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OFFICE OF PERSONNEL MANAGEMENT

5 CFR part 890

RIN 3206–AH46

Federal Employees Health Benefits Program: Opportunities to Enroll and Change Enrollment

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management is issuing this document to correct an incorrect reference cited in § 890.807(c) (62 FR 38433, July 18, 1997).

EFFECTIVE DATE: September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 606–0004.

SUPPLEMENTARY INFORMATION: Accordingly, page 38441, third column, § 890.807(c)(1) of the final rule published on July 18, 1997, is corrected to read as follows:

(c) *Failure to make an election under § 890.806(m).* (1) If the annuity is insufficient to pay the full subscription charge due for the plan in which the former spouse is enrolled, the former spouse may elect one of the two opportunities offered under § 890.806(m) (electing a plan with a full subscription charge that is less than the annuity; or paying premiums directly to the retirement system in accordance with § 890.808(d)). Except as provided in paragraph (c)(3) of this section the enrollment of a former spouse who fails to make an election within the specified time frame will be terminated.

* * * * *

Jacquline D. Carter,

Federal Regulations Liaison Officer.

[FR Doc. 97–27110 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

RIN 3206–AH90

Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management, in publishing regulations at § 900.604, (62 FR 33971, June 24, 1997) added a paragraph to the regulation but referenced the addition as a revision. This document corrects that error.

EFFECTIVE DATE: July 24, 1997.

FOR FURTHER INFORMATION CONTACT: Gary L. Smith, 202–606–2980, EMAIL glsmith@opm.gov, or FAX 202–606–2663.

SUPPLEMENTARY INFORMATION: Accordingly, the final rule published on June 24, 1997, on page 33971, third column, sentence following reference to Authority is corrected to read as follows:

2. In Subpart F § 900.604 paragraph (b)(3) is revised and paragraph (b)(4) is added to read as follows:

Jacquline D. Carter,

Federal Regulations Liaison Officer.

[FR Doc. 97–27109 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–073–3]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by expanding the quarantined area in Los Angeles County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: Interim rule effective October 7, 1997. Consideration will be given only to comments received on or before December 15, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–073–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–073–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks and can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine

enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations also impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

In an interim rule effective August 20, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45141–45142, Docket No. 97–073–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area. In a second interim rule effective September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47551–47553, Docket No. 97–073–2), we quarantined an additional area in Los Angeles County, CA.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that an additional portion of Los Angeles County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, California has taken action to restrict the intrastate movement of certain articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into other States, we are amending the regulations in § 301.93–3 by expanding the quarantined area in Los Angeles County, CA. The revised quarantined areas of Los Angeles County, CA, are described in the rule portion of this document. The area expanded by this interim rule is the second area described.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received withing 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by expanding the quarantined area in Los Angeles County, CA. The regulations restrict the interstate movement of regulated articles from the quarantined areas.

Within the quarantined portion of Los Angeles County, there are approximately 176 entities that will be affected by this rule. All would be considered small entities. These include 2 farmers' markets, 1 grower, 1 community garden, 1 distributor, 119 fruit sellers, 47 nurseries, 1 packer, and 4 swap meets. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Oriental fruit fly regulatory program. The site specific environmental assessment provides a basis for the conclusion that implementation of integrated pest management to achieve eradication of the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS'' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant

diseases and pests, Quarantining, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c), the entry for California is amended by revising the entry for Los Angeles County to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of Los Angeles County beginning at the intersection of Arrow Highway and Interstate Highway 605; then west along Arrow Highway to Buena Vista Street; then north along Buena Vista Street to Huntington Drive; then east along Huntington Drive to Foothill Boulevard; then east along Foothill Boulevard to the shoreline of the San Gabriel River; then northeast along the shoreline of the San Gabriel River to State Highway 39 (San Gabriel Canyon Road); then southeast along an imaginary line to the intersection of Sierra Madre Avenue and Glendora Avenue; then south along Glendora Avenue to Alosta Avenue; then east along Alosta Avenue to Lone Hill Avenue; then south along Lone Hill Avenue to Cypress Street; then west along Cypress Street to Badillo Street; then southwest along Badillo Street to Reeder Avenue; then south along Reeder Avenue to Puente Street; then southeast along Puente Street to Via Verde; then southwest along Via Verde to The Mall; then south along The Mall to Interstate Highway 10; then west along Interstate Highway 10 to Grand Avenue; then southeast along Grand Avenue to Amar Road; then west and northwest along Amar Road to Baldwin Park Boulevard; then northeast along Baldwin Park Boulevard to Francisquito Avenue; then northwest along Francisquito Avenue to Ramona Boulevard; then west along Ramona Boulevard to Interstate Highway 605; then northeast along Interstate Highway 605 to the point of beginning.

Also, that portion of Los Angeles County beginning at the intersection of Interstate Highway 10 and Gateway Boulevard; then east along Interstate Highway 10 to its second intersection with National Boulevard; then east along National Boulevard to Jefferson Boulevard; then east along Jefferson Boulevard to La Cienega Boulevard; then south along La Cienega Boulevard to Rodeo Road; then east along Rodeo Road to Martin Luther King, Jr. Boulevard; then southeast along Martin Luther King, Jr. Boulevard to Crenshaw Boulevard; then south along Crenshaw Boulevard to Slauson Avenue; then east along Slauson Avenue to Vermont Avenue; then south along Vermont Avenue to Florence Avenue; then east along Florence Avenue to Interstate Highway 110; then south along Interstate Highway 110 to Manchester Avenue; then east along Manchester Avenue to Avalon Boulevard; then south along Avalon Boulevard to Rosecrans Avenue; then west along Rosecrans Avenue to Interstate Highway 110; then south along Interstate Highway 110 to State Highway 91 (Artesia Boulevard); then west along State Highway 91 (Artesia Boulevard) to Western Avenue; then south along Western Avenue to 190th Street; then west along 190th Street to Anita Street; then southwest along Anita Street to Herondo Street; then southwest along Herondo Street to Hermosa Avenue; then west along an imaginary line to the Pacific Ocean coastline; then northwest along the Pacific Ocean coastline to a point due west of the west end of Ocean Park Boulevard; then east along an imaginary line drawn from that point to the west end of Ocean Park Boulevard; then northeast along Ocean Park Boulevard to Gateway Boulevard; then northeast along Gateway Boulevard to the point of beginning.

Done in Washington, DC, this 7th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27099 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV97–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Reduced Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule decreases the assessment rate established for the Hazelnut Marketing Board (Board) under Marketing Order No. 982 for the 1997–98 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The 1997–98 marketing year covers the period July 1 through June 30. The assessment rate will continue until amended, suspended, or terminated.

DATES: Effective October 15, 1997. Comments received by December 15, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, or Jadean L. Williams, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or

policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 1997–98 and subsequent marketing years from $0.007 to $0.004 per pound.

The hazelnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on August 28, 1997, and unanimously recommended 1997–98 expenditures of $553,218 and an assessment rate of $0.004 per pound of hazelnuts. In comparison, last year's budgeted expenditures were $558,974. The assessment rate of $0.004 is $0.003 less than the rate currently in effect. At the current rate of $0.007 per pound and an estimated 1997 hazelnut production of 70,000,000 pounds, the projected reserve on June 30, 1998, would exceed the level the Board believed to be adequate to administer the program. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled $284,894. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed lower assessment rates, but decided that an assessment rate of less than $0.004 would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997–98 marketing year include $46,864 for personal service (salaries and benefits), $5,640 for rent, $5,000 for compliance, $17,000 for a crop survey, $269,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1996–97 were $50,020, $5,640, $5,000, $15,000, $275,000, and $182,364, respectively. The Board will consider using emergency funds for authorized activities when it is reasonably certain that its estimate of assessable hazelnuts is reached. It will not be able to make this determination until December 1997, the month in which the hazelnut harvest and deliveries to handlers usually are completed. Thus, any decision on whether or not to undertake any additional activities will not be made until December 1997, at the earliest.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of hazelnuts. With hazelnut shipments for the year estimated at 70,000,000 pounds, the $0.004 per pound assessment rate should provide $280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 1997–98 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 1,000 producers of hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of hazelnut producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 1997–98 and subsequent marketing years. The Board unanimously recommended 1997–98 expenditures of $553,218 and an assessment rate of $0.004 per pound of hazelnuts. The assessment rate of $0.004 is $0.003 less than the rate currently in effect. At the current assessment rate of $0.007 per pound, the Board's reserve was projected to exceed the level the Board believed to be adequate to administer the program. Therefore, the Board voted to lower its assessment rate and use more of the reserve to cover its expenses. Section 982.62 of the order allows the Board to establish and maintain an operating

monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled $284,894. The reduced assessment rate is expected to result in an operating reserve of $257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997–98 marketing years include $46,864 for personal services (salaries and benefits), $5,640 for rent, and $5,000 for compliance, $17,000 for a crop survey, $269,000 for promotion, and $182,364 for an emergency fund. Budgeted expenses for these items in 1996–97 were $50,020, $5,640, $5,000, $15,000, $275,000, and $182,364, respectively. As mentioned earlier, the Board will not make any decision on using emergency funds until December 1997, at the earliest.

Hazelnut shipments for the year are estimated at 70,000,000 pounds, which should provide $280,000 in assessment income. Income derived from handler assessments, along with interest and funds from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $0.32 and $0.43 per pound of hazelnuts. Therefore, the estimated assessment revenue for the 1997–98 marketing years as a percentage of total grower revenue will range between .93 and 1.25 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the August 28, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large hazelnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action reduces the current assessment rate for hazelnuts; (2) the 1997–98 marketing year began on July 1, 1997, and the marketing order requires that the rate of assessment apply to all assessable hazelnuts handled during such marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 982

Marketing agreements, Hazelnuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 982.340 [Amended]

2. Section 982.340 is amended by removing the words ''July 1, 1996,'' and adding in their place the words ''July 1, 1997,'' and by removing ''$0.007'' and adding in its place ''$0.004.''

Dated: October 7, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–27101 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB73

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Book-Entry Procedures for Farm Credit Securities

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), adopts as final with minor technical changes a previously adopted interim rule that revises procedures governing the issuance, maintenance, and transfer of Farm Credit securities on the book-entry system of the Federal Reserve Banks (Book-entry System). This action completes rulemaking necessary to conform FCA book-entry procedures to the recently revised book-entry procedures of the Department of the Treasury (Treasury), which regulates the Book-entry System for Treasury securities. The action simultaneously finalizes conforming amendments in the book-entry regulations governing securities of the Farm Credit System Financial Assistance Corporation (FAC) and the Federal Agricultural Mortgage Corporation (Farmer Mac).

EFFECTIVE DATE: January 1, 1997, except that the technical amendments adopted herein are effective 30 days after publication during which either or both Houses of Congress are in session. A notice of effective date for the technical amendments will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy Development and Risk Control, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,
or
William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 1996, the FCA published interim regulations completely revising the procedures governing the issuance, maintenance, and transfer of Farm Credit securities on the Book-entry System (61 FR 67188). The FCA's interim rulemaking followed the action of Treasury, which revised its book-entry regulations to eliminate outdated legal concepts and incorporate significant changes in commercial and property law affecting the holding of securities through financial intermediaries. At the request of Treasury, and in coordination with other regulators of Government-Sponsored Enterprises (GSEs), the FCA made the interim rule effective on January 1, 1997, the same date on which Treasury's new book-entry regulations became effective. This coordinated action was designed to avoid market uncertainty and help ensure a consistent regulatory approach for all users of the Book-entry System, including Farm Credit System (System) institutions. The interim rulemaking provided for a post-effective date comment period.

More extensive background on FCA book-entry regulations can be found in the interim rulemaking document and is not repeated in this notice of final adoption. A detailed explanation of the rationale and effect of the Treasury's new book-entry regulations, known by the acronym ''TRADES'' (Treasury/Reserve Automated Debt Entry System) is set forth in Treasury's proposed and final rulemaking documents. See 61 FR 8420 (March 4, 1996) and 61 FR 43626 (August 23, 1996). Members of the public should refer to Treasury's TRADES rulemaking documentation for background on the history and mechanics of the Book-entry System and guidance on the general provisions of the book-entry regulations. As is its current policy regarding interpretation of book-entry regulations, the FCA expects to continue to follow Treasury TRADES interpretations and guidance with respect to FCA book-entry regulations and will coordinate with Treasury regarding future guidance and any necessary changes.

II. Comments and Technical Changes

The FCA received one written comment on the interim regulations. The Federal Farm Credit Banks Funding Corporation (Funding Corporation), responding on behalf of the System banks, fully supported the interim regulations but suggested several technical clarifications. In addition, the FCA has continued to consult with Treasury, the Federal Reserve Board, and the Federal Reserve Bank of New York regarding final implementation of the interim regulations. Treasury suggested that references to the United States in several sections of the interim regulations be omitted to avoid any implication that the United States guarantees Farm Credit securities. Treasury made the same suggestion to other GSE regulators in connection with their revised book-entry regulations. The FCA now adopts the interim book-entry regulations as final, but in response to these comments and suggestions, makes several minor technical changes in the regulations as discussed below.

Section 615.5450(h)

The Funding Corporation suggested that the FCA add ''respectively'' after the words ''sections 4.2(c) and 4.2(d)'' to clarify that consolidated securities are issued under section 4.2(c) and Systemwide securities are issued under section 4.2(d) of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2155(c)). The final rule incorporates this suggestion.

Providing for Issuance of Registered Definitive Securities in §§ 615.5451(c) and 615.5457(c)

The Funding Corporation noted that there are registered definitive Farm Credit securities outstanding and that registered definitive securities may be issued in the future. Thus, the Funding Corporation suggested that the reference to ''bearer-definitive form'' in § 615.5451(c) be replaced with a more generic reference to ''definitive form,'' which would encompass both bearer and registered definitive form. Similarly, the Funding Corporation suggested deletion of the term ''bearer'' in § 615.5457(c). The FCA agrees that regulatory references to definitive securities should not be limited to bearer securities and is adding the phrase ''either registered or'' preceding the term ''bearer'' in both sections. In § 615.5451(c), this broader language authorizes Farm Credit securities to be issued in either registered or bearer form, and in § 615.5457(c), it permits Farm Credit securities being withdrawn from the Book-entry System to be converted into definitive securities and issued in either registered or bearer form to the extent permitted by the applicable securities documentation. As amended, this language is consistent with Treasury's in 31 CFR 306.117(d).

Section 615.5457(a)

The Funding Corporation requested clarification regarding the process for withdrawing eligible securities from the Book-entry System. Specifically, the Funding Corporation asked who requests that the securities be withdrawn and to whom the request is submitted.

The FCA's regulations on withdrawal of eligible book-entry securities for conversion to definitive form are modeled after Treasury's regulations at 31 CFR 306.117. Consistent with the TRADES regulations, requests for withdrawal and conversion of eligible book-entry securities could only be made to a Federal Reserve Bank through a participant as defined in the regulations. Thus an investor's request for withdrawal and conversion of eligible book-entry securities would proceed through the chain of the investor's financial intermediaries to a participant. In turn, the participant would transmit the withdrawal and conversion request to the Federal Reserve Bank, which would convert the book-entry securities into definitive securities and deliver them in accordance with the participant's instructions.

