric access to product. These comments noted that opaque packaging is required for child-resistant unit-dose packaging in New Zealand and throughout the European Community.

FDA recognizes that opaque packaging is one approach that may reduce pediatric access to product. However, the comments did not provide the agency with sufficient information to enable FDA to conclude that opaque unit-dose packaging is necessary to ensure that iron-containing products are packaged under conditions that are not injurious to health. Given this fact, FDA finds no basis to require the use of opaque packaging at this time. However, FDA would have no objection if manufacturers used opaque unit-dose packaging.

One comment recommended that the proposed regulation be modified to provide flexibility to permit manufacturers to try alternative packaging designs that achieve the same effect of limiting pediatric access to multiple doses of iron-containing products.

In establishing unit-dose packaging requirements for iron-containing products that contain 30 mg or more of iron per dosage unit, one of the agency's goals is to avoid restrictive requirements that unnecessarily limit technological advances that accomplish the objective of reducing pediatric access to potentially lethal amounts of iron. Under new §§ 111.50 and 310.518, the term ''unit-dose packaging'' means any type of packaging that achieves the goal of allowing access to one dosage unit at a time. The agency wants to clarify that, for the purpose of this rulemaking, several types of packaging can satisfy the definition of ''unit-dose-packaging,'' including blister-type packaging, pouches, and dispensers that deliver one dosage unit at a time. Moreover, the agency anticipates that future advances in package design will result in other types of packaging that will also meet this definition. Therefore, because the regulations as proposed provide for flexibility in the type of packaging used to achieve unit-dose, FDA is taking no action in response to this comment.

One comment asked whether the agency intends to eliminate the practice of packaging iron-containing drug products that are sold by prescription in dispensing size bottles for use by pharmacists. These bottles contain up to 1,000 tablets each. The comment stated that few pharmacists are capable of dispensing these products in unit-dose packaging and added that unit-dose packaging is not necessary for products obtained by prescription. The latter point was made by a second comment as well.

FDA does intend that change be effected in the dispensing and packaging practices of some iron-containing products, including iron-containing drug products sold by prescription. Some of the iron-containing drug products that have caused injury to children have been sold by prescription, and the agency is concerned that their being sold by prescription has not caused adults to ensure that they are kept inaccessible to children. Consequently, the agency believes that unit-dose packaging is necessary for iron-containing prescription drug products that contain 30 mg or more of iron per dosage unit. Therefore, the requirement of this final rule to package iron-containing products that contain 30 mg or more of iron per dosage unit in unit-dose packaging will result, as an unintended consequence, in an elimination of the practice of packaging such iron-containing prescription drug products in dispensing size bottles for use by pharmacists.

One comment recommended that FDA revise the proposal to specify that all iron-containing tablets sold over-the-counter be sold with CRC's. The comment suggested that packaging for iron-containing drug products sold by prescription not be changed because

pharmacies will repackage the contents. The agency understands this latter suggestion to mean that packaging for products sold by prescription should not be subject to regulation since pharmacists will repackage tablets into pharmacy vials.

FDA has not revised the regulations in response to this comment. The distinction between unit-dose packaging and CRC is essential to the rule. As explained above, decisions about child-resistant packaging are the province of CPSC. FDA is requiring unit-dose packaging for products that provide 30 mg or more of iron per dosage unit to ensure that these products are not rendered injurious to health. Serious injuries, including death, are attributable to accidental overdose of products containing this amount of iron per unit. FDA's conclusion, reached on the basis of this rulemaking, is that unit-dose packaging will limit the number of dosage units to which a child will gain access and thereby significantly limit the risk of injury. As noted above, to limit the risk of serious injury and death, the agency intends that such iron-containing drug products sold by prescription will also be packaged in unit-dose packaging.

One comment suggested that FDA review its specifications for unit-dose packaging in a public forum that would include packaging suppliers and associations to determine whether CRC might enhance safety more than unit-dose packaging.

The agency declines to accept this suggestion. As stated previously, FDA is not setting specifications for unit-dose packaging or for CRC's. Such specifications are the responsibility of the CPSC. FDA has the responsibility to ensure that products are packed under conditions that will not render them injurious to health. Young children are gaining access to toxic and potentially fatal amounts of iron from iron-containing products packaged in CRC type packaging. It is for this reason that FDA has determined that unit-dose packaging of products containing 30 mg or more of iron per dosage unit is necessary to ensure that iron containing products are packaged under conditions that will not render them injurious to health.

One comment requested that FDA review its implementation plan with industry and with individual suppliers of unit-dose packaging to discuss issues relevant to materials and machinery, including adequate supply of packaging, cost, validation, stability, and compliance.

FDA declines this request because the agency's analysis of costs and benefits (see section VI. of this document) takes into account these aspects of compliance with the rule. Based on comments received from the packaging industry, the analysis has found that: (1) There is an adequate supply of packaging, and (2) not all firms will need to purchase packaging equipment because adequate capacity exists within the contract packaging industry. The analysis also takes into account other costs of complying with the requirements of this rule, such as administrative costs, storage and transportation costs, stability testing, and label redesign costs.

One comment stated that the proposal failed to address certain regulatory concerns including the impact of the rule on product submissions currently under review by the Center for Drug Evaluation and Research (CDER) and whether new product submissions will be required by this rule.

There currently are no submissions under review by CDER for iron-containing drug products. If future submissions are made to CDER for such products, FDA expects that they will reflect any change in the stability of the products that may be caused by a change to unit-dose packaging. The rule does not, however, in and of itself, establish separate submission requirements for iron-containing drug products.

IV. Formulation and Appearance of Iron-Containing Products

The AG petition recommended that FDA prohibit the manufacture and sale of adult formulations of iron-containing products that look like candy or contain a sweet outer coating. The AAPCC petition asked FDA to urge the industry to voluntarily reformulate iron-containing products containing 30 mg or more of iron per dosage unit to be in less attractive dosage units, specifically avoiding resemblance to popular candies. NDMA asked FDA to reject the recommendation of the AG petition because any provision for ''no candy-like appearance'' would not be practical and would be difficult to administer because of the subjective nature of assessing candy-like appearance. In the proposal, FDA requested comments on whether use of ''candy'' and ''colorful'' coatings on iron-containing products is hazardous to infants and young children because of the apparent attractiveness of the products. FDA stated that the agency would consider action in this regard if the information received presented an objective basis for additional steps that FDA could take to limit the appeal of iron-containing products to young children.

FDA received several comments on the appearance of iron-containing products. Most of these comments expressed an opinion that the resemblance of certain iron-containing products, including products formulated specifically for use by children, to candy or to cartoon characters contributed to the problem of children ingesting large quantities of these products. One comment argued that experience demonstrated that children are attracted to bright, shiny, colorful objects, and that, although children will swallow most objects, they will continue to seek out objects that taste good. This comment stated that changing the sweet coating would be an additional safeguard to ensure that children do not ingest large quantities of these supplements. Another comment asserted that a candy-like appearance and taste both needlessly attract an unsuspecting child and encourage ingestion of large quantities of these products by a child who may be unlikely to chew through the sugar coat.

Another comment, from a State department of health, reported that investigation of 5 of 17 deaths revealed evidence that children chewed or sucked on the iron tablets. A comment from a State consumer protection board expressed the opinion that hazardous products with a look-alike appearance to food products that are safe to consume present conflicting messages that can confuse children about what is safe to eat, and what is not. Some comments noted that current recommendations from industry trade organizations include a recommendation that products containing 30 mg or more of iron per dosage unit should not be manufactured to have a sweet, candy-like outer coating.

In the proposal, FDA stated its tentative view that it may not be possible to objectively measure the candy-like appearance of iron-containing products. None of the comments provided a basis for FDA to change this tentative view. Therefore, FDA is not adopting any requirements relating to the formulation or appearance of iron-containing products.

V. Forms of Iron That May Be Less Toxic

A. Introduction

Three basic types of elemental iron powders are marketed for use in foods: Reduced iron, electrolytic iron, and carbonyl iron. The terms ''reduced,'' ''electrolytic,'' and ''carbonyl'' refer to the production process by which the iron is manufactured rather than the

composition of the product. In the iron proposal, FDA specifically requested comments on the appropriateness of elemental iron as a source of iron in drugs and dietary supplements. FDA stated that the agency would consider exempting iron-containing products that incorporate elemental iron from any regulations that result from the rulemaking instituted by the iron proposal if the information received was persuasive in establishing that the use of elemental iron would substantially decrease the risk of pediatric poisoning while allowing for effective dietary iron supplementation.

B. Public Workshop

In the Federal Register of March 21, 1995 (60 FR 14918), FDA published a notice announcing a public workshop on the acute toxicity of elemental forms of iron relative to that of iron salts. The purpose of the workshop was to solicit scientific data and information about the acute toxicity of elemental forms of iron with regard to whether such forms are sufficiently safe in dietary supplement and drug products to warrant exemption from the special packaging and labeling requirements that FDA had proposed for products containing iron salts.

Specifically, the notice stated that the purposes of the workshop were to: (1) Identify data that objectively describe the acute toxicity of elemental iron; (2) identify the market uses of elemental iron and any adverse reaction reporting systems or processes used by manufacturers and vendors; (3) identify any data on acute, accidental exposure of children or adults to products containing elemental iron; (4) discuss a possible conceptual framework for evaluation of the effects of elemental forms of iron upon acute exposure; and (5) discuss the validity and limitations of acute toxicity data in experimental animals in predicting the risk in young children.

The notice also stated that specific topics that may be relevant and on which discussion was invited included: (1) Physiological factors that influence toxicity of elemental forms of iron, in comparison with those for iron salts; (2) the quality, results, and relevance of animal studies on acute toxicity of elemental iron and iron salts; (3) the quality and results of human studies for evaluating the effects of elemental iron; (4) factors influencing the validity of extrapolation of experimental animal data on acute toxicity of various forms of iron for predicting the risk in young children; and (5) current uses of elemental iron in dietary supplements and drugs and the data available for predicting the risk in young children.

The workshop was held on April 20, 1995, in Rockville, MD. Statements were made by representatives of several manufacturers of iron-containing products, a trade association, a physician, and a law firm representing a manufacturer of iron-containing products. Most of the participants who made oral presentations at the public meeting also submitted written comments containing details of the information discussed at the meeting.

The data and information submitted to FDA in response to the agency's request for data in the notice announcing the public workshop, as well as the data and information submitted to FDA in comments to the iron proposal and the supplementary proposal, are discussed below. Most of the data and information submitted to FDA addressed a single form of elemental iron, namely, carbonyl iron. However, one comment provided data and information on polysaccharide iron complex (PIC), a nonionic iron complex synthesized by the neutralization of a ferric chloride carbohydrate solution. Both forms of iron will be considered below.

C. Market Uses of Elemental Iron

FDA received one comment from a manufacturer who claimed to be the sole producer of carbonyl iron in the United States and who stated that the firm had introduced a pharmaceutical/food grade of carbonyl iron into the marketplace in 1988. The comment provided information on the manufacturers of multivitamins and stand-alone iron supplements who have purchased carbonyl iron for use in those products, brand names of products containing carbonyl iron, the potency (expressed in mg of iron) of the various products, and the distributors who sold the products. The manufacturer stated that carbonyl iron had been used in more than 2 billion tablets marketed by 15 manufacturers in 35 brands of iron-containing dietary supplement and drug products.

Another comment from an industry trade association stated that there are between 1,300 and 3,000 products containing iron, including carbonyl iron, on the market.

The agency received one comment from a manufacturer of PIC, which is approximately 46 percent iron by weight and is sold in solid oral dosage forms in both dietary supplement and drug products in doses ranging from 18 mg of iron to 150 mg of iron. The comment provided information on the brand names of ten products containing PIC in solid oral dosage form and the potency (expressed in mg of iron) of the various products. The comment stated that approximately 255.8 million brand-name tablets or capsules containing PIC had been produced during the period 1993 to 1994.

FDA appreciates receiving this information, which demonstrates that certain forms of elemental iron are used as ingredients in a range of iron-containing products that are marketed for use by children and adults. This information provides a context for evaluating the impact of an agency decision to exempt any form of elemental iron from any or all of the requirements of this final rule. At this time, it appears that between 1 percent and 3 percent of iron-containing products on the market contain carbonyl iron, and that between 0.3 percent and 0.8 percent of iron-containing products on the market contain PIC.

D. Comments on the Acute Toxicity in Animals of Elemental Iron Compared to That of Iron Salts

A comment from a professor of nutrition at a research university stated that there are apparently distinct advantages to the use of carbonyl iron as an alternative to the use of iron salts because of decreased toxicity at the doses that young children are likely to ingest. Another comment from a hematologist urged that carbonyl iron be exempted because of its low acute toxicity. Neither comment, however, supplied any data to support these statements.

Several comments asserted that administering iron as carbonyl iron for the prevention and treatment of iron deficiency provides a greater margin of safety than administering iron as iron salts. One comment conceded that available data are limited but stated that while the estimated lethal dose (LD) of ferrous sulfate in rats was 200 to 300 mg of iron (Fe) (expressed in terms of iron content) per kg body weight,[6] the LD of carbonyl iron in rats and guinea pigs was 50,000 to 60,000 mg Fe/kg body weight or more[7] (Ref. 11). This comment concluded that these studies in experimental animals suggested that carbonyl iron has a 100-to 200-fold

[6] The comment did not provide a literature citation for these data. The comment also did not specify whether the data reflected LD_{50} values (i.e., the dose that is fatal to 50 percent of the animals) or LD_{100} values (i.e., the dose that is fatal to 100 percent of the animals).

[7] The data cited are LD_{100} values. The comment also noted that the LD_0 value (i.e., the dose at which all animals survive) for rats and guinea pigs was 10,000 to 15,000 mg Fe/kg body weight.

greater safety margin than ferrous sulfate.

Another comment from a manufacturer of carbonyl iron included a report, commissioned by that manufacturer, on the toxicity of carbonyl iron powder. This report acknowledged that little data were provided to directly compare the toxicity of carbonyl iron with ionic forms of iron.

FDA has reviewed the animal toxicity data cited in the comments and other available animal toxicity data (Refs. 11 through 16). Most of the reported data were expressed as LD_{50} values (i.e., the dose that is fatal to 50 percent of the animals in the study), although some data were expressed as no-adverse-effect-level (NOAEL) values. For clarity and convenience, the LD_{50} data are summarized in Tables 2 through 4. However, in most cases the data reported in these tables do not reflect studies in which the toxicity of one form of iron was directly (i.e., concurrently) compared to that of other forms of iron.

TABLE 2.—MAGNITUDE OF DIFFERENCES IN STUDIES REPORTING MEDIAN LETHAL DOSE (LD_{50}) LEVELS: CARBONYL IRON VERSUS IRON SALTS [1]

Species	LD_{50} (mg Fe/kg body weight)		Approximate fold difference
	Carbonyl iron	Iron salt	
Rat	30,000	298 to 1,000 (ferrous sulfate)	30 to 90
		580 to >2,300 (ferrous fumarate)	13 to 50
Guinea pig	20,000	300 to 350 (ferrous sulfate)	57 to 67
		263 to 350 (ferrous gluconate)	57 to 76
		350 (ferric ammonium citrate)	57
		2,000 (ferrous carbonate)	10
Dog	>25,000	160 (ferrous sulfate)	156

[1] Data summarized from published literature (Refs. 11 through 16).

TABLE 3.—MAGNUITUDE OF DIFFERENCES IN ST REPORTING MEDIAN LETHAL DOSE (LD_{50}) LEVELS: DIFFERENCES AMONG VARIOUS IRON SALTS [1]

Species	Oral LD_{50} (mg Fe/kg body weight)		Approximate fold difference
Mouse	50–900 (ferrous sulfate)	3,800 (ferrous carbonate)	4 to 25
rat	298–1,000 (ferrous sulfate)	580–>2,300 (ferrous fumarate)	2 to 8
Guinea pig	263–350 (ferrous gluconate)	2,000 (ferrous carbonate)	6 to 8

[1] bid.

TABLE 4.—MEDIAN LETHAL DOSE (LD_{50}) LEVELS REPORTED FROM ORAL EXPOSURE: SPECIES DIFFERENCES [1]

Iron source	Animal species	Oral LD_{50} (mg Fe/kg body weight)	Approximate fold difference
Ferrous sulfate	mouse	150 to 900	1.1 to 10
	rat	298 to 1,000	
	guinea pig	300 to 350	
	rabbit	600 to 720	
	dog	160	
	cat	100	
Ferrous fumarate	mouse	516 to 1,100	2 to 4.5
	rat	580 to>2,300	
Ferrous gluconate	mouse	320 to 1,100	1.3 to 4.2
	rat	518 to 865	
	guinea pig	263 to 350	
	rabbit	463 to 580	
Ferrous carbonate	mouse	3,800	1.9
	guinea pig	2,000	
	rabbit	2,220	
Ferric ammonium citrate	mouse	1,000	2.9
	guinea pig	350	
	rabbit	560	
Carbonyl iron	rat	30,000	1.5
	guinea pig	20,000	
	dog	>25,000	

[1] Ibid.

The data in Tables 2 through 4 show that the reported LD_{50} values for carbonyl iron are at least an order of magnitude greater than those of iron salts. However, although these data do suggest that the acute oral toxicity of carbonyl iron is lower than that of iron salts, FDA does not agree that these data establish that carbonyl iron has a 100- to 200-fold greater safety margin than ferrous sulfate. As explained below, the variations in reported LD_{50} values within and between species, the variations in reported LD_{50} values between different ferrous salts within the same species, and the limited data directly comparing the toxicity of carbonyl iron to that of iron salts prevent the agency from reaching such a conclusion at this time.

In evaluating the LD_{50} data, the agency compared the magnitude of the differences in the reported LD_{50} values for iron salts and for carbonyl iron (see Table 2) to the magnitude of differences in reported LD_{50} values for various iron salts (see Table 3) and to the magnitude of inter-species differences in reported LD_{50} values (see Table 4). For example, the maximum interspecies variation in reported LD_{50} values for ferrous sulfate is tenfold (see Table 4), and the maximum intraspecies variation in reported LD_{50} values for the mouse is twenty-fivefold (see Table 3). By comparison, the difference in the reported LD_{50} values for carbonyl iron and ferrous sulfate ranges from a minimum of thirtyfold in the rat to a maximum of 156-fold in the dog (see Table 2). Thus, while in laboratory animals carbonyl iron appears to be among the least toxic of iron preparations, wide variations in toxicity have been reported among different iron salts and within animal species. In some cases, the magnitude of the difference in reported LD_{50} values between carbonyl iron and iron salts is no greater than the magnitude of difference in reported LD_{50} values between various iron salts or between animal species. Given the facts that most of the LD_{50} data were reported several decades ago, that most of the studies were not conducted as concurrent comparisons of LD_{50} values for carbonyl iron and for iron salts, and that current practice is to characterize LD_{50} values within an order of magnitude range, e.g., 5 to 50 mg/kg (Ref. 17), the agency finds that it is unable to conclude, despite the higher reported LD_{50} values for carbonyl iron, that carbonyl iron provides the quantitative margin of safety compared to iron salts claimed by the comment.

In general, extrapolation from data on acute iron toxicity obtained with experimental animal species to predict acute iron toxicity in humans is not straightforward because there are large inter-species differences in response to large loads of iron. Hoppe, et al. (Ref. 16) reviewed case reports of human deaths from ingestion of ferrous sulfate and found that the average fatal dose of iron in children under 2 years of age was approximately 180 mg/kg body weight. Thus, the LD of ferrous sulfate in children is comparable to the reported LD_{50} values in the dog (160 mg/kg) and in the cat (100 mg/kg) but considerably lower than the reported LD_{50} values for the rat (300 to 1,000 mg/kg) and rabbit (600 to 720 mg/kg). Consequently, because of this variation, in attempting to predict iron toxicity in human children based on data obtained in experimental animals, it would be imprudent to rely on data derived from a single animal species.