Section 615.5457(d)

The terms of certain issuances of Farm Credit securities provide for the redemption of such securities, either in whole or in part, at specified times prior to maturity. Since there may thus be more than one call date that applies to a particular issue of Farm Credit securities, the Funding Corporation requested clarification of which call date applies when requests to withdraw eligible book-entry securities are made. In response to this comment, the FCA inserts the term ''the applicable'' preceding the term ''call date'' to clarify that eligible book-entry securities may be converted to definitive securities only before the call date applicable to such securities. The amount of advance notice required for conversion requests to be honored is controlled by the securities documentation and Federal Reserve Bank Operating Circulars.

New § 615.5460(c)

In response to the Funding Corporation's comment suggesting that there should be more explicit authority in the regulations for conversion of definitive securities into book-entry securities, the FCA has added new § 615.5460(c). New § 615.5460(c) states that definitive Farm Credit securities may be converted to book-entry form in accordance with the terms of the applicable securities documentation and Federal Reserve Bank Operating Circular. This new provision complements the existing references in

§§ 615.5456 and 615.5462 to conversion of definitive securities to book-entry form.

Regulations Applicable to Securities Converted From Book-Entry to Definitive Form

The Funding Corporation requested clarification as to which of the regulations in subpart O of part 615 apply to securities converted from book-entry to definitive form. In general, unless limited by their terms, the definitions in § 615.5450 apply to definitive securities, whether original issue or converted from book-entry. The conversion authority in §§ 615.5456 and 615.5457 covers the conversion process and related matters. Because §§ 615.5461 and 615.5462 apply specifically to lost and stolen definitive securities and the restrictive endorsement of bearer definitive securities, their requirements would apply to definitive securities converted from book-entry form. Converted securities also are subject to applicable securities documentation and any other provisions of law that may be applicable to the issuance, maintenance, and transfer of definitive securities.

The Funding Corporation also inquired whether converted securities are subject to 31 CFR part 306 of Treasury regulations, which sets forth general regulations governing treatment of definitive U.S. securities. Farm Credit securities are not U.S. securities and therefore are not subject to 31 CFR part 306. However, where appropriate and not inconsistent with FCA regulations, the Farm Credit banks may specify in their securities documentation that maintenance, transfer, and other procedures relating to definitive Farm Credit securities will be the same as those applicable to Treasury securities.

References to the United States

Treasury suggested to the FCA and other GSE regulators that their book-entry regulations omit references to the United States wherever possible to avoid any potential confusion regarding the liability of the United States for GSE securities. For this reason, the FCA is removing certain references to the United States in §§ 615.5452(a), 615.5454(c), and 615.5455(a). As the preamble to the interim regulations noted, any reference in FCA book-entry regulations to the United States, the Treasury, or the Federal Reserve Banks is not meant to imply any liability of the United States for Farm Credit securities. *See* section 4.4(c) of the Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, and Rural areas.

For the reasons stated in the interim rule release, supplemented by the above analysis and discussion, the FCA Board adopts as final with technical changes the interim rule amending Part 615 published at 61 FR 67188, Dec. 20, 1996, governing book-entry procedures for Farm Credit, FAC, and Farmer Mac securities. The effective date of this rule remains January 1, 1997, except that the technical amendments adopted herein are effective 30 days after publication during which either or both Houses of Congress are in session. A notice of effective date for the technical amendments will be published in the **Federal Register**.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart O—Book-entry Procedures for Farm Credit Securities

2. Section 615.5450 is amended by revising paragraph (h) to read as follows:

§ 615.5450 Definitions.

* * * * *

(h) *Farm Credit securities* means consolidated notes, bonds, debentures, or other similar obligations of the Farm Credit banks and Systemwide notes, bonds, debentures, or similar obligations of the Farm Credit banks issued under sections 4.2(c) and 4.2(d), respectively, of the Act, or laws repealed thereby.

* * * * *

3. Section 615.5451 is amended by revising paragraph (c) to read as follows:

§ 615.5451 Book-entry and definitive securities.

* * * * *

(c) Consolidated and Systemwide securities also may be issued in either registered or bearer definitive form.

4. Section 615.5452 is amended by revising the section heading and the introductory text of paragraphs (a)(1) and (a)(2) to read as follows:

§ 615.5452 Law governing rights and obligations of Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against Federal Reserve Banks, Farm Credit banks, and Funding Corporation.

(a) * * *

(1) The rights and obligations of the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

* * * * *

(2) The rights of any person, including a participant, against the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

* * * * *

5. Section 615.5454 is amended by revising paragraph (c)(1) to read as follows:

§ 615.5454 Creation of participant's security entitlement; security interests.

* * * * *

(c)(1) The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks have no obligation to agree to act on behalf of any person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a security entitlement that is in favor of a Federal Reserve Bank, a Farm Credit bank, the Funding Corporation, or a person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a security entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

* * * * *

6. Section 615.5455 is amended by revising paragraph (a) to read as follows:

§ 615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 615.5454(c)(1), for the

purposes of this subpart O, the Farm Credit banks, the Funding Corporation and the Federal Reserve Banks shall treat the participant to whose securities account an interest in a book-entry security has been credited as the person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. The Federal Reserve Banks, the Farm Credit banks, and the Funding Corporation are not liable to a person asserting or having an adverse claim to a security entitlement or to a book-entry security in a participant's securities account, including any such claim arising as a result of the transfer or disposition of a book-entry security by a Federal Reserve Bank pursuant to a transfer message that the Federal Reserve Bank reasonably believes to be genuine.

* * * * *

7. Section 615.5457 is amended by revising paragraphs (c) and (d) to read as follows:

§ 615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.

* * * * *

(c) Farm Credit securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable securities documentation.

(d) All requests for withdrawal of eligible book-entry securities must be made prior to the maturity or the applicable date of call of the Farm Credit securities.

8. Section 615.5460 is amended by adding a new paragraph (c) to read as follows:

§ 615.5460 Additional provisions.

* * * * *

(c) *Conversion of definitive securities into book-entry securities.* Definitive Farm Credit securities may be converted to book-entry form in accordance with the terms of the applicable securities documentation and Federal Reserve Operating Circular.

Dated: October 3, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–26999 Filed 10–10–97; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8737]

RIN 1545–AU88

Rewards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to rewards for information that relates to violations of the internal revenue laws. The regulations reflect changes to the law made by the Taxpayer Bill of Rights 2 and affect persons that are eligible to receive an informant's reward.

The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective October 14, 1997.

For dates of applicability, see § 301.7623–1T(g).

FOR FURTHER INFORMATION CONTACT: Judith A. Lintz (202)622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1534. Responses to the collection of information are voluntary with respect to the provision of information relating to violations of the internal revenue laws, but are required to obtain a benefit with respect to filing a claim for reward.

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

For further information concerning these collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 7623 relating to rewards for information that relates to violations of the internal revenue laws. This section was amended by section 1209 of the Taxpayer Bill of Rights 2 (TBOR 2) (Pub. L. 104–168, 110 Stat. 1452 (1996)).

Explanation of Provisions

Section 7623 provides the Secretary with the authority, by regulation, to pay rewards for information that relates to violations of the internal revenue laws. Section 1209 of TBOR 2 amended section 7623 to clarify that rewards may be paid for information relating to civil, as well as criminal, violations. TBOR 2 also provided that the rewards are to be paid out of the proceeds of amounts (other than interest) collected by reason of the information. These temporary regulations reflect those amendments.