The available iron toxicity data primarily provide acute LD levels. Most of these LD_{50} values were reported several decades ago, and details of how the studies were conducted are not available in all cases. Moreover, there are a limited number of studies in which the LD for carbonyl iron was compared directly (i.e., in the same study) to that of iron salts. The known inherent variability and lack of precision in LD_{50} values reported from one study to another (Refs. 17 and 18) make the available data unreliable for use in predicting a margin of safety that carbonyl iron would provide compared to iron salts in the event of accidental overdose. Finally, given the number of pediatric exposures, and the number of moderate and major outcomes associated with those exposures, other measures of acute toxicity, such as clinical chemistry measurements, pathology of the liver and gastrointestinal tract, and clinical signs and symptoms or injuries (e.g., vomiting) are appropriate and necessary to determine whether the acute toxicity of elemental iron is less than that of iron salts.

In summary, the magnitude of the difference in reported LD_{50} values between various iron salts, the magnitude of the inter-species difference in reported LD_{50}, the limited data directly comparing the acute toxicity of carbonyl iron to that of other iron salts, and the lack of measures of acute toxicity other than death mean that the data submitted to support reduced toxicity of carbonyl iron are not suitable for quantitative comparisons of the acute toxicity of carbonyl iron to that of iron salts. Therefore, FDA concludes that the available animal toxicity data are consistent with, but do not establish, reduced toxicity for carbonyl iron relative to that of iron salts.

E. Comments on the Acute Toxicity in Humans of Elemental Iron Compared to the Acute Toxicity of Iron Salts

Several comments cited data from a study (Ref. 19) of human volunteers who, following ingestion of a single dose of 6,000 mg of carbonyl iron (approximately 84 mg Fe/kg body weight), experienced only mild diarrhea without cramp. The comments compared these data to medical guidelines (Refs. 20 and 21) that recommend hospitalization and close observation in response to the acute ingestion of iron salts in doses of 60 mg Fe/kg body weight. One comment from a medical researcher stated that in a study conducted in his own laboratory four adult human volunteers took oral doses of 10,000 mg of carbonyl iron (approximately 140 mg Fe/kg body weight) ''without distress'' (Ref. 22). The same comment cited a published report in which a single adult human volunteer swallowed 10,000 mg of carbonyl iron ''without deleterious effects'' (Ref. 23).

The studies described by these comments are small and include so few subjects that they do not, in and of themselves, provide reliable data concerning the toxicity of carbonyl iron. As discussed below, other comments pointed that the incidence of side effects in volunteers who ingested carbonyl iron during a randomized, double-blind study designed to evaluate the bioavailability of carbonyl iron (Ref. 24) was similar to that of volunteers who ingested ferrous sulfate. However, these reports are consistent with other data that suggest that carbonyl iron may be less toxic than iron salts and could be corroborated by larger studies that are specifically designed to evaluate the safety and side effects of using carbonyl iron.

One comment from a physician noted that the reported side effects (such as diarrhea, heartburn, headache, epigastric discomfort, nausea, and abdominal cramps) from comparable doses of carbonyl iron and ferrous sulfate in a randomized, double-blind study designed to evaluate the bioavailability of carbonyl iron (Ref. 24) were similar. This comment stated that it did not make sense that similar side effects with similar dose amounts would translate to total impunity of carbonyl iron from toxic effects.

FDA agrees that reports that side effects in persons who consumed carbonyl iron as a dietary supplement or for therapeutic purposes are similar to side effects in persons who consumed

iron salts for the same purposes signify a need for caution in evaluating the limited evidence concerning the toxicity of carbonyl iron and do not translate to ''total impunity'' from toxic effects. However, these reports of similar side effects in a therapeutic setting do not necessarily mean that the physiological factors leading to injuries with accidental overdose will be the same for carbonyl iron and iron salts. Moreover, the body's response to an accidental overdose may be different from the body's response to a therapeutic dose.

The requirements of this final rule are intended to help prevent the acute iron poisonings, including deaths, in children less than 6 years of age attributable to accidental overdose of iron-containing products. Although the reports of side effects in adults who consume carbonyl iron as a dietary supplement or for therapeutic purposes raise potential questions of safety, available data are inadequate to document that these observations are necessarily predictive of acute poisoning in young children from accidental overdose of carbonyl iron. These reports, by themselves, do not provide a sufficient basis to determine that carbonyl iron is as toxic as iron salts.

F. Comments Supplying Data on Acute, Accidental Exposure of Children to Products Containing Elemental Iron

One comment from a manufacturer of carbonyl iron stated that the firm had reviewed its files and found no complaints regarding toxicity associated with its carbonyl iron products since the introduction of its pharmaceutical/food grade carbonyl iron product in 1988. The comment also stated that its carbonyl iron had been used in over 2 billion tablets marketed in 35 brands of iron-containing dietary supplement and drug products by 15 manufacturers, and that the firm was unaware of any adverse toxic effects associated with use of those products.

The same comment included data obtained from the Toxic Exposure Surveillance System (TESS) of the AAPCC. The comment summarized exposures, outcomes, symptoms, age group, and iron potency for carbonyl iron exposures and all iron exposures during the period 1989 to 1994. Table 5 compares the exposures and outcomes as summarized in the comment.

TABLE 5.—REPORTED EXPOSURES[1] FOR IRON-CONTAINING VITAMINS AND MINERALS

	Carbonyl iron (Number)	All iron (Number)
Reported exposures:		
Accidental ..	2,635	120,086
Intentional ..	58	9,854
Adverse Reaction	18	863
Unknown/other	3	15
Total	2,714	130,818
Outcomes of Exposures:[2]		
No effect[3] ..	1,081	54,837
Minor effect[4]	173	17,218
Moderate effect[5]	4	2,012
Major effect[6]	0	177
Death	0	35

[1] The data in the table reflect the data supplied in comment 150 to the iron proposal under Docket No 93P–0306.

[2] See ref. 25 of this document.

[3] The patient developed no signs or symptoms as a result of the exposure.

[4] The patient developed some signs or symptoms as a result of the exposure but they were minimally bothersome, and generally resolved rapidly with no residual disability or disfigurement.

[5] The patient developed signs or symptoms as a result of the exposure which were more pronounced, more prolonged, or more of a systemic nature than minor symptoms. Usually, some form of treatment is indicated.

[6] The patient exhibited signs or symptoms as a result of the exposure which were life-threatening or resulted in significant residual disability or disfigurement.

One comment from a manufacturer of iron-containing supplements stated that the firm had not received a single report of adverse side effects or toxicity in 3 years of marketing products containing carbonyl iron.[8] Another manufacturer of iron-containing supplements submitted data on the composition of two of its multivitamin products containing 10 mg or 18 mg of carbonyl iron and summaries of 133 adverse event reports for the product containing 18 mg of carbonyl iron. This comment also provided data from a poison control center on 10 reports of exposures to a product containing carbonyl iron. Reported exposures ranged from approximately 160 mg of iron (approximately 11 mg Fe/kg) to approximately 1,975 mg of iron (unknown mg Fe/kg). The most common outcome was vomiting. The 2½-year old child who ingested 1,975 mg of carbonyl iron was treated with Ipecac and experienced headache, dizziness, hot flashes, and vomited twice. No further followup was reported for these exposures.

A trade association commented that it had conducted a confidential adverse experience survey of its members and stated that the results supported a conclusion that products containing carbonyl iron are safe and do not require special packaging and labeling. The survey results included data from members who marketed a total of seven products containing carbonyl iron. The survey found a total of 15 instances in which children aged 17 months to 4 years old ingested doses of various products in the range of 180 to 2,000 mg of iron. Only 3 of these 15 exposures resulted in minor outcomes, and none of these exposures was associated with moderate outcomes, major outcomes, or death.

One comment from a physician noted that much of the argument for exempting carbonyl iron from the requirements of the proposal was the data on accidental exposure. This comment pointed out that the absence of clinically significant effects associated with accidental exposure to carbonyl iron may reflect the fact that most of the preparations with carbonyl iron are multivitamin preparations containing lower dosages of iron compared to the preparations that have been associated with clinically significant effects. The comment expressed the opinion that there was a reasonable possibility that if carbonyl iron was exempted from the requirements of the proposal and categorized as a ''nontoxic substance,'' then experience with sublethal toxic exposure would accumulate rapidly. The author of the comment stated that he was ''not in favor of such uncontrolled experimentation.'' The comment further expressed the opinion that it would be prudent to wait until accidental exposure numerically equalled accidental exposure to other forms of iron, or at least to ferrous sulfate, when expressed in dose equivalent amounts.

FDA has evaluated the submitted information on acute, accidental exposure to products containing elemental iron. The summary information from poison control centers showed that: (1) Accidental overdose of carbonyl iron-containing products has resulted in 173 minor outcomes; (2) accidental overdose of carbonyl iron-containing products has resulted in four moderate outcomes; and (3) there were no reported exposures to carbonyl iron-

[8] The comment did not provide information about the nature of its reporting system, e.g., whether the system was systematic.

containing products that resulted in major outcomes or death. However, the total number of accidental exposures to carbonyl iron is likely to be underestimated because information on the form of iron ingested was not always reported. For example, information on the form of iron ingested is not available in the original report or followup investigation for 8 of the 37 fatalities described in the iron proposal. This likely underestimation of total accidental exposures raises the question of whether the total number of minor, moderate, major, and fatal outcomes resulting from accidental overdose of carbonyl iron is also underestimated. Moreover, the lack of reported major outcomes or death associated with accidental overdose of products known to contain carbonyl iron may be a reflection of both the small number of total exposures to date and the insensitivity of passive reporting systems.

Furthermore, information supplied in the comments concerning the identity and potency of currently available products that contain carbonyl iron indicate that only 7 of 32 brand-name products contained high doses of carbonyl iron (i.e., greater than or equal to 30 mg of iron).[9] This paucity of products containing high-potency carbonyl iron amplifies the agency's concern that the lack of reported major outcomes or death associated with accidental overdose of products known to contain carbonyl iron may be a function of the small number of total exposures to high doses of carbonyl iron (i.e., 30 mg or more of iron) rather than the low toxicity of the substance. Therefore, these data, while encouraging, must be interpreted with caution and do not by themselves provide a sufficient basis for a conclusion of reduced toxicity for carbonyl iron compared to iron salts.

Although FDA agrees that it would be prudent to defer a decision on whether carbonyl iron is sufficiently less toxic than iron salts to merit an exemption from the requirements of this final rule until the amount of data available concerning accidental human exposures to carbonyl iron approaches that for iron salts, the agency realizes that, given the current market share of carbonyl iron-containing products of 1 to 3 percent (see section V.C. of this document), such a delay is not practicable. Moreover, such a delay would not be in the interest of the public health if carbonyl iron is in fact significantly less toxic than iron salts. On the other hand, FDA recognizes that there may be some basis for the concern expressed by the comment. Therefore, although FDA is not adopting the suggestion that the agency wait until exposure to carbonyl iron numerically equals exposure to other forms of iron or to ferrous sulfate before reaching a decision on whether to exempt carbonyl iron from the requirements of this final rule, FDA will remain cautious in evaluating the existing information concerning the toxicity of carbonyl iron.

G. Comparison of Animal Toxicity Data to Human Toxicity Data

One comment from a physician stated that it may be premature to make a regulatory decision about an exemption for carbonyl iron because the toxicity data were based almost entirely on animal studies. Another comment, in a report commissioned by a manufacturer of carbonyl iron, attempted to relate data on the toxicity in humans of carbonyl iron and iron salts to animal toxicity data. First, the report stated that adult humans who were acutely exposed to a single dose of 6,000 mg (i.e., approximately 100 mg/kg) of carbonyl iron experienced no toxicity other than diarrhea,[10] and that adult humans who were acutely exposed to carbonyl iron at doses ranging from 100 to 10,000 mg (i.e., 1.4 to 142 mg/kg)[11] experienced diverse side effects (such as gastrointestinal tract disturbances and headache) but no fatality. Moreover, the report noted that the effects of exposures to carbonyl iron in rats and guinea pigs in this dose range (i.e., 1.4 to 140 mg/kg) also were not life-threatening.[12]

Second, the report noted that as the ingested dose in cases of accidental overdose of iron salts in children approached and exceeded 200 mg/kg, the likelihood of death seemed to markedly increase. By comparison, the report noted that LD_{50} values in rats for iron salts are similar (300 to 1,000 mg/kg, expressed in terms of iron content)[13] to the dose that is frequently fatal in children. The report presented the similarity in lack of toxicity for carbonyl iron in adult humans and experimental animals, and the similarity in toxicity for iron salts in children and experimental animals, as evidence that the data on experimental animals can be extrapolated to humans.

FDA has considered the reasoning in the comments that the available toxicity data in experimental animals can be extrapolated to predict whether carbonyl iron has reduced acute toxicity in children compared to that of iron salts. The available animal toxicity data qualitatively imply reduced toxicity for carbonyl iron compared to iron salts, but the data are not suited for quantitative comparisons, even among animal species. As discussed above, the quantitative toxicity information available consists for the most part of LD_{50} values calculated from nonconcurrent acute toxicity studies with few animals and few doses, and such values are neither precise nor easily compared from one study to another. The fact that most of the available LD_{50} values are derived from studies conducted more than 30 years ago, for which there are only brief details of the experimental methods and test material identity (including comparability to currently marketed forms of iron), further makes comparison of the LD_{50} values difficult. Moreover, the available information does not contain data regarding levels at which there are no toxic effects, and such data are most directly relevant to this rulemaking considering that the issue at hand is one of acute toxicity. Finally, adults are less sensitive to toxic effects than young children, and most of the available data relates to adult humans and animals. Therefore, FDA is unable to say that the available toxicity data can be extrapolated to reliably predict reduced acute toxicity in children of carbonyl iron compared to that of iron salts.

H. Comments on the Bioavailability of Elemental Iron for Dietary Iron Supplementation

FDA requested information with respect to the bioavailability of carbonyl iron to determine whether carbonyl iron provides desirable iron nutrition to those who need iron supplementation. FDA requested this information because it anticipated that an exemption for carbonyl iron from any packaging or labeling requirements in the final regulations would likely result in a shift in product formulations to replace iron salts with carbonyl iron.

Several comments asserted that administering iron as carbonyl iron is as effective for the prevention and treatment of iron deficiency as

[9] Of these seven brand-name products, three contained 50 mg iron, two contained 65 mg iron, and two contained 150 mg iron.

[10] The report did not provide a direct literature citation for this statement, but likely was referring to the study by Sacks and Crosby (Ref. 19) cited by another comment.

[11] The report did not provide a direct literature citation for this statement, but included the studies by Gordeuk et al. (Refs. 22 and 26) in a bibliography.

[12] The report did not provide a direct literature citation for this statement, but included the study by Shelanski (Ref. 11) in a bibliography.

[13] The report did not provide a direct literature citation for this statement, but LD_{50} values for iron salts are reported in this range in Ref. 12.

administering iron as iron salts. In support of this assertion, one comment from a medical researcher described several published studies in female blood donors comparing the bioavailability of carbonyl iron with that of ferrous sulfate. These published studies were also cited in several other comments.

In one study (Ref. 27) comparing treatment with carbonyl iron or ferrous sulfate with use of a placebo, the treatment was intended to replace, within 56 days, the amount (approximately 200 mg) of iron removed by phlebotomy from 75 menstruating women who were regular blood donors. Blood donor volunteers were assigned randomly to one of three treatment groups: (1) High dose (600 mg) carbonyl iron; (2) standard dose (300 mg) ferrous sulfate (equivalent to 60 mg of iron); or (3) placebo. Each treatment was administered three times daily for 1 week immediately after blood donation.

The reported incidence of side effects was similar in both groups receiving sources of iron, even though the dose of iron was 10 times higher in the group receiving carbonyl iron than in the group receiving ferrous sulfate. The authors of the study estimated total iron absorption of 95 percent, 76 percent, and 64 percent of the iron lost through blood donation by the carbonyl iron group, the ferrous sulfate group, and the placebo group, respectively, and concluded that short-term ingestion of carbonyl iron was an efficacious means of replacing iron lost through blood donation.

A followup study (Ref. 28) of the effects of short-term iron supplementation in female blood donors was designed to develop a regimen that would minimize side effects of iron supplementation compared with a placebo while replacing iron losses in all, or nearly all, donors. In this study, a treatment regimen of 100 mg of carbonyl iron given once daily at bedtime was compared with that of a placebo.[14] The conclusions of the study were that, overall, enough iron was absorbed to replace that lost at donation in 85 percent of the carbonyl iron group but in only 29 percent of the placebo group.

In another study (Ref. 24) comparing the bioavailability of carbonyl iron with that of ferrous sulfate, 49 female blood donors with iron deficiency were treated with equal doses (100 mg) of iron once daily at bedtime over a 12-week period. The doses were administered either as carbonyl iron (100 mg) or as ferrous sulfate (500 mg (equivalent to 100 mg of iron)) in a randomized, double-blind fashion. The incidence of side effects was similar in the two groups, and measures of iron status did not differ significantly throughout the study. The conclusions of the study were that estimates of net changes in total body iron suggested that the overall bioavailability of carbonyl iron is approximately 70 percent that of ferrous sulfate.

The comment also included a description of a long-term 2½-year unpublished study, in which repeated courses of 56 days of low dose (100 mg) carbonyl iron were given to one group of volunteers once daily at bedtime after each blood donation. Two other groups of volunteers were permitted unsupervised self-supplementation, with volunteers in one group donating blood in an unscheduled manner, and volunteers in the second group donating blood on a schedule identical to that of the carbonyl iron group. The conclusion of the study was that the prevalence of iron deficiency in the group receiving carbonyl iron declined substantially compared with its prevalence in the two groups who were permitted unsupervised self-supplementation. In addition, the researchers concluded that increases in measures of iron status in the subjects in the carbonyl iron group over the 30-month course of the study suggested that their iron balance was improved during the course of the study.

At the public workshop, the researcher who conducted this study pointed out that the population of subjects in this study was chosen because it is a population in which individuals are iron deficient but not for any pathological reason. The researcher categorized this population as having ''probably the highest demands on iron absorption that are seen in normal populations.''

However, the comment described as ''unexplained'' a published study (Ref. 29) conducted in Sweden in which a preparation of carbonyl iron radiolabeled with a particular isotope (^{55}Fe) was used to fortify wheat flour in which the naturally occurring iron of the wheat was extrinsically labeled with another radioisotope of iron (^{59}Fe). Doubly labeled wheat rolls prepared from this flour were served with different meals to human adult volunteers. The authors of the study claimed that the ratio of absorbed ^{55}Fe to absorbed ^{59}Fe is a direct measure of the carbonyl iron that joins the nonheme pool and is made potentially available for absorption. The authors stated that the relative bioavailability of carbonyl iron was unexpectedly low and varied from 5 percent to 20 percent when the iron fortified wheat rolls were served with different meals. The authors also stated that factors such as the baking process or the addition of ascorbic acid did not change the relative bioavailability. The authors of the study concluded that this low and variable bioavailability of carbonyl iron in humans makes it necessary to reconsider the rationale of using elemental iron powders for the fortification of foods for human consumption.

FDA recognizes the apparent discrepancy between the conclusions of the multiple studies conducted in female blood donors and the conclusions of the study conducted in human volunteers who consumed wheat rolls fortified with radiolabeled carbonyl iron. Iron bioavailability is a complex issue affected by a number of factors, including the state of physiological iron stores and state of health, in addition to the iron source and the food matrix and meal composition in which the iron is ingested. In fact, the agency has stated its intent to publish a notice of proposed rulemaking concerning the bioavailability of iron used to fortify food (final rules for the iron fortification of flour and bread, (43 FR 38575 at 38576, August 29, 1978) and (46 FR 43413, August 28, 1981)). At this time, FDA believes that following through with such a proposal makes more sense than trying to resolve such a complex issue as part of this rulemaking. Accordingly, FDA is not requiring demonstrated bioavailability as a precondition in its determination on whether to exempt carbonyl iron from the labeling requirements, packaging requirements, or both requirements of this final rule.

I. Comments on Physiological Factors That Influence Toxicity of Elemental Forms of Iron

Several comments cited animal studies (Ref. 30) that were undertaken to characterize the mechanism by which elemental iron such as carbonyl iron is absorbed (i.e., by conversion of non-ionized to ionized iron in the presence of hydrochloric acid in the stomach) and postulated that the toxicity associated with ionized iron is minimized by both the rate of gastric acid production and the equilibrium between formation of ionized iron and the discharge of the ionized iron from the stomach to the intestine. In light of

[14] The treatment was administered at bedtime to allow the carbonyl iron to remain in the gastrointestinal tract for as long as possible without food that would buffer the stomach acid required for solubilization of the elemental iron to the ferrous form.

this postulated mechanism, some of these comments also discussed the importance of the particle size of carbonyl iron in the conversion process, i.e., the smaller the particle size, the faster the conversion process.[15] A representative of a U.S. manufacturer of carbonyl iron stated that the firm manufactures approximately 40 different grades of carbonyl iron, but only 1 grade is designated for pharmaceutical or nutritional use. The average particle size of this grade is approximately 5 to 6 microns.

FDA agrees that the particle size of carbonyl iron is a key factor in the conversion of the carbonyl iron to the ionized form, and that carbonyl iron with a small particle size will be ionized (and thus absorbed) more rapidly than carbonyl iron with a large particle size. FDA also recognizes that this conversion may be necessary for the carbonyl iron to exhibit the full toxicity associated with iron salts. Therefore, the protocol of any animal studies comparing the toxicity of carbonyl iron to the toxicity of iron salts should specify the particle size of the carbonyl iron used in the studies. If FDA exempts carbonyl iron from any of the requirements of this final rule, FDA will consider including particle size, based on the particle size of the carbonyl iron used in the comparative studies, as a specification for carbonyl iron.

J. Other Comments

At the public workshop, a representative of a manufacturer of carbonyl iron expressed the opinion that, in a rulemaking proceeding, it is FDA's responsibility to establish a need for a regulation for a particular product and suggested that the agency had not presented evidence that products containing carbonyl iron need the same kind of protective measures as those that the agency has proposed for products containing iron salts. In addition, a representative of a manufacturer of iron-containing products expressed the opinion that products containing carbonyl iron and bearing a warning statement such as ''Contains iron, which can harm or cause death to a child'' would be falsely labeled and therefore misbranded under the act if the carbonyl iron is in fact a safe source of iron.

At the public workshop, in response to this statement, agency representatives pointed out that the source of the iron in some deaths attributable to iron poisoning has not been identified, and that FDA therefore cannot say with certainty that carbonyl iron was not involved in any of the poisoning deaths that were discussed in the iron proposal. Moreover, as discussed above, the lack of reported major outcomes or death associated with accidental overdose of products known to contain carbonyl iron may be attributable to the small number of total exposures to date, particularly exposures to high dosages of carbonyl iron. These comments did not dispute that accidental overdose of iron-containing products can kill a small child, and that such overdoses are a leading cause of fatal poisoning in children under the age of 6.

Faced with this information, the agency is compelled to err on the side of caution. Unless presented with convincing data demonstrating that some forms of iron are sufficiently less toxic that they are unlikely to cause injury and illness, including death, FDA must assume, to ensure that the public health is adequately protected, that all forms of iron have the potential to cause injury and illness, including serious illness and death.

K. Exemption for Carbonyl Iron From the Labeling Requirements of This Final Rule

FDA has considered the kinds of data and information that would be necessary to enable the agency to reach a decision on an exemption for any form of elemental iron, such as carbonyl iron, from the regulations on labeling of iron-containing products. In the iron proposal, FDA stated that the agency would focus on data and information in two topic areas: Toxicity and bioavailability. Specifically, FDA stated that it would focus on whether use of a source of elemental iron would decrease the risk of pediatric poisoning while providing desirable iron nutrition to those who need iron supplementation (59 FR 51030 at 51052).

As already discussed, FDA has decided not to require demonstrated bioavailability of an iron source as a criterion in exempting carbonyl iron from any of the requirements in this final rule. Therefore, the agency's decision on whether to exempt carbonyl iron from the labeling requirements of this final rule turns on whether the available data demonstrate that carbonyl iron is significantly less toxic than iron salts.

In the iron proposal, FDA tentatively concluded that it should require a label warning statement for iron-containing products because a small child is at risk of injury any time he or she gains unlimited access to any iron-containing product. Therefore, the basis for exempting products containing carbonyl iron from the labeling requirements of this final rule would be data that persuade the agency that carbonyl iron is so much less toxic than ionic forms of iron that accidental overdose of products containing carbonyl iron is unlikely to place a small child at risk of injury (including minor, moderate, and major outcomes as well as death). The most compelling information bearing on this question is the available data on the outcomes of acute, accidental exposure of children to iron-containing products because these data, in contrast to animal studies that must be interpreted and extrapolated to predict toxicity in human children, are directly relevant to the question at hand.

As discussed above, the information available from poison control centers shows that accidental overdose of carbonyl iron-containing products has resulted in 173 minor outcomes and 4 moderate outcomes. Even though there were no reported exposures to carbonyl iron-containing products that resulted in major outcomes or death, the reported occurrences of minor and moderate outcomes show that a young child who accidentally consumes an overdose of a carbonyl iron-containing product is at risk of illness or injury. Therefore, the available data on the acute, accidental exposure of children to iron-containing products do not support an exemption for carbonyl iron from the labeling requirements of this final rule. Accordingly, FDA is not exempting products containing carbonyl iron from the labeling requirements of this final rule.

L. Exemption for Carbonyl Iron From the Packaging Requirements of This Final Rule

FDA has considered the kinds of data and information that would be necessary to enable the agency to reach a decision on an exemption for any form of elemental iron, such as carbonyl iron, from the regulations on packaging of iron-containing products. As discussed with respect to an exemption from the labeling requirements of this final rule, the basis for the agency's decision on whether to exempt carbonyl iron would be data on whether the use of carbonyl iron would decrease the risk of pediatric poisoning.

In the iron proposal, FDA stated that the agency was not persuaded that full

[15] Many of the comments that addressed the influence of particle size on the physiological properties of elemental iron discussed the role of particle size from the perspective of the bioavailability of the elemental iron. However, as discussed above, FDA has decided not to require demonstrated bioavailability of an iron source as a criterion in exempting that iron source from any of the requirements of this final rule. Therefore, the discussion of the importance of particle size emphasizes its potential role in toxicity rather than bioavailability.

compliance with CPSC's CRC requirements, even in the presence of warning statements, would be adequate to ensure the safety of the use of iron-containing products. FDA proposed that iron-containing products that contain 30 mg or more of iron per dosage unit be packaged in nonreusable unit-dose packaging in light of the potentially fatal outcome that can result from pediatric iron poisoning. Moreover, many accidental overdoses of iron-containing products that do not result in fatal consequences do have life-threatening consequences. In light of the potentially fatal or life-threatening outcomes that can result from pediatric iron poisoning, the basis for exempting products containing 30 mg or more of carbonyl iron per dosage unit from the packaging requirements would be data that persuade the agency that carbonyl iron is so much less toxic than ionic forms of iron that accidental overdose of products containing a high dose of carbonyl iron is unlikely to result in major outcomes or death. The information bearing on this question is: (1) Data on the outcomes of acute, accidental exposure of children to iron-containing products; (2) data on acute toxicity in animals of carbonyl iron compared to that of iron salts; and (3) the ability to extrapolate from the acute toxicity data in animals to predict a reduced toxicity for carbonyl iron in children.

As discussed above, the information available from poison control centers shows no reported exposures to carbonyl iron-containing products that resulted in major outcomes or death. However, the data from the poison control centers did not always include the source of iron, and therefore the total number of accidental exposures to products containing carbonyl iron is likely to be underestimated. Consequently, the total number of major and fatal outcomes may also be underestimated.[16] The lack of reported exposures to carbonyl iron that resulted in major outcomes is encouraging in light of the fact that at least three major outcomes would be predicted if carbonyl iron was as toxic as iron salts. However, even if carbonyl iron was as toxic as iron salts, less than one death would be predicted from exposure to carbonyl iron. The lack of reported exposures to carbonyl iron that resulted in major outcomes or death therefore may be attributable to both the insensitivity of passive reporting systems and the small number of total exposures to carbonyl iron, particularly exposures to high doses of carbonyl iron, rather than to any reduced toxicity of carbonyl iron relative to that of iron salts. Therefore, although FDA acknowledges that the data are consistent with an interpretation that accidental overdose of carbonyl iron is unlikely to result in major outcomes or death, FDA finds that the data are too preliminary to allow it to comfortably conclude that accidental overdose of carbonyl iron-containing products is unlikely to result in major outcomes or death.

Moreover, as already discussed, the available animal toxicity data are unsuited for the agency's purpose in evaluating whether the acute toxicity in children of carbonyl iron is less than that of iron salts, and it would be premature for FDA to exempt carbonyl iron absent data that permit such an evaluation. In order to reach a decision on whether to exempt carbonyl iron from the packaging requirements of this final rule, FDA needs animal data comparing the acute toxicity of carbonyl iron to that of at least one iron salt that is commonly used in the manufacture of iron-containing supplements and drug products.

In summary, given the possibility that accidental overdose of products containing carbonyl iron could result in death of a small child, the available data on accidental exposure to carbonyl iron-containing products are too preliminary to provide a basis for an exemption for carbonyl iron from the packaging requirements of this final rule. Moreover, it would be premature for FDA to exempt carbonyl iron from the packaging requirements of this final rule given the lack of animal data that clearly establish the lower toxicity of carbonyl iron compared to at least one commonly used iron salt.

Nonetheless, FDA is encouraged by the fact that accidental overdose of products containing 30 mg or more of carbonyl iron per dosage unit thus far is not known to have caused major outcomes or death. FDA also is encouraged by the fact that the existing animal data, limited though they are, are consistent with an interpretation that carbonyl iron may be so much less toxic than iron salts that an accidental overdose of a carbonyl iron-containing product is unlikely to result in a major outcome or death. Therefore, FDA finds that it is appropriate to provide a temporary exemption from the packaging requirements of this final rule to enable interested parties to conduct appropriate animal studies that could establish a reduced toxicity for carbonyl iron relative to that of iron salts.

Accordingly, §§ 111.50(b) and 310.518(b) temporarily exempt carbonyl iron from the packaging requirements of this final rule. The temporary exemption will automatically expire 1 year after date of publication of this final rule in the Federal Register. If, during the temporary exemption period, FDA receives animal data that clearly establish that carbonyl iron is significantly less toxic than at least one commonly used iron salt, FDA will consider permanently exempting carbonyl iron from the packaging requirements of this final rule. If, following the temporary exemption period, FDA does not extend the exemption, the packaging requirements of this final rule will become effective for products containing carbonyl iron according to the same principle as for products containing other forms of iron, i.e., on the date that is 180 days after the date of expiration of the temporary exemption, or on July 15, 1998. (See discussion of the effective date in sections VI.B.7. and VIII. of this document.)

To predict the margin of safety that carbonyl iron would afford relative to iron salts in the event of accidental overdose, the agency needs data, in weanling/juvenile laboratory animals of 2 to 3 species,[17,18] in which the acute/short-term toxicity of orally administered elemental iron of known particle size [19] is compared to the acute/short term toxicity of at least one iron salt that is commonly used in the manufacture of iron supplements. The range of particle sizes of the carbonyl iron used in the comparative studies should correspond to that of the product proposed to be exempted.

[16] At the public workshop, FDA stated that the ingested substance had been identified as ferrous sulfate in ''16 or 17 out of 37 or 40 deaths.'' Review of the supporting medical records for the 37 deaths reported in the iron proposal now shows that the source of the iron involved in the accidental overdose exposures resulting in death is known in 29 of those 37 cases and that in each of these 29 cases the source was not carbonyl iron. In addition, FDA is aware that 2 additional children died of accidental overdose of an iron-containing product in 1994, and that the source of iron in both of these cases was ferrous sulfate (Refs. 1 and 2). Therefore, the number of reported pediatric deaths attributable to accidental overdose of an iron-containing product in which the source of iron is not known to FDA is 8 of 39 reported pediatric deaths.

[17] As discussed above, extrapolation from data on iron toxicity obtained with experimental animal species to predict iron toxicity in humans is not straightforward. Consequently, it would be imprudent to rely on data derived from a single animal species.

[18] The studies should be performed on at least one weanling/juvenile rodent and one weanling/juvenile nonrodent species whose gastrointestinal physiology is similar to that of infants and children (e.g., swine).

[19] As discussed above, particle size is an important factor in the rate of ionization, and thus the potential toxicity, of elemental iron.

The studies should be carried out over a range of doses, so that they can provide information relevant to the acute/short term toxicological profile, including dose responses and NOAEL's for toxic effects. The endpoints of these studies should include deposition of iron in tissues, clinical measures of iron status (e.g., hematocrit, hemoglobin, serum iron, serum ferritin, total iron binding capacity), assessment of systemic tissue damage using biomarkers (e.g., liver enzymes in serum for liver damage; blood urea nitrogen for kidney damage), gross necroscopy examination, histopathology (with emphasis on known primary target organs of acute oral toxicity of iron such as the gastrointestinal tract and liver, and on any gross lesions observed on necropsy), effects on lipid peroxidation in tissues (liver, intestines, red blood cells), and systematic evaluation and recording of clinical signs and symptoms. Such data will provide a direct comparison of the thresholds for toxic effects of carbonyl iron relative to those of ferrous salts. If the inter-species variability is large, the agency will need data in at least one species that closely resembles the human child, such as a primate species, in order to be able to extrapolate from the animal data to predict whether the toxicity of carbonyl iron in children is reduced relative to that of iron salts.

FDA intends to evaluate the animal data described above, as well as any relevant data from studies in humans that may become available, to determine whether they support a reduced toxicity for carbonyl iron such that an extension, temporary or permanent, of the exemption for carbonyl iron from the packaging requirements of this final rule is justified. However, animal data can only be used to support an interpretation that accidental exposure to a carbonyl iron-containing product is unlikely to result in a major outcome or death and cannot supersede data obtained from human exposure to carbonyl iron-containing products. Thus, animal data would not be a sufficient basis for a continued exemption in the event that FDA receives information that accidental exposure to a product containing 30 mg or more of carbonyl iron per dosage unit resulted in a major outcome or death. Accordingly, if, during the period of temporary exemption or during any period of extended or permanent exemption, FDA receives information that accidental exposure to a product containing 30 mg or more of carbonyl iron per dosage unit resulted in a major outcome or death, FDA will likely move quickly to revoke the exemption.

The temporary exemption identifies the form of iron that is exempted as carbonyl iron that conforms to § 184.1375 (21 CFR 184.1375). Section 184.1375 should accurately describe the carbonyl iron used in iron-containing dietary supplement and drug products, and, given the need for promulgation of this final rule, FDA finds that it is appropriate to incorporate it into the final regulation. However, FDA invites the submission of information on whether this description of carbonyl iron is adequate, and whether alternative or additional information is appropriate and necessary in the event that FDA decides to extend, or make permanent, the exemption. For example, FDA solicits information on whether it is appropriate and important to include a specification for the particle size of carbonyl iron that is used to manufacture dietary supplement and drug products. FDA also solicits information on factors other than particle size, such as the physical and chemical properties of the iron as well as binders and excipients, that may influence the rate of ionization of carbonyl iron and recommendations on whether it is appropriate and important to include specifications for such factors used in the manufacture of products containing carbonyl iron.

M. Other Non-Ionic Forms of Iron

The agency received one comment from a manufacturer of PIC. The comment included data obtained from the TESS database of the AAPCC on a total of 228 potentially toxic exposures to products containing PIC. None of the exposures resulted in death. One exposure, which involved a suspected suicide attempt by an adult and was accompanied by the concomitant consumption of other drug products, resulted in a major outcome. The 228 total exposures also resulted in 3 moderate outcomes and 24 minor outcomes. The comment concluded that the overall risk of accidental iron poisoning or death associated with PIC is low.

In order to determine whether PIC merits an exemption from the labeling requirements of this final rule, FDA has considered whether the information supplied in the comment supports a conclusion that accidental overdose of a PIC-containing product is unlikely to place a small child at risk of illness or injury any time he or she gains unlimited access to such products. The total number of reported acute, accidental exposures in humans to PIC is very small, but already has resulted in 3 moderate outcomes and 24 minor outcomes. Therefore, the available data on acute, accidental exposure of humans to PIC does not support an exemption for PIC-containing products from the labeling requirements of this final rule. Accordingly, FDA is not exempting products containing PIC from the labeling requirements of this final rule.

The comment also included data from an acute 14-day oral toxicity study in rats. The study was initiated with a range-finding test consisting of one male and one female rat at five doses ranging from 500 to 5,000 mg Fe/kg body weight. Following the range-finding test, a limit test was performed in which one group of five male and five female rats received a single oral administration of PIC at a dose of 5,000 mg Fe/kg body weight. Following dosing, the limit test rats were observed daily and weighed weekly. A gross necroscopy examination was performed on all limit test rats, and no gross internal findings were observed at necropsy after the 14-day exposure. No mortality occurred during the limit test, and the acute oral LD_{50} for PIC in rats therefore was estimated to be greater than 5,000 mg Fe/kg body weight.

As discussed above for carbonyl iron, the basis for exempting products containing 30 mg or more PIC per dosage unit from the packaging requirements would be data that persuade the agency that accidental overdose of products containing 30 mg or more of PIC per dosage unit is unlikely to result in major outcomes or death. The information bearing on this question is: (1) Data on the outcomes of acute, accidental exposure of children to iron-containing products; (2) data on the acute toxicity in animals of carbonyl iron compared to that of iron salts; and (3) the ability to extrapolate from the acute toxicity data in animals to predict a reduced toxicity for carbonyl iron in children.

As already discussed, the available data on accidental human overdoses are unclear as to whether there have thus far been any major outcomes resulting from exposure to PIC-containing products because the one report of major outcome was not clearly attributable to the consumption of a PIC-containing product. However, the lack of reported major outcomes or death associated with accidental overdose of products known to contain PIC may be attributable to both the insensitivity of passive reporting systems and the small number of total exposures to date. Therefore, FDA finds that the data on accidental exposures to PIC-containing iron products are too preliminary to

provide a basis for an exemption for PIC from the packaging requirements of this final rule.

Moreover, there are no animal toxicology studies directly comparing the acute toxicity of PIC in animals to that of iron salts. The available animal data therefore have limitations similar to those already discussed for the data submitted in comments discussing the toxicity of carbonyl iron and are unsuited for the agency's purpose in evaluating whether the acute toxicity in children of PIC is less than that of iron salts. It would be premature for FDA to exempt PIC absent such data. In order to reach a decision on whether to exempt PIC from the packaging requirements of this final rule, FDA needs animal data, discussed in detail above for studies with carbonyl iron, comparing the acute toxicity of PIC to that of at least one iron salt that is commonly used in the manufacture of iron-containing supplements and drug products.

At this time, the use of PIC in iron-containing products is not included in any FDA regulations. The comment did not submit sufficient information bearing on the manufacturing process, composition, and physical properties of PIC to allow the agency to adequately describe PIC in any exemption from the packaging requirements of this final rule. For example, the comment did not discuss the role, if any, of particle size and solubility of PIC, or the role of excipients and binders, as factors that may influence the toxicity of PIC. Before FDA can consider an exemption for PIC from the packaging requirements of this final rule, FDA needs information that adequately describes the manufacturing process, composition, and physical properties of PIC. If the agency reached a decision to exempt PIC from the packaging requirements of this final rule, FDA would use this information to define, in the agency's regulations, the substance that is exempt. FDA also solicits information on factors other than the properties of PIC itself, such as the physical and chemical properties of binders and excipients, that may influence the absorption and toxicity of PIC and recommendations on whether it is appropriate and important to include specifications for such factors used in the manufacture of products containing PIC.

In summary, the available data on accidental exposure to PIC-containing products are too preliminary to provide a basis for exempting PIC from the packaging requirements of this final rule. Further, FDA is concerned whether the available data on accidental exposure to PIC-containing products actually signify that PIC is no less toxic than ionic forms of iron. Moreover, it would be premature for FDA to exempt PIC from the packaging requirements of this final rule given the lack of animal data that clearly establish the lower toxicity of PIC compared to at least one commonly used iron salt. In addition, FDA lacks information that would allow the agency to describe the substance that is exempt. Therefore, at this time FDA is not exempting products containing PIC from the packaging requirements of this final rule.