In addition, these temporary regulations incorporate and update § 301.7623–1. For example, the regulations increase the limit on awards from 10% to 15% and provide new titles and addresses to which persons should submit information relating to violations of the internal revenue laws.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It 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.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past approximately 10,000 persons have filed claims for reward on an annual basis. Of these persons, almost all have been individuals. Accordingly, a regulatory

flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this Treasury Decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Drafting Information: The principal author of these regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. § 301.7623–1 is amended by adding paragraph (g) to read as follows:

§ 301.7623–1 Rewards for information relating to violations of internal revenue laws.

* * * * *

(g) *Effective date.* This section is applicable with respect to rewards paid on or before January 29, 1997. See § 301.7623–1T for rewards paid after January 29, 1997.

Par. 3. Section 301.7623–1T is added to read as follows:

§ 301.7623–1T Rewards for information relating to violations of internal revenue laws (temporary).

(a) *In general.* In cases where rewards are not otherwise provided for by law, a district or service center director may approve a reward, in a suitable amount, for information that leads to the detection of underpayments of tax, or the detection and bringing to trial and punishment of persons guilty of violating the internal revenue laws or conniving at the same. The rewards provided for by section 7623 and this section will be paid from the proceeds of amounts (other than interest) collected by reason of the information provided.

(b) *Eligibility to file claim for reward*—(1) *In general.* Any person, other than certain present or former federal employees described in paragraph (b)(2) of this section, that submits, in the manner described in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623 and this section.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time the individual came into possession of information relating to violations of the internal revenue laws, or at the time the individual divulged such information, is eligible for a reward under section 7623 and this section. Any other current or former federal employee is eligible to file a claim for reward if the information provided came to the individual's knowledge other than in the course of the individual's official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to the informant's death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be attached to the claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim.

(c) *Amount and payment of reward.* All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, will be taken into account by a district or service center director in determining whether a reward will be paid, and, if so, the amount of the reward. The amount of a reward will represent what the district or service center director deems to be adequate compensation in the particular case, generally not to exceed fifteen percent of the amounts (other than interest) collected by reason of the information. Payment of a reward will be made as promptly as the circumstances of the case permit, but not until the taxes, penalties, or fines involved have been collected.

However, if the informant waives any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, the claim may be immediately processed. Partial reward payments, without waiver of the uncollected portion of the taxes, penalties, or fines involved, may be made when a criminal fine has been collected prior to completion of the civil aspects of a case, and also when there are multiple tax years involved and the deficiency for one or more of the years has been paid in full. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a district or service center director with respect to the payment of any reward or the amount of the reward.

(d) *Submission of information.* A person that desires to claim a reward under section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the office of a district director, preferably to a representative of the Criminal Investigation Division. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Criminal Investigation), 1111 Constitution Avenue, N.W., Washington, DC 20224, to any district director, Attention: Chief, Criminal Investigation Division, or to any service center director. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Identification of informant.* No unauthorized person will be advised of the identity of an informant.

(f) *Filing claim for reward.* An informant that intends to claim a reward under section 7623 and this section should notify the person to whom the information is submitted of such intention, and must file a formal claim on Form 211, Application for Reward for Original Information, signed by the informant in the informant's true name, as soon as practicable after the submission of the information. If other than the informant's true name was used in furnishing the information, satisfactory proof of identity as that of the informant must be included with the claim for reward.

(g) *Effective date.* This section is applicable with respect to rewards paid after January 29, 1997. See § 301.7623–1 for rewards paid on or before January 29, 1997.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.7623–1T	1545–1534
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–26858 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–241; Amendment Number 74]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments and removal of condition of program approval.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to section 1501:13–6–03 of the Ohio Administrative Code (OAC) dealing with the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated October 3, 1996, (Administrative Record No. OH–2170–00) Ohio submitted a proposed amendment to its program regarding its SOAP pursuant to SMCRA. Ohio submitted the proposed amendment at its own initiative. OSM announced receipt of the proposed amendment in the October 18, 1996, **Federal Register** (61 FR 54373) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 18, 1996. At the time of announcement, the proposed amendment was identified as [OH–240; Amendment Number 74]. Please note that the amendment is now identified as [OH–241; Amendment Number 74]. However, certain cross-references contained in the proposed amendments were inadvertently omitted or incorrect in that notice. These were conveyed to Ohio in a document dated April 14, 1997, Administrative Record No. OH–2170–07. Also, Ohio submitted corrections to its proposed amendments in documents dated April 1, 1997 and May 27, 1997 (Administrative Record Nos. OH–2170–06, and OH–2170–08, respectively). On June 24, 1997, Ohio submitted its revisions in response to the April 14, 1997 document (Administrative Record No. OH–2170–09). Therefore, OSM reopened the public comment period on the proposed amendments until August 4, 1997 as published in the July 18, 1997 **Federal Register** (62 FR 38509).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. The amendment proposes numerous changes regarding both the title of the division and references to gender. Throughout the amendment, due to a name change of the division of reclamation, references to the ''division of reclamation'' are changed to the ''division of mines and reclamation'' and references to ''he'' or ''his'' are changed to ''he or she'' or ''his or hers'', respectively. These changes are non-substantive and are not specifically enumerated below. The changes proposed by Ohio in the revised amendment are discussed briefly below:

OAC 1501:13–6–03 Small Operator Assistance Program

(a) Paragraph (A)(1) is amended by adding items for which qualified operators may request assistance. These include engineering analysis and designs necessary for the determination of probable hydrologic consequences added to subparagraph (A)(1)(a), and amending subparagraph (A)(1)(b) to include geologic drilling and statement of the results of physical and chemical analyses of test borings or core samples.

(b) New subparagraphs (c)(d) (e) and (f) are added under paragraph (A)(1) to identify the development of cross-section maps and plans; the collection of archaeological information and other historical information and the preparation of plans necessitated thereby; pre-blast surveys; and the collection of site specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief, respectively, as items for which a qualified operator may request assistance.

There is no direct federal counterpart. However the proposed changes at (A)(1) are consistent with the corresponding Federal Regulations at 30 CFR 795.9(b)(1)–(b)(6), which describes the SOAP services and data requirements.

(c) Paragraph (B) is amended by deleting subparagraphs (1) and (2) dealing with probable hydrologic consequences and results of test borings and core samplings which are added to Paragraph (A) of this amendment, and adding a statement that the services eligible are now under paragraph (A).

The proposed change in paragraph (B) is non-substantive and the deletion of paragraphs (1) and (2) are not inconsistent with SMCRA or its corresponding Federal regulations, and do not render the State program any less effective than the federal regulations.

(d) Paragraph (C)(2) is amended by substituting the Department of Natural

Resources as an additional reference for production figure verification instead of the division of mines and the division of reclamation. The change in names is made due to the transfer of Division of Mines staff and responsibilities to the Department of Natural Resources. The Department of Natural Resources was assigned to the Division of Reclamation which was retitled the Division of Mines and Reclamation. Subparagraphs (C)(2)(a) and (C)(2)(b) are amended by changing the applicant ownership limit from ''more than a five percent limit'' to ''ten percent or more'' limit.

The proposed changes at (C)(2), (C)(2)(a), & (C)(2)(b) are not less effective than the federal regulations at 30 CFR 795.6(a)(2) (i) & (ii), which require applicant ownership limits of more than ten percent.

(e) Subparagraph (D)(9) is amended by deleting the specific map scale references required for a topographic map and adding a reference to OAC 1501:13–4–09. New subparagraph (D)(9)(e) is added to require that such topographic maps also include any additional information required by the chief.

The proposed changes in (D)(9) and (D)(9)(e) are no less effective than 30 CFR 795.7(e) because the map scale references and details required that were included in the deleted section are now included in the cross-referenced citation.

(f) Paragraph (F)(2) is amended by deleting the heading ''specific provisions'' and adding the following: ''The data, analyses, and statements provided to the chief shall be sufficient to satisfy the requirements for:''. Subparagraphs (F)(2) (a) and (b) are amended to include engineering analyses and designs necessary for the probable hydrologic consequences determination, and the drilling and statement by a qualified laboratory of the result of test borings or core samplings, respectively. Subparagraph (F)(2)(b) is further amended by adding provisions for obtaining a waiver from the requirement. Previously existing subparagraph (F)(2)(c) pertaining to this waiver is deleted.

Existing subparagraph (F)(2)(d) is re-numbered as (F)(3), and existing subparagraphs (F)(2) (e) and (f) are deleted.

New subparagraphs (F)(2) (c), (d), (e) and (f) are added to identify the specific requirements that must be met for the development of cross-section maps and plans; the collection of archeological information and other historical information; pre-blast surveys; and the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values, respectively.

The proposed rules in (F) are found to be substantively identical to the corresponding Federal regulations at 30 CFR 795.9 (b)(1)–(b)(6). The deletion of subparagraphs (F)(2) (e) and (f) are found to be acceptable because the requirements for the submission of a hydrology map and a geologic cross-section required by these subparagraphs are now included in the newly added sections and/or cross-references now included in (F)(2)(c). The revision to paragraph (F)(2)(a) of OAC 1501:13–6–03 also satisfies a required program amendment found at 30 CFR 935.16(a)(3). In the January 13, 1997, **Federal Register** (62 FR 1668), the Director required that Ohio amend ORC 1513.07(B)(4)(a)(i) or otherwise clarify that under the Small Operator's Assistance Program (SOAP), probably hydrologic consequences determinations include the engineering analyses and designs necessary for those determinations. The revision to paragraph (F)(2)(a) specifically adds this required language. Therefore, the Director is removing the required amendment at 30 CFR 935.16(a)(3).

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. One comment was received from the Ohio Historic Preservation Office in a letter dated February 24, 1997. The commenter stated that several times the new language refers to the collection of archaeological information, but does not refer to the National Historic Preservation Act review process which includes more than just archaeological sites. The Ohio Historical Preservation Office suggests that the rule language parallel the Section 106 review process at 36 CFR part 800. One of the changes made by Ohio to the proposed rules in one of its subsequent submissions is to add the words ''and historical'' after the word archaeological in sections OAC 1501:13–6–03(A)(1)(D) and OAC 1501:13–6–03(F)(2)(d). Additionally, the Director notes that OAC 1501:13–4–01(B) requires coordination of review and issuance of permits with other federal or state laws which includes the National Historic Preservation Act of 1966 and that OAC 1501:13–5–01(A)(3) requires that a written notification of a permit application, renewal or revision be sent to all federal, state and local governmental agencies that have an interest in the area of the proposed operations. There are no SOAP operations that are not included in the permit application process. The program amendment does not propose to change any coordination that currently exists between OHPO and DMR concerning review of cultural and historical resources. No one requested an opportunity to speak at a public hearing, therefore no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Army Corps of Engineers responded that the changes were satisfactory. The U.S. Department of Labor's Mine Safety and Health Administration acknowledged receipt of the proposed amendment and responded that no further action was anticipated. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Comments were requested from EPA, however they did not reply.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Ohio on October 3, 1996 and modified in documents dated April 1, 1997, May 27, 1997, and June 24, 1997. (Administrative Record Nos. OH–2170–06, OH–2170–08, and OH–2170–09, respectively). The Director is also removing the condition of program approval at 30 CFR 935.16(a)(3) because this amendment now includes those requirements at paragraph (F)(2)(a) of OAC 1501:13–6–03. The requirement amendment was initially included in OH–204 published as a final rule in the January 13, 1997, **Federal Register** (62 FR 1668). The condition required an amendment that probable hydrologic consequences determinations include engineering analyses and designs necessary for those determinations.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment

process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * * * *
October 3, 1996	October 14, 1997.	..... OAC 1501:13–6–03, (A)(1) (a) through (f), (B), (1), (2), (F)(2), (a) through (f), (C)(2), (a), (b), (D)(9), (10), (11).

§ 935.16 Required regulatory program amendments.

Section 935.16 is amended by deleting paragraph (a)(3).

[FR Doc. 97–27065 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5026a; FRL–5904–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions establish and require volatile organic compound (VOC) reasonably available control technology (RACT) on six major sources of VOCs located in Virginia. The intended effect of this action is to approve, as SIP revisions, source-specific plan approvals and Consent Agreements that establish RACT in accordance with the Clean Air Act (the Act).

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Air, Radiation, and Toxics Division, Mailcode 3AT21, U.S.

Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092, at the EPA Region III office or via e-mail at Gaffney.Kristeen@epamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On August 12, 21, 26, 30, 1996, September 3, 1996, and March 27, 1997, the Commonwealth of Virginia submitted revisions to its State Implementation Plan (SIP). These revisions establish source specific VOC RACT requirements on major sources of VOCs. Today's rulemaking approves those source specific VOC RACT requirements for six sources because they meet the requirements of section 182 of the Act. All of the sources are located in the Richmond moderate ozone nonattainment area. Plan approvals and Consent Agreements for other sources that were also submitted on the dates listed above that are not a part of today's action will be addressed by separate rulemaking.

I. Background

Under the pre-amended Clean Air Act (i.e., the Act prior to the 1990 Amendments), ozone nonattainment areas were required to adopt RACT rules for VOC sources. EPA issued three sets of control technique guideline documents (CTGs), establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The Richmond, Virginia area was designated nonattainment under the pre-amended Act and was required to adopt RACT for all CTG categories as well as non-CTG VOC sources with a potential to emit 100 tons per year (TPY) or more. Under the 1990 amendments to the Act, amended sections 172(c)(1) and 182(a)(2), required the Richmond, Virginia nonattainment area to correct its RACT requirements in effect prior to enactment of the 1990 amendments. Virginia submitted those RACT corrections as SIP revisions on May 10, 1991 and June 20, 1991. Among the regulations in that SIP revision, was a provision (Rule 120–04–0407) establishing the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Northern Virginia and Richmond nonattainment areas not covered by an existing state adopted VOC control regulation. Virginia's RACT correction SIP was approved by EPA on March 31, 1994 (See 59 FR 15117). To implement Rule 120–04–0407, the Commonwealth must submit to EPA a RACT determination and enforceable document for all major VOC sources not otherwise controlled under existing State VOC RACT regulations.

Sections 182(b) (2)(A),(B) and (C) of the Act require moderate and above areas to adopt standards for all sources covered by any CTG document issued by the Administrator after 1990 and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 CAA amendments; and all major sources of VOC not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. This provision of the Act makes nonattainment areas that were previously exempt from RACT requirements ''catch up'' to requirements during the earlier period, and therefore, is known as the RACT catch-up requirement.

Because Rule 120–04–0407 imposed RACT on all major VOC sources in the Northern Virginia and Richmond nonattainment areas on an individual basis, this rule partially satisfied the RACT catch-up requirement. On November 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emission control areas to coincide with the revised boundaries of the Richmond and Northern Virginia ozone nonattainment areas resulting from the 1990 amendments. This SIP was approved by EPA on March 12, 1997 (59 FR 52701). To satisfy the RACT correction and catch-up requirements under sections 182(a)(2) and 182(b)(2) (A), (B) and (C), and implement Rule 120–04–0407, Virginia has submitted source-specific VOC RACT determinations for the following six sources in the Richmond, Virginia ozone nonattainment area:

1. AlliedSignal Inc.—Hopewell Plant
2. AlliedSignal Inc.—Chesterfield Plant
3. Stone Container Corporation
4. E.I. DuPont de Nemours & Company—Spruance Plant
5. ICI Americas, Inc.
6. Bear Island Paper Company

II. Summary of SIP Revisions

Detailed decriptions of the RACT requirements for the source-specific plan approvals and Consent Agreements can be found in the docket and accompanying technical support document (TSD). Below is a summary of the facility type and the applicable RACT requirements for each company. Each SIP revision consists of a Consent Agreement signed by the company and the Virginia Department of Environmental Quality. The Consent Agreements are enforceable documents which include a description of the RACT technologies, control efficiencies, operating parameters, monitoring and reporting requirements. For further details on the sources' processes and how RACT was determined, refer to the TSD associated with this rulemaking. EPA is approving revisions to the Virginia SIP pertaining to the determination of RACT for six major sources of VOCs. This action is being taken under section 110 of the Act.