Regardless of whether FDA receives animal data that support a conclusion of reduced toxicity for PIC, the agency cautions that animal data alone may not provide a sufficient basis for an exemption in light of the extremely small number of exposures in humans to date. Further, as already discussed for carbonyl iron, animal data can only be used to support an interpretation that accidental exposure to a PIC-containing product is unlikely to result in a major outcome or death and cannot supersede data that may be obtained in the future from accidental human exposure to PIC-containing products.

VI. Other Matters

One comment requested an exemption from both the labeling and unit-dose packaging requirements for the inert, iron-containing tablets that are included in packages of oral contraceptives. The inert tablets are taken on the days on which the active drug product is not taken to facilitate proper and regular use of the contraceptives by enabling women to take a pill each day rather than having to remember which day to resume after the days for which an active pill is not provided. The comment argued that meeting the requirement for an additional warning statement on the immediate container labeling of oral contraceptive products would be impossible because of the lack of space, the small size of the immediate container, and preexisting label requirements. The comment stated that oral contraceptives are a special class of prescription products that should be exempted from the labeling requirements of this rule.

The agency observes that the inert tablets in oral contraceptive products contain up to 75 mg of ferrous fumarate (equivalent to 25 mg of iron), and therefore a 1-month supply of oral contraceptives containing 7 inert tablets will contain up to 175 mg of iron. The total amount of iron in a 1-month supply of oral contraceptives is only 70 percent of the amount (250 mg) that experts have stated is sufficient to produce symptoms of poisoning in a 10 kg child (see discussion above). Moreover, FDA is not aware of any reported cases of poisoning caused by the inert, iron-containing tablets in packages of oral contraceptives. Moreover, these products are separately regulated. Therefore, FDA is granting the requested exemption from the specific labeling requirement of this final rule (see § 310.518(d)). If FDA becomes aware of poisoning caused by the ingestion of the inert, iron-containing tablets in oral contraceptive packages, it may reconsider the exemption.

The amount of iron per tablet is below the threshold level for unit-dose packaging of 30 mg of iron per dosage unit. Therefore, an exemption from the unit-dose packaging requirement is not necessary.

VII. Economic Impact

FDA has examined the economic implications of the final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small businesses. Though not economically significant, FDA finds that this final rule is a ''significant regulatory action'' as defined in Section 3(f)(4) of the Executive Order because it raises novel policy issues. The agency also finds under the Regulatory Flexibility Act that the final rule is likely to have a significant impact on a substantial number of small entities. Finally, the agency, in conjunction with the Administrator of OIRA, OMB, finds that this rule is not a major rule for the purposes of congressional review (Pub. L. 104–121).

The rule will result in costs in the first year of approximately $56 million and $4.3 per year starting in year two for total discounted costs of $118 million

(discounted to infinity at 7 percent). The rule will also result in per year benefits of between $31.5 million and $61 million for total discounted benefits of between $426 million and $847 million (discounted to infinity at 7 percent). Below is a detailed description of FDA's economic analysis.

In response to the iron proposal, the agency received many comments regarding the economic impact of the proposed actions. The comments were from a variety of sources including consumer advocacy organizations, manufacturers, distributors, and trade associations.

A. Description of the Industry

In the analysis of the proposed rule, FDA stated that there are approximately 300 iron-containing products that may be affected by this action, of which approximately one-half contain 30 mg or more of iron per dosage unit. FDA received one comment from an industry trade association stating that there are between 1,300 and 3,000 iron-containing products. The comment did not specify the number or percentage of products containing 30 mg or more of iron per dosage unit.

The agency acknowledges that it originally underestimated the number of iron-containing products that may be affected by these actions. Therefore, the analysis of the final rule will be based on an estimate of 2,150 products ((1,300 + 3,000)/2). The agency will continue to assume that approximately one-half, or 1,075 products, contain 30 mg or more of iron per dosage unit.

The types of iron-containing products that have been associated with poisonings of young children are products offered in solid oral dosage form as multivitamin/mineral supplements, products intended for use as iron supplements, and drug products for therapeutic purposes. Although this final rule requiring warning statements affects all iron-containing products, the requirement for unit-dose packaging affects only products containing 30 mg or more of iron per dosage unit. Typically, multivitamin/mineral supplements provide less than 30 mg of iron per dosage unit and therefore are subject to warning statement requirements but not to packaging requirements. Iron supplements and drug products typically contain 30 mg or more of iron per dosage unit and therefore are subject to both requirements.

Iron-containing products may be purchased by consumers on their own initiative as food supplements, or they may be prescribed by physicians. Information available to the agency at the time of the proposal suggested that the overwhelming majority of iron-containing products are packaged in bottles. Additional information suggested that iron-containing products administered in hospitals are commonly packaged in unit-dose packaging. Unit-dose packaging is preferred by hospitals because use of this type of packaging provides each dosage unit with an identification and an expiration date and allows the hospital to continue to dispense product from a partially used package of drugs rather than discard a bottle opened for a specific patient after that patient is discharged. There were no comments challenging FDA's assumption that iron-containing products dispensed in hospitals are packaged in unit-dose packaging, and, therefore, this assumption is being retained in this analysis.

In the proposed analysis, FDA reported that, according to the National Center for Health Statistics, of the approximately 169 million persons of age 18 or older, 19.7 percent consume iron-containing products. If it is assumed that each individual consumes one dosage unit per day, there are approximately 12 billion dosage units of iron-containing products consumed annually in the United States. The agency does not have complete information on the number of dosage units of iron-containing products that contain 30 mg or more of iron nor did any comments provide such information. According to the recommended dietary allowance published in 1989 by the Food and Nutrition Board of the National Academy of Sciences, only pregnant women require 30 mg Fe/day. Therefore, FDA assumes that the number of higher-dosage iron-containing products consumed per year can be estimated by multiplying the number of pregnant women in the United States by the number of days in 1 year.

In the most recent year (1991) for which data is available, there were 4.1 million live births. Assuming further that each live birth resulted from a distinct pregnant woman (as opposed to more than one birth per pregnant woman), this data implies that there are about 4.1 million pregnant women on any 1 day in the United States, and that the number of dosage units per year can be estimated at 4.1 million times 365 days per year or about 1.5 billion (assumes women who give birth take iron-containing products for 3 months of nursing after delivery). The number of pregnant women may be overestimated because multiple births by one woman are ignored. The number of pregnant women may also be underestimated because using the number of live births ignores pregnancies not resulting in a live birth. In addition, all pregnant women may not necessarily take iron-containing products or begin on the first day of pregnancy, another source of potential overestimation.

B. Comments on Regulatory Options

The proposed analysis raised many possible regulatory alternatives available that may reduce the number of cases of pediatric poisonings from the accidental ingestion of iron-containing products. The options include packaging, warning statements, product reformulation, and educational efforts.

1. Packaging

In the proposal, FDA proposed to require that products containing 30 mg or more of iron per dosage unit be packaged in unit-dose containers. Because of Consumer Product Safety Commission regulations, most iron containing products currently must be packaged in CRC's. Therefore, this option would likely result in child resistant unit-dose packaging for most of these products.

a. Costs. In the analysis of the proposed actions, FDA stated that there are four types of costs associated with a mandated packaging change: Equipment, materials, transportation, and administrative costs. FDA received one comment stating that the changes in packaging will require additional storage costs of $10,800 for four products. In addition, several other comments stated that the packaging requirements would cause manufacturers to incur additional stability testing at a cost of $4,000 per product.

FDA agrees that the packaging requirements will increase storage costs and has changed its analysis to reflect that change. Using the data provided in the comment, the agency estimates storage costs to be approximately $1.4 million per year.

As discussed above, stability testing with new packaging is required under drug CGMP regulations. Therefore, FDA agrees that the packaging requirements of this final rule will increase costs for drug products containing 30 mg or more of iron per dosage unit and will change its analysis to reflect that change. There are approximately 150 drug products containing 30 mg or more iron per dosage unit. Total stability testing costs will be $0.6 million (150 drug products $\times$ $4,000).

Several comments expressed concern over the cost of equipment. One

comment from a manufacturer stated that machine tooling costs would be approximately $20,000 per product. However, one comment from a trade association stated that contract packaging firms can provide unit-dose packaging services at a cost that would be significantly less than purchasing machinery, although there was no data supporting this statement.

In the analysis of the proposed rules, FDA stated that many packagers of iron-containing products will be required to purchase new packaging equipment. Incorporating the costs provided in the comments with information used to develop the estimates used in the proposed analysis, FDA now estimates the cost of equipment used in packaging blisters, one common form of unit-dose packaging, is between $20,000 and $250,000, or on average $135,000. New equipment will not be purchased for each product sold because some manufacturers already possess unit-dose packaging equipment, and some manufacturers will use the services of contract packaging firms. FDA will not change its equipment cost per product, but it will reduce the number of products requiring new equipment based on the assumption that many firms will use contract packagers. If approximately one-third of the 1,075 products containing 30 mg or more of iron per dosage unit require the purchase of new equipment, the total equipment cost will be $48 million.

The cost of child-resistant bottles, currently the most common form of packaging, is approximately $7 per 1,000 dosage units. Child resistant blister packaging materials cost approximately $9 per 1,000 dosage units, a difference of $2 per 1,000 dosage units. FDA received no comments challenging these cost estimates.

In the proposed analysis, FDA stated that it did not have information to estimate transportation costs and requested comments. FDA received one comment providing an estimate of additional transportation costs caused by unit-dose packaging requirements to be approximately $340,000 per year.

Because no other information was provided to the agency, FDA will use this estimate in its analysis.

FDA received one comment regarding administrative costs. One manufacturer stated that its administrative cost of reviewing and implementing the regulation would be $13,000.

FDA notes that this estimate, when examined on a cost-per-product basis, is not out of line with its estimate of approximately $500 per product in the first year. Administrative costs are the dollar value of the incremental administrative effort expended in order to comply with a regulation. Administrative activities include, but are not limited to, reading and interpreting the regulation, establishing a policy to comply with the regulation (which may include, for example, challenging the regulation, compliance with direct requirements, remarketing product, or withdrawal from the market), and identifying the appropriate staff to comply with the regulation, monitoring to ensure staff efforts are consistent with corporate policy, and interacting with Federal inspectors.

The cost for equipment for unit-dose packaging for all products with 30 mg or more of iron per dosage unit is estimated to be $48 million (358 products × $135,000). The cost of materials is estimated to be $3 million per year or $43 million (discounted to infinity at 7 percent). Transportation costs are estimated to be $.34 million per year or $4.86 million (discounted to infinity at 7 percent). Storage costs will be approximately $1.4 million per year or $20 million (discounted to infinity at 7 percent). Administrative costs are estimated to be $0.54 million (1,075 × $500). Total costs associated with requiring unit-dose packaging for products containing 30 mg or more of iron per unit dose are estimated to be $116 million (discounted to infinity at seven percent) with annual costs not exceeding $54 million in any 1 year.

b. Benefits. FDA received two comments concurring with its analysis of the benefits of unit-dose packaging, and no comments challenging that analysis. In the past 8 years, there have been at least 39 cases of pediatric fatalities from the accidental ingestion of iron-containing products, or a mean of 4.9 deaths per year. Data on the dosage of the product consumed is available for 25 of these cases. In all cases for which information is available, the product consumed contained at least 40 mg of iron. In a 7-year period, there were nearly 190 poisonings that were life threatening or resulted in permanent injury, and over 2,000 poisonings that required some form of treatment. FDA believes that most, if not all, such deaths and some poisonings can be prevented by requiring that higher-dosage iron-containing products be packaged in unit-dose containers, because studies indicate that the child is less likely to consume the number of dosage units that may be fatal if the child must first remove each tablet from a unit-dose package.

Although no studies have attempted to directly estimate the value of reducing the risk of death and illness to children in particular, many studies have attempted to estimate the value of reducing these risks to adults. Most of these estimates are based on wage differences between high and low risk jobs and, thus, are derived from the labor market decisions of middle-aged adults. Although these estimates cluster around a fairly small range, $2 million to $10 million, it is not clear that these estimates are valid when applied to children.

FDA has used estimates of the value of reducing risks to adults to a level that would avoid one statistical fatality between $3 million and $5 million in past regulations, including food labeling and Hazard Analysis Critical Control Points (HACCP). One method of estimating the value of reducing risks to children is to adjust the value of reducing risks to adults by accounting for the difference in the number of life-years saved. Under this approach, an often used estimate of the value of reducing the risks to adults to a level that would avoid one statistical fatality is $5 million for a middle-aged adult. If this value does not vary with life years remaining (that is, if we assume that an infant is willing to pay the same amount to avoid risk of death as a 40 year old would be willing to pay and assuming the same distribution of wealth exists in both age groups), then $5 million is a reasonable estimate. If, however, this value does vary with life years remaining, then the corresponding value for reducing the risks to small children would be $11 million. FDA used these figures ($5 to 11 million) in the proposed analysis to provide a range of estimates. FDA received no comments objecting to these estimates and is, therefore, continuing to use these values in this analysis.

Requiring unit-dose packaging for iron-containing products at 30 mg or more of iron per dosage unit would result in benefits of reducing an average of 4.9 deaths per year, valued at between $24.5 million and $54 million per year, or between $350 million and $771 million (discounted to infinity at 7 percent).

Requiring unit-dosage packaging for iron-containing products will also reduce the number of nonfatal cases of pediatric iron poisoning. FDA has obtained from CPSC case reports for 78 iron ingestions necessitating emergency room treatment reported over 7 years, or an average of 11 illnesses per year. The dosage consumed was reported for 12 of these cases. In five of those cases, the dosage reported was under 30 mg of iron per dosage unit. AAPCC data show that from 1986 through 1992 there were nearly 190 poisonings that were life

threatening or resulted in permanent injury, and over 2,000 poisonings requiring some form of treatment as a result of accidental ingestion of adult and pediatric iron-containing products, or an average of 286 per year. FDA is unable to predict the percent of these nonfatal poisonings that would be prevented by substituting unit-dose packaging for bottles. In the proposed analysis, FDA assumed that all nonfatal poisonings would be prevented by the proposed packaging requirements. The agency received no comments on this issue and is, therefore, continuing the assumption in this final analysis.

Using a methodology developed previously for FDA to value morbidity risks, FDA is able to estimate the value of reduced risk of nonfatal poisoning. As described in the proposed analysis, by comparing similar symptoms and medical interventions, the agency has derived an estimate of the value of preventing a nonfatal pediatric iron poisoning of $20,000 per case. Seven out of twelve cases of nonfatal poisonings were a result of ingestion of products of dosages over 60 mg of iron. Assuming this proportion is extrapolated to the remaining cases for which information is unknown, and assuming unit-dose packaging will prevent all nonfatal cases (2,000 cases in 7 years), then requiring unit-dose packaging for products containing 30 mg or more of iron per unit dose will result in reduced morbidity valued $5 million per year, or $71 million (discounted to infinity at 7 percent).

The total value of the benefits of unit-dose packaging options is the sum of the value of reducing both mortality and morbidity risks. Requiring unit-dose packaging for all products containing 30 mg or more of iron per dosage unit, would result in benefits of reducing mortality risks of between $24.5 million and $54 million per year or between $350 million and $771 million (discounted to infinity at 7 percent) and reduced morbidity valued at $5 million per year or $71 million (discounted to infinity at 7 percent). Therefore, total discounted benefits are between $29.5 million and $59 million per year or between $421 million and $842 million (discounted to infinity at 7 percent).

2. Warning Labels

a. Costs. FDA received two comments providing estimates of the cost of relabeling. One manufacturer estimated graphic and design costs at $2,850 per product. Another estimated artwork costs of $240,500 for 100 products, or $2,405 per product.

In the analysis of the proposed actions, FDA estimated that the cost of relabeling was $1,500 per label. Manufacturers of iron-containing products will be required to change their labels on both the product container and the retail package to incorporate warning statements. However, because manufacturers of iron-containing products with 30 mg or more of iron per dosage unit will also be required to change their packaging, they will not incur any incremental cost of adding a warning statement to the product container. Therefore, the redesign cost per product was estimated in the proposal was estimated to be $2,250 ($1,500 x 1.5). FDA notes that this estimate is similar to redesign costs submitted in the comments. Therefore, the analysis will not be changed based on this comment. The total cost of the warning label requirements is one-time cost of $5 million (2,150 products × $2,250).

In the proposed analysis, FDA stated that an additional cost of this regulation may be an increase in iron deficiency anemia if susceptible adults react inappropriately to a warning label targeted for children. It is possible that incidence of iron-deficiency anemia may actually increase as a result of this final action. According to NHANES II, approximately 7.2 percent of women age 15 to 19 and 6.3 percent of women age 20 to 44 suffer from iron-deficiency anemia. In addition, men had a prevalence of less than 1 percent. FDA received no comments on this issue.

b. Benefits. Warning statements will only prevent pediatric iron poisonings to the extent that they lead to changes in the behavior of the adult controlling the use of the product. Whether or not the warning messages prescribed in this final rule will cause a change in behavior will depend on a number of factors, including the degree to which the statement is noticed, read, understood, and acted upon.

There is some evidence that warning statements can change behavior. For example, research indicates that the rate of increase of sales of diet soft drinks declined after saccharin warnings were put on the labels of these products (Ref. 31). However, FDA is unable to predict exactly how many cases of pediatric iron poisoning will be prevented as a result of warning statements. To the extent that warning statements will cause adults to take proper care in handling iron-containing products and to the extent that such care is not taken in the absence of warning statements, some cases of pediatric iron poisoning will be prevented.

FDA did not receive any comments challenging its estimate of the benefits of warning statements. Therefore, the analysis will not be changed by the comments. If all products containing 30 mg or more of iron per dosage unit are subject to the packaging requirements, and packaging is 100 percent effective in preventing both fatal and nonfatal cases, then there are no benefits from warning labels on these products. However, for those products still packaged in bottles, warning labels will have an impact. If each nonfatal case of iron poisoning is valued at $20,000, and the one-time cost of warning statements is $5 million, then benefits of requiring warning statements will exceed costs if warning statements prevent at least 15 nonfatal cases every year out of an average of 285.

3. Product Reformulation—Appearance

In the proposed rule, FDA requested comment on the option of reformulating iron-containing products to be less visually attractive, i.e., not look like candy. FDA received several comments on this issue. As discussed above, none of these comments presented data to support their contention that FDA should take steps to limit the appeal of iron-containing products to young children, and therefore, FDA is not including in this final rule any requirements relating to the formulation and appearance of iron-containing products.

4. Product Reformulation—Taste

In the proposed rule, FDA also requested comment on the option of adding a bitter substance to products containing iron which would discourage multiple ingestions. FDA did not receive any comments specifically addressing this issue. However, as discussed above, FDA did receive a comment expressing an opinion that a candy-like taste needlessly encourages an unsuspecting child, who may be unlikely to chew through the sugar coat, to ingest large quantities of these products. Another comment from a State department of health reported that investigation of 5 of 17 deaths revealed that children chewed or sucked on the iron tablets. However, none of these comments presented data to support a requirement by FDA for adding a bitter substance to products containing iron to discourage multiple ingestions.

5. Forms of Iron That May Be Less Toxic

Several comments requested that iron-containing products containing carbonyl iron, an elemental iron powder, be exempted from the labeling and packaging requirements. Comments stated their belief that carbonyl iron is effective in the prevention or treatment of iron deficiency and yet is less toxic

than other forms of iron commonly used in iron-containing products. Comments also stated that a permanent exemption from both packaging and labeling would dramatically reduce the costs of the regulation.

FDA agrees that such an exemption would reduce the costs of this final regulation. According to one producer of carbonyl iron, there are approximately 35 iron-containing products marketed by 15 manufacturers currently using carbonyl iron. It is likely that, if given an exemption for carbonyl iron, most, if not all, of the rest of the industry would convert their products to this form of iron. Therefore, an exemption from both labeling and packaging requirements would reduce costs by the difference between the cost of switching to carbonyl iron and the cost of making labeling and packaging changes. The cost of carbonyl iron is approximately $5.28 per lb as compared with ferrous sulfate which costs approximately $1.70 per lb. However, carbonyl iron has an iron content which is three times as high as ferrous sulfate. Therefore, on an equivalency basis, the price of the two types of iron are approximately equal ($5.28 for carbonyl iron and $5.10 for ferrous sulfate).