1. AlliedSignal Inc., Hopewell: AlliedSignal Inc. is a synthetic organic chemical manufacturing facility in Hopewell, Virginia that produces caprolactam. Other chemicals produced at the site include raw materials for caprolactam production and other co-products with commercial value that include ammonium sulfate, adipic acid, cyclohexanol, cyclohexanone and oxime performance chemicals. This facility includes emission sources subject to EPA's CTG entitled ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)'' (EPA–450/4–91–031, August 1993), as well as non-CTG sources. The specific process areas with VOC emissions are:

Area 6—Phenol Hydrogenation
Area 7—Caprolactam Purification
Area 8/16—Crude Caprolactam Production
Area 9—Hydroxylamine Production
Area 11—Ammonium Sulfate Production
Area 13—Adipic Acid Production
Area 14—Performance Chemicals Plant/Area
Kellogg/Girdler—Ammonia Plant

RACT as prescribed in the Consent Agreement for AlliedSignal—Hopewell, Registration Number 50232, dated March 26, 1997, is as follows:

(1) VOC emissions from the Hydrogenation Reaction Catalyst Centrifuges, designated as CT–48, 53,

55, all of which are located in the Cyclohexane Production Area (Area 6) shall be controlled by a nonassisted combustion flare at 98 percent reduction efficiency. Annual emissions will be reduced from 131.1 tons/year to 2.6 tons/year.

(2) VOC emissions from the overheads product recovery condensers in Areas 8 and 16, the Toluene/Sulfate Stripping Column (CL–15) and the Toluene/Caprolatam Stripping Column (CL–62) shall be controlled by a thermal oxidizer having a VOC reduction efficiency of at least 98 percent by weight or shall reduce the VOC emissions to a concentration of 20 ppmv, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent. Annual emissions will be reduced from 134.4 tons/year to 2.7 tons/year.

(3) VOC emissions from the Methyl Ethyl Ketoxime distillation column in Area 14 shall be controlled by a scrubber operating with a Total Resource Effectiveness Value of greater than 1.0, as described in EPA's SOCMI CTG. Annual emissions will be reduced from 107 tons/year to 25 tons/year.

(4) VOC emissions resulting from desorbtion of the Natural Gas Desulfurization Carbon Drums in the Girdler Area, shall be reduced by use of an alternative, non-regenerative adsorbent or an alternative technology which must first be submitted to EPA for review and approval. Annual emissions will be reduced from 206 tons/year to 6 tons/year.

(5) The vacuum jet ejectors in Area 6 (CL–26 and CL–65) which control the pressure on the Cyclohexanone Distillation Columns will be controlled with product recovery condensers. Combined annual emissions will be reduced from 81.5 tons/year to 24.4 tons/year.

(6) Fugitive VOC emissions resulting from equipment leaks in Areas 6, 8, 14 and 16 shall be controlled by instituting a Leak Detection and Repair (LDAR) program which is equivalent to the requirements set forth in 40 CFR part 60, subpart VV, ''Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry''. Implementation of this control program will reduce annual emissions from 665 tons/year to 392 tons/year.

(7) RACT for volatile organic liquid (VOL) storage tanks in Areas 6 and 14 shall be continued use of existing control technologies. VOL storage tanks are subject to Virginia SIP approved rule 120–04–25, ''Volatile Organic Compound Storage and Transfer Operations'.

2. AlliedSignal—Chesterfield: AlliedSignal, Inc. operates a nylon fibers and plastics manufacturing facility in Chesterfield County, Virginia. Total pre-RACT emissions from the facility were calculated to be 580.23 tons/year from eleven (I–XI) different emission source processes and including fugitive emissions. After RACT emissions are estimated to be 295.02 tons/year, or a 49% reduction in VOC emissions. EPA has not published a CTG document for this source category.

Pursuant to the Consent Agreement for AlliedSignal—Chesterfield, Registration Number 50233, dated May 20, 1996, RACT is the installation of absorption (scrubbing) systems for emissions from Groups I and II (spinning lines 5–12) by November 15, 1996, that have a control efficiency of 80% on a mass basis. The one-hour pressure losses of the gas stream through each absorption system may not be less than 6 inches and the one-hour average liquid flow rates to each absorption system shall not be less than 40 gallons/minute. Pressure losses and liquid flow rates must be monitored continuously and recorded.

RACT for the Group IX emissions (distillate systems exhaust) is installation of a condenser by July 1, 1997, that has a control efficiency of 99% on a mass basis. The one-hour average temperature of each condenser exhaust vent is not to exceed 100°F. Exhaust vent stream temperatures must be continuously measured and recorded.

The facility is required to conduct performance tests within 180 days of installation of control technology to demonstrate compliance with the control efficiency requirements. Records of all data necessary to demonstrate compliance and maintain operating parameters must be kept on site.

RACT was determined to be no control for the following sources that have exhaust streams with low concentrations of VOCs or negligible VOC emissions contribution: Group V, Group VIII, Buildings 5 and 25 Vent Fans, VOL Storage Tanks and the Industrial Wastewater Stream. Analysis has determined that it is not reasonably cost effective to control VOC emissions from source processes for Group III, Group IV, Group VI, Group VII, Group X and Group XI and fugitive emissions from the Process Operations/Open Buildings.

The Consent Agreement allows the facility to use alternate controls or control strategies, upon approval by the Commonwealth and EPA, in place of controlling emissions from Group I, II or IX if the new VOC control efficiencies exceed those in the Consent Agreement and the overall VOC emission reductions are equivalent to those resulting from implementation of RACT as defined in the Consent Agreement.

3. Stone Container Corporation: Stone Container is a kraft pulp and paper mill located in the city of Hopewell. Process operations include wood storage and handling, kraft pulp mill, paper mill, chemical recovery, co-product production and power and steam production. Pre-RACT emissions based upon the maximum annual throughput of the mill, after considering existing enforceable controls, were calculated by Virginia to be 1393 tons/year, including fugitives. Post-RACT maximum emissions calculate to 1065 tons/year, a 24% additional reduction in total VOC emissions. EPA has not published a CTG document for this source category.

Total VOC emission sources in the mill are grouped into process areas: the Kraft Pulp Mill area, the Paper Mill area, the Co-product Recovery area, the Chemical Recovery area, the Power Generation Area, the Non-condensible Gas (NCG) System, and non-quantifiable point and fugitive emissions of the Wood Handling and Storage area.

Pursuant to the Consent Agreement for Stone Container Corporation, Registration Number 50370, dated May 30, 1996, RACT is determined as follows:

1. Wood storage and handling operations, the paper mill and power and steam generation areas—no additional controls.

2. Chemical recovery area—existing level of control, use of city/river water as the sole source of make-up water.

3. Pulp mill area—no additional controls with the exception of the noncondensible gases sent to the NCG collection system and the requirement to replace the existing weak black liquor filter with a new, no-emissions filter by December 1997.

4. RACT for VOC sources within the NCG collection system is existing control technology—thermal oxidation accomplished by venting the gases to the lime kiln while the kiln is operating.

5. RACT for the co-product recovery area is installation of a packed tower scrubber for the tall oil batch reactor vent, which must be installed by August 1996. The VOC removal efficiency of 15 percent will be verified and related operating parameters will be determined through performance tests after start-up.

The Consent Agreement also provides that all processes not subject to additional controls are to be operated in a manner consistent with minimizing

VOC emissions and good air pollution control practices.

4. E.I. DuPont de Nemours & Company—Spruance Plant: DuPont operates a synthetic fiber production and coating facility located in Chesterfield, Virginia. There are eight air-emission producing units at the facility: the Kevlar plant, the Nomex plant, the Nylon plant, Dowtherm operations, the Teflon plant, the Mylar plant, the Tyvek plant and the wastewater treatment plant. There is no CTG document for this source category. According to Virginia's RACT submittal, plant-wide pre-RACT emissions of VOCs, including fugitives, based on 1991 emissions data and including existing enforceable control technologies, were 846.4 tpy. This source had already installed controls on several emissions units prior to 1991. Implementation of additional RACT controls do not result in any emission reductions at the facility. However, VOC emissions were reduced by 73.3 tpy from 1991 RACT baseline levels because the Nylon Plant was destroyed by fire in 1992, and its operations were replaced with the Zylar plant. The Zylar plant was subject to lowest achievable emission rate (LAER) review under the New Source Review provisions of the Act. Post-RACT emissions are 773.1 tpy. VOC emissions from the DuPont facility were previously controlled using technologies described in the following table. In addition to the existing controls on the table, RACT requirements for the DuPont facility pursuant to the Consent Agreement, Registration Number 50397, dated May 30, 1996, require implementation of a LDAR program:

Plant operations	Control efficiency	RACT technology	Emissions (tons/year)
Kevlar	98.3% 6 month rolling average.	Existing Control (Solvent Recovery System and chloroform quench stack scrubber) and Implementation of LDAR program.	Uncontrolled emissions*: 6,627.99. Pre-RACT 33.2. RACT 33.2.
Nomex	98.3% 6 month rolling average.	Existing Control (Solvent Recovery, ventilation scrubber, chloroform scrubber stack and scrubber for the wash/draw lines) and Implementation of LDAR program.	Uncontrolled emissions*: 19,410.7. Pre-RACT 594.7. RACT 594.7
Dowtherm	N/A	Implementation of LDAR program	Pre-RACT 10.5.
Nylon	N/A	Plant shutdown—replaced by Zytel operations	Pre-RACT 82.8 RACT 0.
Zytel	N/A	RACT is no control	Pre-RACT 20 RACT 20.
Teflon	N/A	RACT is no control	Pre-RACT 6.5 RACT 6.5.
Mylar	98.3% 6 month rolling average.	Existing control (Carbon bed adsorbers, solvent recovery and LDAR program).	Uncontrolled emissions*: 7,791. Pre-RACT 117.3 RACT 117.3.
Tyvek	N/A	New plant subject to NSR/LAER controls; plus implementation of LDAR program.	Pre-RACT N/A. RACT 110.
Wastewater Treatment Plant.	N/A	RACT is no control	Pre-RACT 1.4. RACT 1.4.

*Uncontrolled emissions are the total estimated amount of VOC emissions that would be emitted if the pre-RACT existing control equipment had not been installed.

Compliance for the fugitive LDAR programs being implemented at the Kelvar, Zytel, Tyvek and Nomex plants requires procedures to correspond with the standards set in 40 CFR Part 60, Subpart VV, including record keeping requirements, except for the reporting requirements of 60.487. The second exception is that equipment shall be considered to be leaking when a reading is above 500 ppm using an approved measurement technique. The amount of emission reductions achieved through implementation of LDAR has not been determined for any of the plants. The RACT determination assumes the same amount of VOCs will continue to be emitted at each plant even though the LDAR program is being instituted.

The Nylon plant was closed in November 1992 due to a fire and is not anticipated to reopen. Emissions from the Nylon Plant were part of the RACT analysis document because the RACT analysis was performed prior to destruction of the plant. However, since the fire, RACT for the Nylon plant is permanent shutdown. The Nylon Plant was replaced by the Zytel Plant, which underwent NSR, including LAER, prior to construction.

No RACT determination was completed for the Tyvek Plant because 1991 was used as the baseline for determining RACT controls and the former Tyvek operations at that time did not emit any regulated VOCs. Freon11, an exempt VOC, but a chlorofluorocarbon (CFC) which contributes to stratospheric ozone depletion, was used in the plant operations. To comply with the national phase-out of ozone depleting CFCs, DuPont replaced Freon11 with a regulated VOC, which required major plant modifications. The plant was issued a NSR modification permit in October 9, 1992, which imposed LAER requirements on the plant. The NSR permit for the new plant imposes LAER controls which are described in the RACT Determination document and include, catalytic incineration and condenser absorption. In addition to LAER controls, Virginia has imposed as RACT the Tyvek Plant a LDAR program to reduce fugitive emissions.

5. ICI Americas, Inc. Films Divisions—Hopewell Site: ICI films, a division of ICI Americas, Incorporated, currently operates a polymer film and manufacturing plant in Hopewell, Virginia. Polyester film is produced as a final product to be used in a variety of applications including packaging, window sun screens, and audio/video cassette tapes. Production operations results in the emissions of volatile organic compounds (VOCs).

According to the RACT determination, plant-wide pre-RACT maximum calculated emissions, including fugitives, of VOCs were 290.29 tons/year. Maximum facility-wide post-RACT emissions are 223.3 tons/year, a 25% reduction.

EPA has not published a CTG document for this source category. RACT analysis was completed for the following VOC emission source processes: VOL storage tanks, chip driers, heat setting ovens, methanol loading of rail cars, batch reactors, process cooling tower, fuel burning equipment, industrial wastewater

streams, biotreatment plant, and fugitive emissions.

The Consent Agreement for ICI, Registration Number 50418, dated May 30, 1996, limits the production rate for the ICI films facility as follows:

Polymer Plant: 13,600 DMT batches of polymer per year; 1,000 TA batches of polymer per year.

Film Plant: 150,000 tons of polymer chip throughput per year

RACT for the volatile organic liquid storage tanks was determined to be in compliance with SIP approved Rule 4–25 of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution for the VOL storage tanks.

RACT for VOC emissions from the cooling tower is replacement of the ethylene glycol (EG) Still Vacuum System direct contact spray condensers with non-contact shell and tube condensers and diverting 100 percent of the condensate to the Biotreatment aeration basin for remediation instead of sending it to the cooling tower hotwell. A 99 percent reduction of VOCs attributed to the EG stills (50 percent of total cooling tower emissions) is anticipated through the replacement of the direct contact condensers serving the EG still vacuum system with non-contact condensers.

The fugitive emissions from the polymer and film manufacturing processes leaks and heat transfer fluid systems will follow the procedures from the LDAR program as specified in 40 CFR Part 60, Subpart VV, including record-keeping and test procedures. This will account for an approximately 86 percent overall reduction in fugitive emissions. The LDAR program will be implemented within 180 days of the effective date of the Consent Agreement.

6. Bear Island Paper Company, L.P.: Bear Island Paper Company, L.P. (BIPCO) operates a pulp and paper mill in Ashland, Virginia. The pulp is used for the manufacture of newsprint. According to the Consent Agreement, the maximum potential to emit before RACT was 1134.8 tons per year. With the application of RACT, the maximum annual emissions are 623.7 tons per year of VOCs, a 45% reduction.