The cost savings from providing an exemption from packaging requirements is $54 million in the first year, or $116 million discounted to infinity at 7 percent. There are minimal cost savings from providing an exemption from labeling requirements because most labels will still be changed to reflect a change in ingredients.

However, as stated previously, although there may be some probability that carbonyl iron is less toxic, FDA is not entirely convinced that carbonyl iron is sufficiently less toxic than other commonly used forms of iron to substantially decrease the risk of pediatric poisoning. Thus, it is possible that providing an exemption from either labeling or packaging requirements, while substantially reducing costs, could also substantially reduce benefits. If carbonyl iron is not sufficiently less toxic than other forms of iron, then encouraging the industry to convert to carbonyl iron will result in lost benefits of between $426 million and $847 million (discounted to infinity at 7 percent). A permanent exemption for carbonyl iron from labeling requirements could result in a net loss to society of approximately $5 million. An exemption for carbonyl iron from packaging requirements could result in a net loss to society of between $421 million and $842 million. On the other hand, if carbonyl iron is sufficiently less toxic than other forms of iron such that accidental overdose of products containing a high dose of carbonyl iron is unlikely to result in major outcomes or death, then an exemption from the packaging requirements would result in a cost savings of $54 million annually with no corresponding loss in benefits.

Because of the uncertainty regarding the relative toxicity of carbonyl iron, FDA is temporarily exempting products containing carbonyl iron from the packaging requirements. At the end of 1 year, those products will be subject to the unit-dose packaging requirements. However, if FDA receives sufficient data to convince the agency that an exemption from carbonyl iron will not result in any loss in benefits, the exemption will be made permanent. The temporary exemption for carbonyl iron will allow manufacturers of iron containing products to delay making changes to their packaging while conducting further studies on the toxicity of carbonyl iron. This delay will result in cost savings equal to the interest on the cost of the packaging changes (7 percent of $54 million, or $4 million). The cost of the studies will depend on the species selected. FDA estimates that conducting the necessary studies will cost approximately $30,000.

6. Consumer Education Campaign

Two of the three petitions submitted advocated educational efforts for the public and health professionals. FDA agrees that the public needs to be informed of the dangers of pediatric iron poisoning. The fact that in 7 years over 2,000 poisonings requiring some kind of treatment occurred, may indicate that the public is not aware of the potential for serious harm or death in young children from accidental ingestion of iron-containing products. FDA is developing materials for a public information campaign utilizing the channels available to FDA.

7. Effective Dates

The agency proposed to make any final rule based on the proposed rule effective 6 months after date of publication of the final rule in the Federal Register. FDA received many comments objecting to this effective date.

Several comments stated that the proposed effective date is not feasible for relabeling, urging FDA to consolidate the effective date with the date for the new nutrition labeling rules for dietary supplements that would be issued as a result of the DSHEA and were statutorily mandated to be effective after December 31, 1996. This would amount to a compliance period of approximately 1 year after publication of the final rules, a delay of approximately 6 months compared to the proposed effective date. One comment requested that firms be allowed to use up existing stocks of labeling bearing the voluntary warning statement. One comment stated that revising labeling requires at least 1 year.

FDA agrees that costs of compliance with labeling requirements are reduced with extended effective dates. In general, costs of compliance for labeling are less for longer compliance periods because firms can incorporate mandatory changes to product labeling with regularly scheduled changes. In general, labeling costs are reduced by 50 percent when a compliance period is extended from 6 months to 1 year. However, benefits are also delayed.

FDA has considered the requests to extend the effective date for implementing the labeling requirements of this final rule from a period of 6 months to a period of 1 year. FDA would select the regulatory option of extending the compliance period for the warning statement requirements if the marginal benefit of the option exceeds the marginal cost. The marginal benefit of extending the compliance period to 1 year is the reduction in benefits caused by not preventing nonfatal cases for 6 months. Marginal costs will exceed marginal benefits if 125 cases are not prevented. FDA believes that it is likely that the number of additional nonfatal cases not prevented during the 6-month period will exceed this number. Thus, the savings to manufacturers from a 1-year compliance period will not be as great as the savings from injuries avoided by having the warning statement on all products. Consequently, FDA is denying the requests to extend the compliance period to 1 year.

FDA also has considered the requests to consolidate the effective date for the labeling requirements of this rule with the dietary supplement labeling requirements that would be issued as a result of the DSHEA. At this time, the effective date of this final rule is after December 31, 1996, which is the statutorily mandated date of compliance for the labeling requirements imposed by the DSHEA. However, it is questionable whether FDA's regulations implementing the DSHEA labeling requirements will be finalized before that date. FDA has previously stated its intent to provide a reasonable compliance period for the provisions of DSHEA (61 FR 16423, April 15, 1996). In light of the comments that discussed the extent of the current compliance with the industry's voluntary labeling program, FDA considers that a

reasonable response to the requests for a single compliance date, which still places public health at the forefront, is to retain the effective date of 180 days as proposed but to use enforcement discretion, consistent with its announced intent to provide a reasonable compliance period for the provisions of the DSHEA, for those products that bear a voluntary warning statement (such as the statement suggested by the NDMA). Products that do not bear any warning statement, however, must be in compliance with this final rule within 6 months of its date of publication. In the interest of fairness, the agency is likely to follow a similar approach with respect to iron-containing drug products even though iron-containing drug products are not subject to the agency's labeling regulations implementing DSHEA.

Several comments requested an extension of the effective date for the packaging requirements. One comment stated revising packaging requires at least 1 year. The comment stated that the time required to order, obtain, and implement new tooling and equipment easily exceeds 180 days. Another comment suggested that many firms would have to use outside contractors for unit-dose packaging with resultant costs and time delays but did not provide any estimates. One comment expressed uncertainty about whether the capacity of the packaging industry was sufficient to handle the extra work. One comment from the packaging industry stated that enough capacity exists to unit-dose pack all iron-containing products currently sold in the United States.

FDA agrees that costs of compliance with packaging requirements are reduced with extended effective dates. In general, extending the compliance date for packaging to 1 year would reduce costs of materials, transportation, storage, and administration. The total reduction in cost of packaging due to a 6-month extension would be approximately $5 million. However, the 6-month extension would also decrease benefits. The cost of extending the compliance date for packaging requirements for products containing 30 mg or more of iron per dosage unit is a reduction in benefits caused by not preventing fatal cases for 6 months, valued at an amount between $16 and $32 million.

FDA has considered the requests to extend the effective date for implementing the packaging requirements of this final rule. The agency's calculations show that the reduction in costs that would be expected by extending the compliance period to 1 year is small compared to the overall costs of the rule. Moreover, the reduction in benefits that would be expected by extending the compliance period to 1 year exceed the reduction in costs by a factor of 3 to 6. Therefore, FDA is denying the requests to increase the time for compliance with this final rule.

C. Regulatory Flexibility

FDA stated in the original analysis that it was not aware that any small businesses would be affected by the proposed rule and therefore determined that the rule will not result in a significant burden on small businesses. In response to those statements, FDA received comments indicating that some small businesses will be adversely affected by the rule if finalized as proposed.

One comment requested that FDA conduct an Initial Regulatory Flexibility Analysis and republish the proposed rule with that analysis, allowing for an appropriate period for public comment. FDA is denying this request. The risk of harm from accidental iron pediatric poisonings is too great for FDA to postpone rulemaking on this matter. Republishing the proposed rule would postpone action on this issue for at least 6 additional months. During that time, FDA estimates that 2 fatal cases and as many as 1,000 nonfatal cases that could be prevented by publishing the final rule rather than republishing the proposal. Further, FDA received many comments to the proposed rule providing information that FDA used to modify the provision of the rule to be less burdensome for small entities. FDA does not believe that republishing the proposed rule would result in a final rule that is significantly different from this one.

According to the Small Business Administration's (SBA) size standards, a maker of iron-containing products is small if it employees fewer than 500 persons. According to the National Nutritional Foods Association (NNFA), of approximately 100 of their members that produce iron-containing products, over 90 percent have fewer than 500 employees. However, because not all iron-containing products are produced by members of NNFA, there are probably more than 90 firms producing iron-containing supplements. According to the Bureau of the Census, approximately 84 percent, or 504 firms, of the pharmaceutical industry, which is not limited to manufacturers of iron-containing products, are small. Therefore, a significant portion of the affected industry is small by SBA's definitions. However, sources of information on the number of firms that produce iron-containing products are limited. Several sources collect information only on a subgroup of iron-containing product manufacturers, e.g., members of a particular trade organization. Other sources collect information at such an aggregated level that the information specific to iron-containing products cannot be separated out. Therefore, it is either impossible or impracticable to estimate the number of small entities that produce iron-containing products.

FDA was able to gather specific data on 10 small and 12 large producers of iron-containing supplements. The firms for which data were available sold over-the-counter iron-containing supplements through grocery stores and cannot be considered as representative of the entire industry. Many other iron-containing products are distributed through pharmacies or clinics or are marketed through other types of retail outlets and mail order catalogs. Nevertheless, because these were the only firms for which FDA could find data on the number of employees, annual revenues, and number of iron-containing products produced, the analysis was restricted to these 22 firms.

The 10 small firms employed between 4 and 440 persons (median = 111), had annual sales ranging from $450,000 to $116 million (median = $17 million), and produced between 1 and 8 iron-containing products (median = 3). A total of 35 iron-containing products were produced by small firms in the sample. The impact was heaviest on the two firms with the smallest annual revenues. For these two small firms, the regulatory cost as a percentage of annual revenues were 3 and 6 percent. The regulatory cost could be expected to raise total company expenses by 4 and 8 percent for these two small firms. In addition, the regulatory cost as a percentage of total company profits was 16 and 30 percent for these two small firms. On average, the ten small firms in the sample would experience an increase in total company expenses of 1.6 percent (median = .68 percent). The costs of the regulation as a percentage of total company profits was 6.27 percent on average for the 10 firms in the sample (median = 2.64 percent).

By comparison, the 12 large firms in the sample employed between 600 and 82,000 persons (median = 21,950), had annual sales between $60 million and $19 billion (median = $6.1 billion), and produced between 1 and 15 iron-containing products (median = 5). A total of 67 products were produced by the large firms in the sample. On average, large firms would experience

an increase in total company expenses of 0.05 percent (median = .0021 percent). Regulatory costs as a percent of annual revenues would be 0.04 percent for the average large firm (median = .0017 percent). Regulatory costs as a percent of total company profits would be 0.21 percent on average for large firms (median = .0083 percent).

D. Alternatives to Provide Regulatory Relief for Small Business

There are five alternatives that the agency considered to provide regulatory relief for small entities. First, FDA considered the option of exempting small entities from the requirements of this rule. Second, FDA considered lengthening the compliance period for small entities. Third, the agency considered exempting products containing elemental iron, such as carbonyl iron, from packaging requirements because of its low potential for toxicity. Fourth, FDA considered less restrictive warning label requirements for small entities. Finally, FDA considered the option of establishing performance rather than design standards.

1. Exempt Small Entities

One alternative for alleviating the burden for small entities would be to exempt them from the provisions of this rule. However, the majority of the firms engaged in the manufacture of iron-containing products are small. Even accounting for the fact that large firms produce more products on average than small firms, exempting small firms would exempt a large proportion of iron-containing products. Although this option would clearly eliminate the burden on small firms, it would also result in a significant decrease in the number of pediatric iron poisonings prevented. Therefore, FDA concludes that selecting this alternative would defeat the purpose of the regulation.

2. Lengthen the Compliance Period

As discussed above, the agency proposed to make any final rule effective 6 months after publication of the final rule. The DSHEA imposes certain labeling requirements on dietary supplements to be effective in December 1996. FDA could consolidate the effective date for the warning label requirements with the effective date for the new nutrition labeling format for dietary supplements, thus reducing costs. FDA received many comments stating that extending the compliance period for labeling requirements would reduce the burden for small entities without significantly reducing the benefits of the actions.

FDA agrees that extending the compliance period for the labeling requirements to coincide with the effective date for the requirements of DSHEA would significantly reduce the burden of the labeling requirements on small entities. However, a delay in the effective date for small entities would reduce the number of accidental poisonings that would be prevented by between 7 and 100 nonfatal cases. Therefore, the agency does not agree that the reduction in costs exceeds the reduction in benefits that would be expected. However, because compliance with the industry's voluntary labeling program appears to be significant, as stated previously in this document, FDA is retaining the effective date of 180 days as proposed but intends to exercise its enforcement discretion, consistent with its announced intent to provide a reasonable compliance period for the provisions of the DSHEA, for those products bearing a voluntary warning statement, such as the statement suggested by NDMA, until after the agency begins to enforce the labeling regulations implementing DSHEA. FDA believes that this response will relieve some of the burden associated with the warning statement requirements.

3. Exemption for Carbonyl Iron

Several comments to the proposed rule suggested that an exemption for carbonyl iron would reduce the impact on small entities. Because it is less expensive to switch to carbonyl iron than to comply with the packaging requirements, most or all small producers would likely take advantage of the exemption. Thus, FDA acknowledges that exempting products made with carbonyl iron would significantly reduce the burden on small entities. Because of the uncertainty regarding the relative toxicity of carbonyl iron, FDA is temporarily exempting products containing carbonyl iron from the packaging requirements for 1 year. If FDA receives sufficient data to convince the agency that an exemption from carbonyl iron will not result in a significant loss in benefits, the exemption will be made permanent. Because this exemption would apply to large firms as well as small, FDA does not believe that small entities will bear the cost of developing the necessary data.

4. Less Stringent Labeling Requirements

Elsewhere in this preamble, FDA has responded to comments from both large and small firms regarding more flexible requirements with respect to warning statements. Upon consideration of the comments, FDA has amended its proposed warning label requirements to allow as much flexibility as is possible. For example, FDA is no longer requiring that the warning statement appear on the principal display panel. FDA is also allowing firms that currently use warning statements additional time to modify their labels. Because the requirements of the final warning statements requirements are as flexible as possible, there is no room for additional flexibility for small firms.

5. Performance Standards Rather Than Design Standards

FDA considered the possibility of establishing performance rather than design standards for this final rule. Although specifically prescribing packaging and labeling changes, FDA has written performance based criteria for certain provisions of this rule. In the case of warning label statements for unit-dose containers, FDA has revised the wording of the regulation in such a way that makes clear that the manufacturer bears the responsibility in designing labeling that will meet the agency's goal of informing consumers of the dangers to small children from an accidental overdose of a product that contains iron but provides the manufacturer with flexibility in determining how it will do so. Also, FDA has decided specifically not to require any particular type of packaging, for example blister packs or pouches. Instead, FDA is allowing the manufacturer to determine the most appropriate packaging for its product provided that the packaging meets the goal of allowing access to only one dose at a time.

FDA considered the potential for establishing an acceptable toxicity for iron-containing products rather than prescribing packaging and labeling requirements to reduce risk of harm. It is not clear that this option would be less costly for small entities. For most sources of iron, the available toxicity data either does not exist or is unsuited for the purpose of evaluating the toxicity of the form of iron in humans.

E. Summary

FDA has examined the impact of the final rule in accordance with Executive Order 12866 and has determined that it is not an economically significant rule. The rule will result in costs in the first year of approximately $56 million and $4.3 per year starting in year two for total discounted costs of $118 million (discounted to infinity at 7 percent). The rule will also result in per year benefits of between $31.5 million and $61 million for total discounted benefits of

between $426 million and $847 million (discounted to infinity at 7 percent).

FDA has also examined the impact of this final rule on small businesses in accordance with the Regulatory Flexibility Act. This analysis with the rest of the preamble constitutes the Final Regulatory Flexibility Analysis. FDA has determined that this rule is likely to have a significant impact on a substantial number of small entities. However, if the temporary exemption for products made with carbonyl iron is made permanent, the impact on small entities will be significantly reduced. FDA is also reducing the impact on small entities by exempting from the labeling requirements those products bearing a voluntary warning statement until after the agency's labeling regulations implementing DSHEA take effect. FDA, in conjunction with the Administrator of OIRA, OMB, has determined that this rule is not a major rule for purposes of congressional review.

F. Public Outreach

FDA has conducted extensive outreach to a wide audience on the problem of accidental overdose of iron-containing products in small children. This outreach included independent FDA activities as well as cooperative efforts between FDA and professional trade organizations.

One focus of FDA's outreach effort was to educate consumers about the danger that iron-containing products posed to small children to foster changes in behavior with respect to safe handling of these products. This effort included direct outreach to consumers through TV and radio public service announcements in English and in Spanish; a camera-ready newspaper column in English and Spanish; multicolored posters, in English and in Spanish, distributed to retail pharmacists and clinics operated by the Women, Infants, and Children Program of the U.S. Department of Agriculture; an FDA backgrounder, which described the agency's efforts to protect children from accidental iron poisoning, that was both disseminated in printed form and made available through electronic means as a special feature in the FDA News section of the agency's home page on the World Wide Web (August 1995); an article in FDA Consumer, the agency's official consumer publication; a ''Dear Consumer'' letter distributed to more than 500 organizations with more than 10,000 affiliates; and a ''Dear Consumer Newsletter Editor'' letter to more than 150 consumer publications. FDA believed that many of these efforts would be noticed by small producers of iron supplements.

A second focus of FDA's outreach effort was to inform the professional health care community of the danger that iron-containing products posed to small children so that health care providers could help disseminate educational materials to consumers and promote the safe handling of iron-containing products. FDA notified several dozen pharmacy, medicine, and nursing organizations of the proposed regulation by telefax, including a copy of the press release, backgrounder, and summary of the regulation; mailed a ''Dear Doctor'' letter to obstetricians/gynecologists; issued a Medical Bulletin; and published columns in leading medical journals.

A third focus of FDA's outreach effort was to inform manufacturers of iron-containing products of the agency's proposed regulations on packaging and labeling such products and encourage them to work together with the agency to develop a final rule based on the proposal. The initial outreach consisted of a telefax notification, including a copy of a press release from the Department of Health and Human Services and the above-mentioned FDA backgrounder, to several trade associations to alert them to the publication of the agency's proposed rule, followed by a direct mailing of a copy of the proposed rule to those organizations. In addition, FDA met with representatives of two manufacturers' trade organizations shortly after the publication of the proposed rule to discuss specific aspects of the proposed regulation. FDA also placed a summary of key provisions of the proposed rule in the FDA News section of the agency's home page on the World Wide Web.

VIII. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of October 6, 1994 (59 FR 51030). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IX. Paperwork Reduction Act

The labeling requirement of this final rule is not within the scope of the Paperwork Reduction Act of 1995, because under 5 CFR 1320.3(c)(2),[20] it is excluded from the definition of collection of information.

X. Effective Date

As discussed above (see section VII.B.7. of this document), the effective date of the labeling requirements of this final rule is 180 days after the date of its publication in the Federal Register except that the effective date for iron-containing dietary supplement and drug products bearing a voluntary warning statement (such as the statement suggested by the NDMA) is after December 31, 1996 (i.e., after the agency's labeling regulations implementing DSHEA take effect).

As also discussed above (see section VII.B.7. of this document), the effective date of the packaging requirements of this final rule is 180 days after date of its publication in the Federal Register, except that FDA is temporarily exempting products that contain carbonyl iron as the sole source of iron from these packaging requirements. The temporary exemption will automatically expire 1 year after date of publication of this final rule in the Federal Register. If, following the temporary exemption period, FDA does not temporarily or permanently extend the exemption, the packaging requirements of this final rule will become effective for products that contain carbonyl iron as their sole source of iron source according to the same principle as for products containing other forms of iron, i.e., on the date that is 180 days after date of expiration of the temporary exemption, or on July 15, 1998.

XI. 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.

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2. Memorandum of telephone conversation between Paul Whittaker, FDA, and Suzanne Barone, U.S. Consumer Product Safety Commission, dated November 30, 1995.

3. American Association of Poison Control Center, Inc., petition to FDA, 91P–0186/CP1, 1991.

4. Attorneys General, petition to FDA, 93P–0306/CP1, 1993.

5. Nonprescription Drug Manufacturers Association, petition to FDA, 93P–0306/CP2.

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[20] Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included within the definition of ''collection of information.''

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List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 111

Drugs, Packaging and containers, and labeling.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and record keeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, title 21 CFR chapter I is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.17 is amended by adding new paragraph (e) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(e) *Dietary supplements containing iron or iron salts.* (1) The labeling of any dietary supplement in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

WARNING: Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

(2)(i) The warning statement required by paragraph (e)(1) of this section shall appear prominently and conspicuously on the information panel of the immediate container label.

(ii) If a product is packaged in unit-dose packaging, and if the immediate container bears labeling but not a label, the warning statement required by paragraph (e)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

(3) Where the immediate container is not the retail package, the warning statement required by paragraph (e)(1) of this section shall also appear prominently and conspicuously on the information panel of the retail package label.

(4) The warning statement shall appear on any labeling that contains warnings.

(5) The warning statement required by paragraph (e)(1) of this section shall be set off in a box by use of hairlines.

3. Part 111 consisting of § 111.50, is added to read as follows:

PART 111—CURRENT GOOD MANUFACTURING PRACTICE FOR DIETARY SUPPLEMENTS

Authority: Secs. 201, 402, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 371).

§ 111.50 Packaging of iron-containing dietary supplements.

(a) The use of iron and iron salts as iron sources in dietary supplements offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, is safe and in accordance with current good manufacturing practice only when such supplements are

packaged in unit-dose packaging. ''Unit-dose packaging'' means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term ''dosage unit'' means the individual physical unit of the product (e.g., tablets or capsules). Iron-containing dietary supplements that are subject to this regulation are also subject to child-resistant special packaging requirements in 16 CFR parts 1700, 1701, and 1702.

(b)(1) Dietary supplements offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, are exempt from the provisions of paragraph (a) of this section until January 15, 1998, if the sole source of iron in the dietary supplement is carbonyl iron that meets the specifications of § 184.1375 of this chapter.

(2) If the temporary exemption is not extended or made permanent, such dietary supplements shall be in compliance with the provisions of paragraph (a) of this section on or before July 15, 1998.

PART 310—NEW DRUGS

The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

4. New § 310.518 is added to subpart E to read as follows:

§ 310.518 Drug products containing iron or iron salts.

Drug products containing elemental iron or iron salts as an active ingredient in solid oral dosage form, e.g., tablets or capsules shall meet the following requirements:

(a) *Packaging.* If the product contains 30 milligrams or more of iron per dosage unit, it shall be packaged in unit-dose packaging. ''Unit-dose packaging'' means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term ''dosage unit'' means the individual physical unit of the product, e.g., tablet or capsule. Iron-containing drugs that are subject to this regulation are also subject to child-resistant special packaging requirements in 16 CFR parts 1700, 1701, and 1702.

(b) *Temporary exemption.* (1) Drug products offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, are exempt from the provisions of paragraph (a) of this section until January 15, 1998, if the sole source of iron in the drug product is carbonyl iron that meets the specifications of § 184.1375 of this chapter.

(2) If this temporary exemption is not extended or made permanent, such drug products shall be in compliance with the provisions of § 111.50(a) of this chapter on or before July 15, 1998.

(c) *Labeling.* (1) The label of any drug in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

WARNING: Accidental overdose of iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

(2)(i) The warning statement required by paragraph (c)(1) of this section shall appear prominently and conspicuously on the information panel of the immediate container label.

(ii) If a drug product is packaged in unit-dose packaging, and if the immediate container bears labeling but not a label, the warning statement required by paragraph (c)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

(3) Where the immediate container is not the retail package, the warning statement required by paragraph (c)(1) of this section shall also appear prominently and conspicuously on the information panel of the retail package label.

(4) The warning statement shall appear on any labeling that contains warnings.

(5) The warning statement required by paragraph (b)(1) of this section shall be set off in a box by use of hairlines.

(d) The iron-containing inert tablets supplied in monthly packages of oral contraceptives are categorically exempt from the requirements of paragraphs (a) and (c) of this section.

Dated: October 24, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 97–947 Filed 1–14–97; 8:45 am]

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Federal Register

Wednesday
January 15, 1997

Part III

Department of Energy

Office of the Secretary

10 CFR Part 1045
Information Classification; Proposed Rule

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 1045

RIN 1901–AA21

Information Classification

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE or Department) proposes to revise its regulations concerning its policies and procedures on the identification of classified information. These regulations establish the policies and procedures implementing the requirements of the Atomic Energy Act of 1954 for the classification and declassification of information as Restricted Data and Formerly Restricted Data and also implement those requirements of Executive Order 12958 concerning National Security Information (NSI) that directly affect the public. These regulations prescribe procedures to be used by all agencies of the Federal Government in the identification of Restricted Data and Formerly Restricted Data, and describe how members of the public may request DOE NSI and appeal DOE classification decisions regarding such requests.

DATES: Comments on the proposed rule (3 copies) must be submitted on or before March 17, 1997. A public hearing will be held on February 26, 1997. Written requests to speak at the hearing must be received at the address below by February 12, 1997.

ADDRESSES: Send written comments and requests to speak at the hearing to Janet O'Connell, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290. (Docket No. RM–96–1045). The hearing will be held at 9:00 a.m. at the Department of Energy, Forrestal Building, Main Auditorium, 1000 Independence Ave, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Janet O'Connell, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–1113, or Joseph S. Mahaley, Department of Energy, Office of the Assistant General Counsel for National Security, Washington, DC 20585, (202) 586–0806.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Atomic Energy Act of 1954, 42 U.S.C. 2011, the Department of Energy is responsible for the classification and declassification of nuclear-related information. Such information is classified as Restricted Data (RD). The DOE has joint responsibility with the Department of Defense (DOD) for the classification and declassification of certain nuclear-related information which relates primarily to the military utilization of nuclear weapons. Military utilization information which can be protected as National Security Information (NSI) is classified as Formerly Restricted Data (FRD). These regulations specify the policies and procedures that organizations and individuals shall follow in classifying and declassifying RD and FRD. In formulating these policies and procedures, DOE has solicited and made use of significant recommendations from the public and other agencies of the Federal Government (hereafter referred to as ''agencies''); the Department has embraced the goal of ''open policies openly arrived at.'' The resulting proposed regulation balances the Department's commitment to maximize the amount of information made available to the public with the need to protect national security and prevent nuclear proliferation.

Section 5.6(c) of Executive Order (E.O.) 12958, ''Classified National Security Information,'' requires that agencies that originate or handle classified information promulgate implementing regulations to be published in the Federal Register to the extent that they affect members of the public. Subpart D of these proposed regulations implements those requirements of the Executive order and was approved by the Information Security Oversight Office (ISOO) on July 5, 1996, in accordance with section 5.3(b)(3) of E.O. 12958.

This proposed regulation establishes overall classification and declassification policies and procedures and serves as the bridge between the Atomic Energy Act and E.O. 12958, the procedures contained in DOE and agency orders and directives, and the technical guidance in classification guides.

II. Section by Section Analysis

This proposed regulation is written in four Subparts. Subpart A provides general information on the management of the RD classification system, including the responsibilities of DOE and all agencies with access to RD and FRD. Subpart B describes procedures for the classification and declassification of RD and FRD information (as contrasted with classification and declassification of documents containing such information). Requirements and procedures for the review, classification, and declassification of RD and FRD documents to be implemented by all agencies are described in Subpart C. Lastly, Subpart D provides DOE requirements and procedures concerning NSI to the extent that they affect the public, as required by Executive Order 12958.

This regulation incorporates recommendations of the Classification Policy Study of July 1992, the Atomic Energy Act Study of January 1994, and the National Academy of Sciences Review of 1995. Copies of these studies are available from the contact person in the **ADDRESSES** section of this notice. DOE has completed a Fundamental Classification Policy Review Study which is currently undergoing interagency coordination. Its major purpose is to determine what information must still be protected in light of the end of the Cold War and to recommend declassification of all other information. The Department will consider appropriate recommendations from this latest study and seek additional comments if necessary prior to issuance of the regulation in final form.

Subpart A deals with management of the RD classification program. Responsibilities are specified for the DOE Director of Declassification for the management of the Government-wide system for the classification and declassification of RD and FRD; for DOD concerning FRD; for agency heads with access to RD and FRD; and for agency RD management officials to oversee the implementation of the program within their agency. The Nuclear Regulatory Commission (NRC) has responsibility for assuring the review and proper classification of RD under this regulation, generated in NRC and in its licensed or regulated facilities and activities. NRC and the DOE jointly develop classification guides for programs over which both agencies have cognizance.

Definitions of all terms used in any Subpart are provided in proposed § 1045.3. Where appropriate, these definitions follow precisely legal or statutory language, as in the definition of Restricted Data taken from the Atomic Energy Act (AEA). The AEA and E.O. 12958 differ in the wording used for assessing the consequences of unauthorized disclosure of information at the lowest classification level. Therefore, ''Confidential'' is applied to NSI if disclosure is expected to cause ''damage to the national security''; to RD and FRD if the expectation is ''undue risk to the common defense and security.''

In the proposed regulation, ''information'' is defined as ''facts, data, or knowledge itself.'' ''Document'' is defined as ''the physical medium on or in which information is recorded, or a product or substance which contains or reveals information, regardless of its physical form or characteristics.'' The distinction between ''information'' and ''documents'' is important in understanding DOE classification and declassification policies and procedures. Only a few senior Government officials have the authority to make decisions concerning the classification and declassification of information and set policy. Conversely, hundreds or even thousands of Government and contractor employees have the authority to make decisions concerning the classification and declassification of documents and follow such policy

The Director, Office of Declassification (hereafter DOE Director of Declassification), is subordinate to the Director, Office of Security Affairs (hereafter DOE Director of Security Affairs). The DOE Director of Declassification reviews new information, potentially falling within the definition of RD to determine if the information should be classified as RD. However, due to the especially sensitive nature of RD information, the authority to declassify RD information is vested in the DOE Director of Security Affairs.

The decisions concerning the classification and declassification of RD made by these Directors are explained in classification guides, which contain detailed instructions as to whether information is classified. These guides are the primary basis for the review of documents to determine whether they contain RD information.

A large number of individuals within the DOE, other agencies, and their contractors may determine whether a document contains RD and, therefore, should be classified or unclassified.

This centralized policy-setting, decentralized policy-following approach ensures consistency and efficiency. However, it means that the full benefit of the Department's Openness Initiative can only be realized if the policy decisions concerning the classification and declassification of RD information made by the DOE Directors of Declassification and Security Affairs are applied by one of the many document reviewers to previously classified documents so that they are declassified and made available to the public.

FRD information and documents are generally handled in the same manner as RD except that DOD and DOE have joint authority over the classification and declassification of FRD information and some RD information which has not been transclassified to FRD but which relates primarily to the military utilization of nuclear weapons. The DOD and the DOE jointly develop classification guides for programs over which both agencies have cognizance.

Proposed § 1045.5 provides for sanctions and alerts employees to the administrative penalties that can result from violation of policies and procedures prescribed in this regulation.

Proposed § 1045.6 states that DOE will maintain an Openness Advisory Panel to advise the Secretary regarding the current status and strategic direction for the Department's classification and declassification policies and programs as well as other aspects of the Department's ongoing Openness Initiative. Several studies of DOE classification policy and recommendations from public stakeholders led DOE to creation of this panel. It is anticipated that this panel will not only provide evaluation and advice on DOE classification policies, but will also serve as an independent authority to confirm for the public the validity of classification decisions in which the full rationale cannot be disclosed for reasons of national security. This panel is currently constituted under the Secretary of Energy's Advisory Board (SEAB), in accordance with the Federal Advisory Committee Act, and composed of thirteen recognized experts in a broad spectrum of disciplines.

Subpart B applies to the small number of DOE and DOD officials who hold the authority to make decisions on the classification of information as RD or FRD. This authority is somewhat analogous to original classification authority for NSI. DOE has decided to publish these procedures and the criteria used in making classification determinations in order to formally implement the Department's openness policies and to assure the public that the RD/FRD classification process serves the public interest as well as national security interests, and will continue to do so in the future.

Section 1045.13 proposes several classification prohibitions and specifies that the classification of RD and FRD shall not be used to prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety. This prohibition is included to fulfill DOE's commitment to the public release of environmental, safety and health information, including information on human radiation experiments.

The definition of RD contained in the AEA has been interpreted to mean that all information falling within the RD definition is automatically classified or ''born classified.'' When the AEA was written, this was effectively true and most of this type of information was classified. Now, this all-encompassing definition for RD has been reduced by nearly fifty years of declassification actions to a core of information. Information which remains classified as RD relates primarily to nuclear weapons design, or the use or acquisition of nuclear weapons or nuclear material, with nuclear science and much nuclear technology excluded because it is no longer classified. Only five areas of nuclear technology still contain information classified as RD or FRD. Each of these broad areas contains specific information that is still classified and other information that has been declassified. Identifying whether specific information is classified in these areas requires technical expertise and reference to a classification guide.

These five areas are: (1) Nuclear weapon design and utilization (includes selected information revealing theory, design principles and details, yields, inventories, mode of operation, methods for command and control, destruction, and vulnerabilities to sabotage or countermeasures); (2) nuclear material and nuclear weapon production (includes selected information revealing special techniques for manufacture); (3) inertial confinement fusion (includes selected target design and operational information judged to be particularly revealing of nuclear weapons technology); (4) military nuclear reactors (includes selected design, development, test, and operational information concerning reactor power systems for military purposes, especially for naval nuclear propulsion, and selected information concerning capabilities and vulnerabilities); and (5) isotope separation (includes key process and design information for practical

techniques for enrichment of uranium and certain other elements of military significance).

The nuclear field is now quite mature; any new information is likely to be either further detail in an area for which classification guidance is already well established, or characteristics of a new weapon design operating outside the envelope of its predecessors. In the latter case, the classification of such information is not automatically prescribed, but is determined by authorized officials by application of specific criteria. This procedure de-emphasizes, but does not abolish, the ''born classified'' concept. In order to abolish the concept, an amendment to the AEA would be required.

It is DOE policy to make information publicly available to the maximum extent possible while considering nonproliferation and national security implications. Section 1045.16 specifies the Department's criteria for evaluation of RD and FRD information. These criteria have been applied internally for several years. DOE shall classify information only if a risk of damage to the national security from unauthorized disclosure can be identified and described (for NSI), or if there is undue risk to the common defense and security which can be identified and described (for RD and FRD). If information does not warrant classification under the criteria, it should be declassified and released to the public unless otherwise restricted by law, treaty or international agreement. These criteria collectively form the harm-based system for the classification and declassification of RD and FRD. The proper application of these criteria results in a qualitative analysis of the relative benefits of classification and declassification.

As an aid to application of these criteria, § 1045.15 proposes certain areas in which information may generally be presumed to be classified RD or FRD, and others in which information is generally unclassified. The term ''generally'' means that, as a rule but not necessarily in every case, information in the identified areas has the classification indicated. These presumptions do not address every possible RD or FRD subject area. They reflect classification decisions that have already been made and, therefore, provide the initial input for the classification decision making process for new information. This proposed regulation requires that DOE be able to provide a publicly releasable justification whenever decisions are made which are contrary to these presumptions.

DOE has traditionally avoided use of the Top Secret classification level for RD, but has required DOE personnel and contractors to follow security procedures for Secret RD that were essentially equivalent to those used throughout the Government for Top Secret NSI. These included the requirement for background investigations to obtain a ''Q'' clearance authorizing access to Secret RD. Within the DOD, no distinction is made for access to RD. Access to all Secret information is based on a national agency check and credit checks, which is not as in-depth an investigation as a background investigation. Now, as a result of the National Industrial Security Program, security procedures are standardized. To ensure adequate protection for its most sensitive information, DOE is proposing to reinstate use of the Top Secret RD classification for only that nuclear-related information the release of which would cause exceptionally grave damage to the national security.

Section 1045.17 provides a description and examples of information which warrant classification at the Top Secret RD level. This section specifies that information which provides a comprehensive description of a nuclear weapons design warrants classification as Top Secret RD. By upgrading this information to Top Secret RD, a background investigation will be required for all agency and contractor personnel having access to it. This action is consistent with recommendations of the recent National Academy of Sciences study of the DOE classification program calling for ''high fences around narrow areas * * * and maintaining stringent security around sharply defined areas.'' Before the Top Secret RD classification is reinstated by this regulation, the recommendations of the Fundamental Classification Policy Review regarding this issue will be considered.

Section 1045.18 permits the classification of newly generated information in a previously declassified area. For example, established technical information concerning the reprocessing of nuclear reactor fuel is unclassified, but a major breakthrough in reprocessing could be classified if it meets the requirements for classification as RD. This provision could not be used to reclassify information that has been widely disseminated in the public domain. While this provision is expected to be used in rare instances, it provides the opportunity to classify information if the circumstance warrants.

Section 1045.19 institutionalizes accountability by requiring that DOE be able to provide a written justification for classification and declassification decisions. This requirement does not apply to derivative classification decisions made routinely at the document level (which are the subject of Subpart C), but applies only to initial information classification decisions. By including this requirement, the public will be assured access to the rationale for classification decisions. Greater understanding of the decision making process should result in increased public trust. DOE envisions that this requirement may be fulfilled by a report which summarizes all such decisions, updated periodically.

Section 1045.20 would invite proposals for declassification of RD and FRD information from the public, agencies, or contractors. This section is included to seek input so that DOE can focus its declassification efforts on subject areas in which there is public interest. Procedures are included for the submission of such proposals.

DOE authority to classify RD which is privately generated by persons in the U.S., not pursuant to Government contracts, originates in the definition of RD in the AEA and is reconfirmed in §1045.21. This section would limit this unique authority to classify privately generated RD to the Secretary and Deputy Secretary.

Subpart C prescribes requirements for classifying and declassifying documents which are applicable to all Government agencies and industry components with access to RD and FRD. The AEA is the basis for DOE to specify the detailed policies and procedures for the Government-wide RD program and to provide oversight. This Subpart sets the foundation for more effective classification management of nuclear-related information throughout Government and in industry.

Section 1045.32 specifies the authorities for the classification and declassification of documents containing RD and FRD. Classification guides are to be used by RD classifiers as the primary basis for classification decisions. DOE prefers use of classification guides over the use of source documents for derivative classification decisions because use of guides results in greater consistency in classification decisions and fewer classification errors. DOE originally considered mandating the use of guides and prohibiting the use of source documents for derivative classification. After coordinating with other agencies, DOE proposes to allow the use of properly classified source documents

for derivative classification of RD and FRD documents.

Authority for the declassification of RD documents, whatever their origin, is limited to authorized DOE personnel. DOE considered authorizing other agencies with joint DOE/agency guides to declassify RD documents in accordance with those guides. However, because most personnel in other agencies do not have specialized technical knowledge and may lack access to all of the applicable classification guides required to adequately determine if an RD document can be declassified, DOE opted to limit this authority. Future events and circumstances may prompt DOE to reconsider this decision. The development of more advanced technology to support electronic exchange of classified documents between agencies, better distribution of classification guides, improved training of personnel in other agencies, and adequate resources are among the factors which may lead DOE to reevaluate authorities for declassification of RD documents.

Section 1045.33 requires each agency with access to RD and FRD to appoint an RD management official to implement this regulation. This management official is similar to the senior agency official required by E.O. 12958 and can be the same person. An RD management official should be at the appropriate level to effectively communicate with classification and security officials as well as RD classifiers in the agency. This official will also serve as the primary point of contact with DOE for RD classification issues. Within the DOD, an RD management official shall be appointed at each DOD agency.

Section 1045.34 requires that persons who classify RD and FRD documents be designated as RD classifiers, except within the DOD. Because of the size, mission, organizational diversity and personnel turnover rate within DOD, designation of persons who classify RD or FRD is recommended, but not required. In any case, RD management officials within DOD, and within all agencies with access to RD and FRD, will ensure that persons who handle RD and FRD documents have access to classification guides needed and are trained.

Within DOE, all original and derivative classifiers and declassifiers are formally designated, trained, and certified. Training and ongoing performance-based testing of these personnel is standard practice within the DOE. DOE does not require other agencies which generate RD and FRD documents to institute a training program comparable to the DOE program. Section 1045.35 specifies that DOE will take the lead in Government-wide RD related training by developing training materials for RD classifiers in all agencies. DOE and RD management officials will consult periodically concerning the adequacy of training. DOE shall review any RD-related training materials submitted by agencies.

Section 1045.36 specifies that DOE will consult periodically with RD management officials and may conduct on-site reviews of agencies when consultations indicate a need for a review or that such a review would be mutually beneficial. These provisions are proposed in order for DOE to effectively manage the Government-wide RD classification program.

Section 1045.37 prescribes the procedures for the development and use of classification guides. This section would require that all agencies which develop classification guides with RD or FRD topics coordinate a review of those guides with DOE prior to their issuance.

Section 1045.38 emphasizes that documents containing RD and FRD are never automatically declassified; a positive action by an authorized person is required to declassify them. As the automatic declassification provisions of E.O. 12958 are being implemented, DOE is working to ensure that RD and FRD are not inadvertently declassified. This section of the regulation furthers DOE's efforts in this regard.

Section 1045.40 prescribes requirements for marking RD and FRD documents. DOE has never required that individual portions of RD or FRD documents be marked to indicate their classification level or category. In fact, it is DOE policy not to portion mark RD and FRD documents. DOE considered extending this policy to all agencies. However, DOE has determined that most agencies require the portion marking of NSI documents as well as RD and FRD documents. Consequently, this section states that portion marking is an agency option.

To facilitate public release of as much information as possible, §1045.41 emphasizes that originators of RD or FRD documents should prepare a classified addenda whenever classified information constitutes a small portion of an otherwise publicly releasable document.

Section 1045.42 describes the procedure for processing mandatory and Freedom of Information Act reviews of RD and FRD documents. With the exception of the appeal authority, this process is the same as that described for NSI in Subpart D. The DOE appeal authority for RD (as well as NSI) documents is the DOE Director of Security Affairs. However, while NSI denials may be challenged by further appeal to the Interagency Security Classification Appeals Panel, this Panel has no jurisdiction over RD and FRD.

Section 1045.43 formally establishes a Government-wide systematic declassification review program, based on public priorities and likelihood of declassification, for RD and FRD. It is not intended that every classified document should be reexamined at regular intervals because many documents (e.g., nuclear weapons design drawings) will be unlikely candidates for declassification. Instead, resources will be applied to well-defined areas of interest, with systematic review of new areas undertaken as earlier reviews are completed or resources become available. Public interest priorities will be determined by solicitation of stakeholder input. Also, the Openness Advisory Panel will play a major role in determining these priorities. Within DOE, a large-scale declassification review effort has been ongoing to declassify RD and FRD documents. This requirement will codify the current practice within DOE and extend it to other agencies.

E.O. 12958 requires that every agency classifying information as National Security Information (NSI) publish implementing regulations in the Federal Register to the extent these regulations affect the public. Subpart D complies with this requirement of the E.O. 12958.

Subpart D does not parallel earlier Subparts in that it does not describe DOE authorities and procedures for the classification and declassification of NSI. These authorities and procedures are uniform throughout the Government as specified in E.O. 12958 and in implementing directives issued by the Information Security Oversight Office (ISOO). Aspects of NSI unique to DOE are the particular procedures DOE has established for the public to use in requesting mandatory review of DOE originated NSI, and for appealing decisions regarding NSI to DOE authorities. This Subpart describes these procedures and identifies the appropriate appeal channels. All other aspects of E.O. 12958 which are being implemented by DOE are specified in internal DOE directives.

III. Rulemaking Requirements

A. Review Under Executive Order 12866

Today's regulatory action does not constitute a ''significant regulatory

action'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735), and has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 501 *et seq.*, are imposed by today's regulatory action.

C. Review Under the National Environmental Policy Act

This rule would amend DOE's policies and procedures for the classification and declassification of information. Implementation of this rule would not affect whether such information might cause or otherwise be associated with any environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of a rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive order requires preparation of a federal assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's regulatory action amends DOE's policies and procedures on information classification and declassification. Therefore, the Department has determined that these amendments will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in Section 3 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of Section 3 (a) and (b) of Executive Order 12988.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. Today's regulatory action amends DOE's policies and procedures on information classification and declassification. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

G. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis for each proposed rule or to certify that the rule will not have a ''significant economic impact on a substantial number of small entities.'' Today's proposed rule would amend DOE's policies and procedures on information classification and declassification. The rule, if promulgated, will apply to all agencies, persons and entities that generate and maintain RD or FRD information or documents. The Department has identified over 50 federal government entities that have access to RD or FRD information or documents. Each of these government entities may, in turn, have contractors or consultants that have access to RD or FRD information or documents.

Section 1045.35 would impose on the government, in the person of the RD management official the responsibility to ensure that RD classifiers are properly trained. That section further imposes on the DOE Director of Declassification the obligation to develop and review training materials related to the implementation of this regulation. The proposed regulation imposes on non-government entities the requirement that persons with access to RD or FRD be properly trained. The economic impact of the training requirement on non-government entities would be limited to the labor hours required to familiarize those persons with access to RD and FRD with the training materials provided by DOE and the RD management official.

Section 1045.40 would require that government and non-government RD classifiers clearly mark each new document generated to convey that it contains RD or FRD information. The burden of the marking requirement would vary depending on the number of documents the entity generates. DOE considers the proper marking of a classified document to be an act integrated in the act of creating the document. As such, the marking of individual documents containing RD and FRD imposes minimal costs on the entity generating new RD documents.

Finally, DOE recognizes that non-government entities that generate documents containing RD or FRD will do so pursuant to a government contract. In those instances, any costs incurred in compliance with the regulation will be charged back to the government.

Based on the foregoing, DOE has determined that the proposed rule, if promulgated, will not have a ''significant economic impact.'' As permitted by section 605 of the Regulatory Flexibility Act, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

IV. Freedom of Information Act (FOIA) Considerations

RD and FRD classified under the Atomic Energy Act fall within the scope of exemption 3 of the FOIA (5 U.S.C. 552(b)(3)). Thus RD and FRD are not subject to disclosure under the FOIA. Similarly, information that is properly classified as NSI under E.O. 12958 may be withheld from disclosure under exemption 1 of the FOIA.

DOE shall process requests for documents made under the FOIA in accordance with applicable DOE regulations and orders which implement the FOIA within the Department. DOE shall process these requests promptly and shall respond to the requester in a timely manner. DOE shall coordinate requests involving FRD information and RD information which relates primarily to the military utilization of nuclear weapons with the DOD. The Director of Security Affairs shall decide all appeals of denials of requests for classified information covered by sections 141 and 142 of the Atomic Energy Act and E.O. 12958.

V. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to today's notice.

Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation ''Information Classification, Docket No. RM 96–1045.'' In the event any person wishing to provide written comments cannot provide three copies, alternative arrangements can be made in advance with the Department.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, Room 1E–090, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under 10 CFR 1004.11.

B. Public Hearing

A public hearing will be held pursuant to this notice at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this notice. Any person who has an interest in making an oral presentation should make a written request to speak. Such requests should be sent to the address given in the **ADDRESSES** section of this notice and must be received by 4:30 p.m. on the date specified in the **DATES** section. The person should also provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to make an oral presentation should bring nine copies of their statement to the hearing.

DOE will establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes. A DOE official will preside at the hearing, and may ask questions. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel the hearing, DOE will make every effort to give advance notice of the cancellation. The hearing may be canceled in the event no requests to speak are received by the deadline for submission of such a request.

VI. Interagency Coordination

The Department of Energy has coordinated this proposed regulation with classification representatives from the Department of Defense (DOD), Central Intelligence Agency, Nuclear Regulatory Commission (NRC), and Department of State. Concurrence from the NRC was obtained on February 21, 1996. Concurrence from the DOD was obtained on June 28, 1996.

List of Subjects in 10 CFR Part 1045

Classified information.

Issued in Washington, D.C. on January 8, 1997.

Hazel R. O'Leary,

Secretary of Energy.

For the reasons set forth in the preamble, 10 CFR Part 1045 is proposed to be revised to read as follows:

PART 1045—INFORMATION CLASSIFICATION

Subpart A—Program Management of the Restricted Data and Formerly Restricted Data Classification System

Subpart B—Identification of Restricted Data and Formerly Restricted Data Information

Subpart C—Generation and Review of Documents Containing Restricted Data and Formerly Restricted Data

Subpart D—Access to Information: Executive Order 12958, ''Classified National Security Information'' Requirements Affecting the Public

Authority: 42 U.S.C. 2011; E.O. 12958.

Subpart A—Program Management of the Restricted Data and Formerly Restricted Data Classification System

§1045.1 Purpose and scope.

This subpart establishes responsibilities associated with this part, describes the Openness Advisory Panel, defines key terms, describes sanctions related to violation of the policies and procedures in this part, and describes how to submit suggestions or complaints concerning the Restricted Data classification and declassification program, and how to request procedural exceptions.

§1045.2 Applicability.

This subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person who might generate information determined to be RD or FRD.

§1045.3 Definitions.

As used in this part:

Agency means any ''Executive Agency'' as defined in 5 U.S.C. 105; any ''Military Department'' as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into possession of RD or FRD information or documents.

Atomic Energy Act means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Authorized holder means a person with the appropriate security clearance required to have access to classified information and the need to know the information in the performance of Government-approved activities.

Automatic declassification means the declassification of information or documents based solely upon;

(1) The occurrence of a specific date or event as determined by the classifier; or

(2) The expiration of a maximum time frame for duration of classification established under Executive Order 12958.

Classification means the act or process by which information is determined to be classified information.

Classification Guide means a written record of detailed instructions as to whether specific information is classified, usually concerning a system, plan, project, or program. It identifies information to be classified and specifies the level (and duration for NSI only) of classification assigned to such information. Classification guides are a primary basis for reviewing documents to determine whether they contain classified information.

Classification level means one of three designators:

(1) *Top Secret* is applied to information (RD, FRD, or NSI), the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the appropriate official is able to identify or describe.

(2) *Secret* is applied to information (RD, FRD, or NSI), the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the appropriate official is able to identify or describe.

(3) *Confidential.* (i) For NSI, Confidential is applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the appropriate official is able to identify or describe.

(ii) For RD and FRD, Confidential is applied to information, the unauthorized disclosure of which could reasonably be expected to cause undue risk to the common defense and security that the appropriate official is able to identify or describe.

Classified Information means;

(1) Information classified as RD or FRD under the Atomic Energy Act and this part; or

(2) Information determined to require protection against unauthorized disclosure under Executive Order (E.O.) 12958 or prior Executive orders (also identified as National Security Information or NSI).

Contractor means any industrial, educational, commercial, or other non-Government entity that has access to RD or FRD.

Declassification means a determination by appropriate authority that information or documents no longer require protection against unauthorized disclosure in the interests of national security.

Department or DOE means Department of Energy.

Director of Declassification means the Department of Energy Director, Office of Declassification, or any person to whom the Director's duties are delegated. The Director of Declassification is subordinate to the Director of Security Affairs.

Director of Security Affairs means the Department of Energy Director, Office of Security Affairs, or any person to whom the Director's duties are delegated.

Document means the physical medium on or in which information is recorded or a product or substance which contains or reveals information, regardless of its physical form or characteristics.

Formerly restricted data (FRD) means classified information jointly determined by DOE and the DOD to be related primarily to the military utilization of nuclear weapons and removed (by transclassification) from the RD category pursuant to section 142d of the Atomic Energy Act.

Government means the executive branch of the Federal Government of the United States.

Government information means information that is owned by, produced by or for, or is under the control of the U.S. Government.

Information means facts, data, or knowledge itself.

Interagency Security Classification Appeals Panel means a panel created pursuant to Executive Order 12958 to perform functions specified in that order with respect to National Security Information.

National security means the national defense or foreign relations of the United States.

National security information (NSI) means information that has been determined pursuant to Executive Order 12958 or prior Executive orders to require protection against unauthorized disclosure and is marked to indicate its classification status when in document form.

Nuclear weapon means atomic weapon.

Person means;

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State, or any political subdivision of, or any political entity within a State; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Portion marking means the application of certain classification markings to individual words, phrases, sentences, paragraphs, or sections of a document to indicate their specific classification level and category.

Restricted data (RD) means a kind of classified information that consists of all data concerning the following, but not including data declassified or removed from the RD category pursuant to section 142 of the Atomic Energy Act:

(1) Design, manufacture, or utilization of atomic weapons;

(2) Production of special nuclear material; or

(3) Use of special nuclear material in the production of energy.

Restricted data or RD classifier means an individual who derivatively classifies RD or FRD documents.

Restricted data or RD management official means an individual appointed by any agency with access to RD and FRD who is responsible for managing the implementation of this part within that agency or any person to whom these duties are delegated. This person may be the senior agency official required by E.O. 12958.

Secretary means the Secretary of Energy.

Source document means a classified document, other than a classification guide, from which information is extracted for inclusion in another document. The classification of the information extracted is determined by the classification markings shown in the source document.

Special nuclear material means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Secretary determines to be special nuclear material pursuant to the Atomic Energy Act.

§1045.4 Responsibilities.

(a) The DOE Director of Declassification shall:

(1) Manage the Government-wide system for the classification and declassification of RD and FRD in accordance with the Atomic Energy Act;

(2) In coordination with the DOD, develop regulations to implement the RD and FRD classification system;

(3) Determine whether nuclear-related information is RD;

(4) Oversee agency implementation of the RD and FRD classification system to ensure compliance with this part;

(5) Review agency implementing policies and conduct on-site reviews of each agency's program established under this part;

(6) Prepare and distribute classification guides concerning RD and FRD and review such guides developed by any agency; and

(7) Consider and take action on complaints and suggestions from any person with respect to administration of this program.

(b) The DOE Director of Security Affairs shall:

(1) Declassify RD which may be published without undue risk to the common defense and security;

(2) Jointly with the DOD, determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category; and

(3) Jointly with the DOD, declassify FRD which may be published without undue risk to the common defense and security

(c) The DOD jointly with the DOE shall:

(1) Determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category;

(2) Ensure that classification guides for FRD and RD relating primarily to the military utilization of nuclear weapons are prepared; and

(3) Declassify FRD and RD relating primarily to the military utilization of nuclear weapons which may be published without undue risk to the common defense and security.

(d) The Nuclear Regulatory Commission (NRC) shall:

(1) Jointly with the DOE, develop classification guides for programs over which both agencies have cognizance; and

(2) Ensure the review and proper classification of RD by RD classifiers under this part, generated by the NRC or by its licensed or regulated facilities and activities.

(e) Agency heads with access to RD and FRD shall:

(1) Ensure that RD and FRD are classified in such a manner as to assure the common defense and security in accordance with the policies established in this part;

(2) Designate an RD management official to direct and administer the RD classification program within the agency; and

(3) Promulgate implementing directives.

(f) RD management officials shall:

(1) Jointly with the DOE, develop classification guides for programs over which both agencies have cognizance;

(2) Ensure that agency and contractor personnel who generate RD and FRD documents have access to any classification guides needed;

(3) Ensure that persons with access to RD and FRD are trained on the procedures for classifying, marking, declassifying, and handling the information; and

(4) Cooperate and provide information as necessary to the DOE Director of Declassification to fulfill responsibilities under this part.

§ 1045.5 Sanctions.

(a) Knowing, willful, or negligent action contrary to the requirements of this part which results in the misclassification of information may result in appropriate sanctions. Such sanctions may range from administrative sanctions to civil or criminal penalties, depending on the nature and severity of the action as determined by appropriate authority, in accordance with applicable laws.

(b) Other violations of the policies and procedures contained in this part may be grounds for administrative sanctions as determined by appropriate authority.

§ 1045.6 Openness Advisory Panel.

The DOE shall maintain an Openness Advisory Panel, in accordance with the Federal Advisory Committee Act, to provide the Secretary with independent advice and recommendations on Departmental openness initiatives, including classification and declassification issues that affect the public.

§ 1045.7 Suggestions or Complaints.

(a) Any person who has suggestions or complaints regarding the Department's classification and declassification policies and procedures may direct them in writing to the Openness Coordinator, Department of Energy, Office of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290.

(b) Such letters should include a description of the issue or problem, the suggestion or complaint, all applicable background information, and an address for the response.

§ 1045.8 Procedural Exemptions.

(a) Exceptions to the procedural provisions of this part may be granted by the DOE Director of Declassification.

(b) A request for an exception shall be made in writing to the DOE Director of Declassification and shall provide all relevant facts, justification, and a proposed alternate procedure.

Subpart B—Identification of Restricted Data and Formerly Restricted Data Information

§ 1045.10 Purpose and Scope.

(a) This subpart implements sections 141 and 142 (42 U.S.C. 2161 and 2162) of the Atomic Energy Act, which provide for Government-wide policies and procedures concerning the classification and declassification of RD and FRD information.

(b) This subpart establishes procedures for classification prohibitions for RD and FRD, describes authorities and procedures for identifying RD and FRD information, and specifies the policies and criteria DOE shall use in determining if nuclear-related information is RD or FRD.

§ 1045.11 Applicability.

This Subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person who might generate information determined to be RD or FRD.

§ 1045.12 Authorities.

(a) The DOE Director of Declassification may determine whether nuclear-related information is RD.

(b) Except as provided in paragraph (c) of this section, the DOE Director of Security Affairs may declassify RD information.

(c) The DOE Director of Security Affairs jointly with the DOD may determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category.

(d) The DOE Director of Security Affairs jointly with the DOD may declassify FRD information.

§ 1045.13 Classification prohibitions.

In no case shall information be classified RD or FRD in order to:

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person, organization, or Agency;

(c) Restrain competition;

(d) Prevent or delay the release of information that does not require protection because of national security or nonproliferation concerns;

(e) Unduly restrict dissemination by assigning an improper classification level; or

(f) Prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety.

§ 1045.14 Process for classification and declassification of restricted data and formerly restricted data information.

(a) *Classification of restricted data.* (1) *Submission of potential RD for evaluation.* Any authorized holder who believes he or she has information which may be RD shall submit it to the DOE Director of Declassification for evaluation. The DOE Director of Declassification shall determine whether the information is RD within 90 days of receipt by doing the following:

(i) Determine whether the information is already classified RD;

(ii) If it is not already classified, determine if the information concerns the design, manufacture, or utilization of nuclear weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; and,

(iii) Apply the criteria in § 1045.16 as the basis for determining the appropriate classification.

(2) *Protection of potential RD during evaluation.* Pending a determination by the DOE Director of Declassification, potential RD submitted for evaluation by authorized holders shall be protected at a minimum as Confidential Restricted Data.

(b) *Declassification of restricted data.* The DOE Director of Security Affairs shall apply the criteria in § 1045.16 when determining whether RD may be declassified.

(c) *Classification of formerly restricted data.* The DOE Director of Declassification, jointly with the DOD, shall remove information which relates primarily to the military utilization of nuclear weapons from the RD classification and classify it as FRD.

(d) *Declassification of formerly restricted data.* The DOE Director of Security Affairs, jointly with the DOD, shall apply the criteria in § 1045.16 when determining whether FRD may be declassified.

§ 1045.15 Classification and declassification presumptions.

(a) The DOE Directors of Declassification and Security Affairs shall consider the presumptions listed in paragraphs (d) and (e) of this section before applying the criteria in § 1045.16.

(b) Not all areas of nuclear-related information are covered by the presumptions.

(c) As a general rule, the information listed in paragraphs (d) and (e) of this section has the classification indicated. Inclusion of specific information in one of the presumption categories does not mean that the information is or is not classified, but only that arguments to change the classification status of the information should use the appropriate presumption as a starting point.

(d) The DOE Directors of Declassification and Security Affairs shall presume that information in the following areas is unclassified unless application of the criteria in § 1045.16 indicates otherwise:

(1) Basic science: mathematics, chemistry, theoretical and experimental physics, engineering, materials science, biology and medicine;

(2) Instruments and equipment;

(3) Magnetic confinement fusion technology;

(4) Civilian power reactors, including nuclear fuel cycle information but excluding technologies for uranium enrichment;

(5) Source materials (defined as uranium and thorium and ores containing them);

(6) Fact of use of safety features (e.g., insensitive high explosives, fire resistant pits) to lower the risks and reduce the consequences of nuclear weapon accidents;

(7) Generic weapons effects;

(8) Physical and chemical properties of uranium and plutonium, their alloys and compounds, under standard temperature and pressure conditions;

(9) Nuclear fuel reprocessing technology and reactor products not revealing classified production rates or inventories;

(10) The fact, time, location, and yield range (e.g., less than 20 kiloton or 20–150 kiloton) of all U.S. nuclear tests;

(11) General descriptions of nuclear material production processes and theory of operation;

(12) DOE special nuclear material aggregate inventories and production rates;

(13) Types of waste products resulting from all DOE weapon and material production operations; and

(14) Operations solely relating to the public and worker health and safety or to environmental quality.

(e) The DOE Directors of Declassification and Security Affairs shall presume that information in the following areas is classified unless the application of the criteria in § 1045.16 indicates otherwise:

(1) Detailed designs, specifications, and functional descriptions of nuclear explosives, whether in the active stockpile or retired;

(2) Material properties under conditions achieved in nuclear explosions that is principally useful only for design and analysis of nuclear weapons;

(3) Vulnerabilities of U.S. nuclear weapons to sabotage, countermeasures, or unauthorized use;

(4) Nuclear weapons logistics and operational performance information (e.g., specific weapon deployments, yields, capabilities), related to military utilization of those weapons required by the DOD;

(5) Details of the critical steps or components in nuclear material production processes; and

(6) Features of military nuclear reactors, especially naval nuclear propulsion reactors, that are not common to or required for civilian power reactors.

§ 1045.16 Criteria for evaluation of restricted data and formerly restricted data information.

(a) The DOE Director of Declassification shall classify information as RD and the DOE Director of Security Affairs shall maintain the classification of RD (and FRD in coordination with the DOD) only if the undue risk of damage to the common defense and security from its unauthorized disclosure can be identified and described.

(b) The DOE Director of Declassification shall not classify information and the DOE Director of Security Affairs shall declassify information if there is significant doubt about the need to classify the information.

(c) In determining whether information should be classified or declassified, the DOE Directors of Declassification and Security Affairs shall consider the following:

(1) Whether the information is so widely known or readily apparent to knowledgeable observers that its classification would cast doubt on the credibility of the classification system;

(2) Whether publication of the information would assist in the development of countermeasures or otherwise jeopardize any U.S. weapon or weapon system;

(3) Whether the information would hinder U.S. nonproliferation efforts by significantly assisting potential adversaries to develop or improve a nuclear weapon capability, produce nuclear weapons materials, or make other military use of nuclear energy;

(4) Whether publication of the information would have a detrimental effect on U.S. foreign relations;

(5) Whether publication of the information would benefit the public welfare, taking into account the importance of the information to public discussion and education and potential contribution to economic growth; and

(6) Whether publication of the information would benefit the operation of any Government program by reducing operating costs or improving public acceptance.

§ 1045.17 Classification levels.

(a) *Restricted data.* The DOE Director of Declassification shall assign one of the following classification levels to RD information to reflect the sensitivity of the information to the national security. The greater the damage expected from unauthorized disclosure, the higher the classification level assigned to the information.

(1) *Top Secret.* The DOE Director of Declassification shall classify RD information Top Secret if it is vital to the national security and if its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of RD information that warrant Top Secret classification include comprehensive descriptions of a nuclear explosive design (i.e., a major proliferation threat), information that would make possible the unauthorized use of a U.S. nuclear weapon, or information revealing catastrophic failure or operational vulnerability in a U.S. nuclear weapon.

(2) *Secret.* The DOE Director of Declassification shall classify RD information as Secret if its unauthorized disclosure could reasonably be expected to cause serious damage to the national security, but the RD information is not sufficiently comprehensive to warrant designation as Top Secret. Examples of RD information that warrant Secret classification include designs for specific weapon components, key features of uranium enrichment technologies, or specifications of weapon materials.

(3) *Confidential.* The DOE Director of Declassification shall classify RD information as Confidential if it is deemed to be of significant use to a potential adversary or nuclear proliferant and its unauthorized disclosure could reasonably be expected to cause undue risk to the common defense and security. An example of RD information that warrants Confidential classification is the amount of high explosives used in nuclear weapons.

(b) *Formerly restricted data.* The DOE Director of Declassification, jointly with the DOD, shall assign one of the classification levels in paragraph (a) of this section to FRD information to reflect its sensitivity to the national security.

§ 1045.18 Newly generated information in a previously declassified subject area.

The DOE Director of Declassification may evaluate newly generated specific information in a previously declassified subject area using the criteria in section 1045.16 and classify it as RD, if warranted.

§ 1045.19 Accountability for classification and declassification determinations.

(a) Whenever a classification or declassification determination concerning RD or FRD information is made, the DOE Directors of Declassification and Security Affairs shall be able to justify the determination. For FRD and RD primarily related to military utilization, the DOE Directors of Declassification and Security Affairs shall coordinate the determination and justification with the DOD. If the determination involves a departure from the presumptions in §1045.15, the justification shall include a rationale for the departure. Often the justification itself will contain RD or FRD information. In such a case, the DOE Directors of Declassification and Security Affairs shall ensure that a separate justification can be prepared which is publicly releasable. The publicly releasable justification shall be made available to any interested person upon request to the DOE Director of Declassification.

(b) The DOE Director of Declassification shall prepare a report on an annual basis on the implementation of this part. This report shall be available to any interested person upon request to the DOE Director of Declassification.

§ 1045.20 Ongoing call for declassification proposals.

The DOE Director of Security Affairs shall consider proposals from the public or agencies or contractors for declassification of RD and FRD information on an ongoing basis. Declassification proposals for RD and FRD information shall be forwarded to the Department of Energy, Director of Security Affairs, Washington, D.C. 20585. Any proposed action shall include a description of the information concerned and may include a reason for the request. DOE and DOD shall coordinate with one another concerning declassification proposals for FRD information.

§ 1045.21 Privately generated restricted data.

(a) DOE may classify RD which is privately generated by persons not pursuant to government contracts, in accordance with the Atomic Energy Act.

(b) In order for information privately generated by persons to be classified as RD, the Secretary or Deputy Secretary shall make the determination personally and in writing. This authority shall not be delegated.

(c) DOE shall publish a Federal Register notice when privately generated information is classified as RD.

§ 1045.22 No Comment Policy.

(a) Authorized holders of RD and FRD shall not confirm, deny, or expand upon the classification status or technical accuracy of public statements in an RD or FRD subject area.

(b) If the public statements are sufficiently authoritative or credible, the DOE Director of Security Affairs shall examine the possibility of declassification.

Subpart C—Generation and Review of Documents Containing Restricted Data and Formerly Restricted Data

§ 1045.30 Purpose and scope.

This subpart specifies Government-wide classification program implementation requirements for agencies with access to RD and FRD, describes authorities and procedures for RD and FRD document classification and declassification, provides for periodic or systematic review of RD and FRD documents, and describes procedures for the mandatory review of RD and FRD documents. This subpart applies to all RD and FRD documents, regardless of whether they also contain National Security Information (NSI), or other controlled information such as ''For Official Use Only'' or ''Unclassified Controlled Nuclear Information.''

§ 1045.31 Applicability.

This subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person generating a document containing RD or FRD.

§ 1045.32 Authorities.

(a) *Classification of RD and FRD documents.* (1) To the extent practical, all RD and FRD documents shall be classified based on classification guides. When not practical, properly classified source documents may be used as an alternative.

(2) Only individuals designated as RD classifiers may classify RD and FRD documents, except within the DOD. Within the DOD, any individual with access to RD and FRD who has been trained may classify RD and FRD documents.

(b) *Declassification of RD and FRD documents.* (1) Only DOE may declassify documents containing RD.

(2) Except as provided in paragraph (b)(3) of this section, only DOE or appropriate individuals in DOD may declassify documents marked as FRD in accordance with joint classification guides.

(3) The DOE and DOD may delegate these authorities to other agencies and to contractors. Contractors without the delegated authority shall send any document marked as RD or FRD that needs to be considered for declassification to the appropriate agency office.

§ 1045.33 Appointment of restricted data management official.

(a) Each agency with access to RD or FRD shall appoint an official to be responsible for the implementation of this part and shall advise the DOE Director of Declassification of such appointment.

(b) This official shall ensure the proper implementation of this part within his/her agency and shall serve as the primary point of contact for coordination with the DOE Director of Declassification on RD and FRD classification and declassification issues.

(c) Within the DOD, an RD management official shall be appointed in each DOD agency.

§ 1045.34 Designation of restricted data classifiers.

Except within the DOD, RD management officials shall ensure that persons who derivatively classify RD or FRD documents are designated by position or by name as RD classifiers.

§ 1045.35 Training requirements.

(a) RD management officials shall ensure that persons with access to RD and FRD information are trained on the procedures for classifying, declassifying, marking and handling the information.

(b) The DOE Director of Declassification shall develop training materials related to implementation of this part and shall provide these materials to RD management officials and any other appropriate persons.

(c) The DOE Director of Declassification shall review any RD-related training material submitted by agency and contractor representatives to ensure consistency with current policy.

§ 1045.36 Reviews of agencies with access to restricted data and formerly restricted data.

(a) The DOE and each agency with access to RD and FRD shall consult periodically to assure appropriate implementation of this part. Such consultations may result in DOE conducting an on-site review within the agency if DOE and the RD management official determine that such a review would be mutually beneficial or that it is necessary to remedy a problem.

(b) To address issues concerning implementation of this part, the DOE Director of Declassification shall establish a standing group of all RD management officials to meet periodically.

§ 1045.37 Classification guides.

(a) The classification and declassification determinations made by the DOE Directors of Declassification and Security Affairs under the classification criteria in § 1045.16 are promulgated in classification guides.

(b) DOE shall jointly develop classification guides with the DOD, NRC, NASA, and other agencies as required for programs for which DOE and these agencies share responsibility.

(c) Agencies shall coordinate with the DOE Director of Declassification whenever they develop or revise classification guides with RD or FRD information topics.

(d) Originators of classification guides with RD or FRD topics shall review such guides at least every five years and make revisions as necessary.

(e) RD Classifiers shall use classification guides as the primary basis for classifying and declassifying documents containing RD and FRD.

(f) Each RD management official shall ensure that persons working with RD and FRD information have access to all pertinent nuclear classification guides.

§ 1045.38 Automatic declassification prohibition.

(a) Documents containing RD and FRD remain classified until a positive action by an authorized person is taken to declassify them.

(b) In accordance with the Atomic Energy Act, no date or event for automatic declassification ever applies to RD and FRD documents, even if such documents also contain NSI.

(c) E.O. 12958 acknowledges that RD is exempt from all provisions of the E.O., including automatic declassification.

§ 1045.39 Challenging classification and declassification determinations.

(a) Any authorized holder of an RD or FRD document who, in good faith, believes that the RD or FRD document has an improper classification status is encouraged and expected to challenge the classification with the RD Classifier.

(b) Agencies shall establish procedures under which authorized holders of RD and FRD documents are encouraged and expected to challenge any classification status they believe is improper. These procedures shall assure that:

(1) Under no circumstances are persons subject to retribution for bringing forth a classification challenge.

(2) A response is provided within 90 days to the person bringing forth the challenge.

(3) A decision concerning a challenge involving RD or FRD may be appealed to the DOE Director of Declassification. In the case of FRD and RD related primarily to the military utilization of nuclear weapons, the DOE Director of Declassification shall coordinate with the DOD. If the justification for classification is still unsatisfactory, a further appeal may be made to the DOE Director of Security Affairs.

(c) Classification challenges concerning documents containing RD and FRD information are not subject to review by the Interagency Security Classification Appeals Panel, unless those documents also contain NSI which is the basis for the challenge. In such cases, the RD and FRD portions of the document shall be deleted and the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

§ 1045.40 Marking requirements.

(a) RD classifiers shall ensure that each RD and FRD document is clearly marked to convey to the holder that it contains RD or FRD information, the level of classification assigned, and the additional markings in paragraphs (b)(3) and (4) of this section.

(b) *Front marking.* In addition to the overall classification level of the document, the following notices shall appear on the front of the document, as appropriate:

(1) If the document contains RD:

RESTRICTED DATA

This document contains RESTRICTED DATA as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions.

(2) If the document contains FRD but does not contain RD:

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as RESTRICTED DATA in

foreign dissemination. Section 144b, Atomic Energy Act of 1954.

(3) An RD or FRD document shall be marked to identify the classification guide or source document used to classify the document:

Derived from: _____
(Guide or source document)

(4) An RD or FRD document shall be marked with the identity of the RD classifier, unless the classifier is the same as the document originator or signer.

RD Classifier: _____
(Name or position/title)

(c) *Interior page.* RD Classifiers shall ensure that documents are clearly marked at the top and bottom of each interior page with the overall classification level and category of the document or the classification level and category of the page, whichever is preferred. The abbreviations ''RD'' and ''FRD'' may be used in conjunction with the document classification (e.g., SECRET RD, SRD or SECRET FRD, SFRD).

(d) Portion marking of RD and FRD documents is an agency option.

(e) *Declassification marking.* Declassified RD and FRD documents shall be marked with the identity of the RD classifier authorizing its declassification, the declassification date and the classification guide which served as the basis for the declassification. RD classifiers shall ensure that the following marking is affixed on RD and FRD documents which they declassify:

Declassified on: _____
(Date)

RD Classifier: _____
(Name and position/title)

Authority: _____
(Classification Guide)

§ 1045.41 Use of classified addendums.

(a) In order to maximize the amount of information available to the public and to simplify document handling procedures, document originators should segregate RD or FRD into an addendum whenever practical.

(b) When segregation of RD or FRD into an addendum is not practical, DOE document originators are encouraged to prepare separate unclassified versions of documents with significant public interest.

§ 1045.42 Mandatory and Freedom of Information Act reviews for declassification of restricted data and formerly restricted data documents.

(a) *General.* (1) Agencies with documents containing RD and FRD shall respond to mandatory review and Freedom of Information Act requests for these documents from the public.

(2) In response to a mandatory review or Freedom of Information Act request, DOE or DOD may refuse to confirm or deny the existence or nonexistence of the requested information whenever the fact of its existence or nonexistence is itself classified as RD or FRD.

(b) *Processing requests.* (1) Agencies shall forward documents containing RD to DOE for review.

(2) Agencies shall forward documents containing FRD to the DOE or to the DOD for review, depending on which is the originating agency.

(3) The DOE and DOD shall coordinate the review of RD and FRD documents as appropriate.

(c) *Denying official.* (1) The denying official for documents containing RD is the DOE Director of Declassification.

(2) The denying official for documents containing FRD is either the DOE Director of Declassification or an appropriate DOD official.

(d) *Appeal authority.* (1) The appeal authority for RD documents is the DOE Director of Security Affairs.

(2) The appeal authority for FRD documents is either the DOE Director of Security Affairs, or an appropriate DOD official.

(e) The denying official and appeal authority for Naval Nuclear Propulsion Information is the Director, Office of Naval Reactors.

(f) The review and appeal process is the same as that described in subpart D of this part with the exception of the appeal authority. The Interagency Security Classification Appeals Panel (ISCAP) is an appeal authority for mandatory or Freedom of Information Act reviews of documents containing NSI. RD and FRD are not under the jurisdiction of the ISCAP. DOE and DOD shall not forward RD and FRD documents to the ISCAP for appeal review unless those documents also contain NSI. In such cases, the DOE or DOD shall delete the RD and FRD portions and shall forward the NSI and unclassified portions to the ISCAP for review.

(g) RD and FRD information contained in documents shall be withheld from public disclosure under exemption 3 of the FOIA (5 U.S.C. 522(b)(3)) because such information is under the statutory jurisdiction of the Atomic Energy Act.

§ 1045.43 Systematic review for declassification.

(a) The DOE Director of Declassification (and the DOD for FRD) shall ensure that RD documents are periodically and systematically reviewed for declassification. The focus of the review shall be based on the degree of public and researcher interest and likelihood of declassification upon review.

(b) Agencies with RD or FRD document holdings shall cooperate with the DOE Director of Declassification (or the DOD for FRD) to ensure the systematic review of RD and FRD documents.

(c) Review of documents in particular areas of public interest shall be considered if sufficient interest is demonstrated. Proposals for systematic document reviews of given collections or subject areas should be addressed to the Director of Declassification, Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

§ 1045.44 Classification review prior to public release.

Any person with authorized access to RD or FRD who generates a document intended for public release in an RD or FRD subject area shall ensure that it is reviewed for RD or FRD by an RD Classifier prior to its release.

§ 1045.45 Review of unmarked documents with potential restricted data or formerly restricted data.

(a) Individuals reviewing NSI records of permanent historical value under the automatic or systematic review provisions of E.O. 12958 may come upon information they think may be RD or FRD, but which is not so marked. Such documents are not subject to automatic declassification.

(b) Such documents shall be reviewed by an RD Classifier as soon as possible to determine their classification status. Assistance may be requested from the DOE Director of Declassification.

Subpart D—Access to Information: Executive Order 12958 ''Classified National Security Information'' Requirements Affecting the Public

§ 1045.50 Purpose and scope.

(a) This subpart describes the procedures to be used by the public in questioning or appealing DOE decisions regarding the classification of NSI.

(b) This subpart applies to any person with authorized access to DOE NSI or who desires access to DOE documents containing NSI.

§ 1045.51 Mandatory declassification review requests.

All DOE information classified as NSI is subject to review for declassification by the DOE if:

(a) The request for a review describes the document containing the information with sufficient specificity to

enable the agency to locate it with a reasonable amount of effort;

(b) The information is not exempted from search and review under the Central Intelligence Agency Information Act;

(c) The information has not been reviewed for declassification within the past 2 years; and

(d) The request is sent to the Department of Energy, Director of Declassification, 19901 Germantown Road, Germantown, Maryland 20874–1290.

§ 1045.52 Appeal of denial of mandatory declassification review requests.

(a) If the Department has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the Department shall inform the requester of this fact and of the requester's appeal rights.

(b) When the Director of Declassification has denied a request for review of NSI, the requester may, within 30 calendar days of its receipt, appeal the determination to the Director of Security Affairs.

(c) *Elements of appeal.* The appeal shall be in writing and addressed to the Director of Security Affairs, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It should also include a discussion of all relevant authorities which include, but are not limited to DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals, and any judicial determinations being relied upon to support the appeal. A copy of the letter containing the determination being appealed shall be submitted with the appeal.

(d) *Receipt of appeal.* An appeal shall be considered to be received upon receipt by the appeal authority, who is the Director of Security Affairs.

(e) *Action within 60 working days.* The appeal authority shall act upon the appeal within 60 working days of its receipt. If no determination on the appeal has been issued at the end of the 60-day period, the requester may consider his or her administrative remedies to be exhausted and may seek a review by the Interagency Security Classification Appeals Panel. When no determination can be issued within the applicable time limit, the appeal shall nevertheless continue to be processed. On expiration of the time limit, DOE shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be issued, and of his or her right to seek further review by the Interagency Security Classification Appeals Panel. Nothing in this subpart shall preclude the appeal authority and the requester from agreeing to an extension of time for the decision on an appeal. The appeal authority shall confirm any such agreement in writing and shall clearly specify the total time agreed upon for the appeal decision.

(f) *Form of action on appeal.* The appeal authority's action on an appeal shall be in writing and shall set forth the reason for the decision. The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under E.O. 12958.

(g) *Right of final appeal.* The requester has the right to appeal a final Department decision or a failure to provide a determination on an appeal within the allotted time to the Interagency Security Classification Appeals Panel for those appeals dealing with NSI. In cases where NSI documents also contain RD and FRD, the RD and FRD portions of the document shall be deleted and the NSI and unclassified portions shall be provided to the Interagency Security Classification Appeals Panel for review.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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