VOC emissions result from the following source processes: Nebraska Package Boiler, the Babcock & Wilcox (B&W) Boiler, the Sludge Dryer Burner, Wastewater Treatment Plant (WWTP), and four Thermomechanical Pulp (TMP) process lines. The bulk of the VOC emissions are terpenes that are emitted from the TMP process lines. The Nebraska Package Boiler was closed in May of 1994 and replaced by a new Package Boiler which began operations in January 1996. The Package Boiler has a permitted maximum emissions cap of 3.7 tpy of VOCs.

The Consent Agreement for Bear Island, Registration Number 50840, dated July 12, 1996, determines RACT for VOCs from the B&W and package fossil fuel boilers and the sludge burner dryer to be good combustion practices and periodic maintenance. Proper combustion practices include periodic maintenance of the burner system and maintaining combustion temperature and air/fuel ratio according to the manufacturer's specifications.

RACT for the four TMP lines has been determined to be the installation of 2 heat exchangers/condensers and 1 scrubber/heat exchanger, with a combined control efficiency of 40.5 percent. Specifically, emissions from the steam tubes, primary refiners, and secondary refiners, from all four TMP lines will be controlled by a double pass, plate and frame water heat exchanger/condenser. The two stage heat exchanger/condenser will use water as the heat transfer medium, except for the latency transfer chest and the rejects latency chest, which will use water as a heat transfer medium for the first stage of the heat exchanger/condenser and glycol as the heat transfer medium for the second stage of the condenser. The condensate will be discharged to the wastewater treatment plant.

For the wastewater treatment plant (WWTP), test results confirm negligible amounts of EPA Method 624 VOCs in the effluent wastewater stream, and system modeling showed that wood organic species not analyzed by Method 624 are emitted at a rate of 5.6 tons/year. Because the WWTP does not emit a significant quantity of VOCs, the Consent Agreement establishes RACT for the WWTP as maintaining the standard operating procedures.

III. Final Action

The provisions in these plan approvals and Consent Agreements, submitted by the Commonwealth of Virginia as revisions to the SIP, are being approved by EPA. The Consent Agreements were effective on the date of signature by both signatory parties. The Consent Agreements do not contain expiration dates.

EPA is approving these SIP revisions without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective November 28, 1997 unless, by October 29, 1997, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover,

due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC RACT determinations for a number of individual sources in Virginia as a revision to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(121) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(121) Revisions to the State Implementation Plan submitted on August 12, 21, 26, 30, 1996, September 3, 1996 and March 27, 1997 by the Virginia Department of Environmental Quality regarding non-CTG VOC RACT requirements for six sources:

(i) Incorporation by reference.

(A) Letters submitted by the Virginia Department of Environmental Quality transmitting source-specific VOC RACT determinations in the form of Consent Agreements on the following dates: August 12, 21, 26, 30, 1996, September 3, 1996 and March 27, 1997.

(B) Consent Agreements:

(*1*) AlliedSignal Inc.—Hopewell Plant, City of Hopewell, VA, Consent Agreement Registration Number 50232, effective March 26, 1997;

(*2*) AlliedSignal Inc.—Chesterfield Plant, Chesterfield County, VA, Consent Agreement Registration Number 50233, effective May 20, 1996;

(*3*) Bear Island Paper Company, L.P., Hanover County, VA, Consent Agreement Registration Number 50840, effective July 12, 1996;

(*4*) Stone Container Corporation Hopewell Mill, City of Hopewell, Virginia, Consent Agreement Registration Number 50370, effective May 30, 1996;

(*5*) E.I. DuPont de Nemours and Company, Spruance Plant, Chesterfield County, Virginia, Consent Agreement Registration Number 50397, effective May 30, 1996;

(*6*) ICI Americas, Inc. Film Division—Hopewell Site, Chesterfield County, Virginia, Consent Agreement Registration Number 50418, effective May 30, 1996.

(ii) Additional material.

(A) Technical Support Documents submitted as part of the RACT determinations in paragraph (c)(121)(i) of this section by the Commonwealth of Virginia on August 12, 21, 23, 26, 30, 1996, September 3, 1996 and March 27, 1997.

[FR Doc. 97–27122 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN40–03–6988; FRL–5906–3]

Approval and Promulgation of State Implementation Plan; Minnesota; Evidentiary Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action approves the State Implementation Plan (SIP) revision submitted by the State of Minnesota. The State's revision clarifies the types of testing and monitoring data, including stack and process monitoring data, that can be used directly for compliance certifications and enforcement.

EFFECTIVE DATE: This final rule is effective November 13, 1997.

ADDRESSES: Copies of the documents relevant to this action are available forpublic inspection during normal business hours at the following location:U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Regulation Development Section 2, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, section 114 of the Clean Air Act (Act) was amended to require the Administrator of EPA to promulgate rules implementing an enhanced monitoring and compliance program for major stationary sources of air pollution. EPA determined that certain SIPs may preclude EPA and the States from implementing such a program because these SIPs may be interpreted to limit the types of testing and monitoring data

that may be used for determining compliance and establishing violations. Therefore, EPA issued a SIP call to those States whose SIPs may have limited the types of testing and monitoring data that may be used for determining compliance and establishing violations.

On March 24, 1994, EPA issued a SIP call to the State of Minnesota to revise its SIP. As part of the SIP call, EPA provided draft SIP language to the State. The SIP call clarified that any monitoring approved for the source (and included in a federally enforceable operating permit) may form the basis of the compliance certification, and that any credible evidence may be used for purposes of enforcement in Federal court.

On April 9, 1997, EPA published a direct final rulemaking approving the Minnesota Pollution Control Agency's (MPCA's) SIP revision that was made in response to EPA's SIP call. During the 30 day public comment period, adverse comments were received from the Minnesota Chamber of Commerce, the American Petroleum Institute and the National Environmental Development Association.

II. Public Comment/EPA Response

The following evaluation summarizes each comment received and EPA's response to the comment.

Minnesota Chamber of Commerce Comments

Following is a summary of comments received from the Minnesota Chamber of Commerce in a letter dated May 9, 1997 signed by Sherry Munyon. After each comment is EPA's response.

Comment 1: EPA's final ''credible evidence'' rule clearly removes any reference to ''presumptively credible'' forms of evidence and properly leaves questions of legal admissibility and credibility to judicial and administrative tribunals (62 FR 8316 February 24, 1997). Therefore, it appears that EPA is set to approve a SIP revision containing a rule based on an interpretation to which it no longer subscribes.

Response 1: In writing its rule, the MPCA did not feel that it had the authority to create presumptively credible evidence, since the MPCA did not feel it had the authority to create judicial ''presumptions.'' Therefore, the MPCA simply stated that violations may be based on any required monitoring method or any credible evidence. In doing this, the MPCA clarifies that its own rules cannot be used to limit a court's consideration of any credible evidence of a violation of a MPCA standard. This does not create judicial presumptions, nor does it conflict with EPA's final Credible Evidence rule.

Comment 2: If MPCA's rule is incorporated into the SIP, sources would then face two different standards regarding the admissibility and credibility of evidence.

Response 2: The EPA believes, contrary to the commentor, that approving this SIP revision actually enhances consistency rather than creating inconsistency. Since the rule submitted for Federal approvability is already adopted at the State level, approving it into the SIP would mean that both State and Federal authorities would be enforcing the same provisions.

American Petroleum Institute Comments

Following is a summary of comments received from the American Petroleum Institute in a letter dated May 8, 1997 signed by John E. Reese. After each comment is EPA's response.

Comment 1: Because sections 7007.0800 Subpart 6.C.(5) and 7017.0100 Subparts 1 and 2 of the Minnesota regulations were based on EPA's premature March 24, 1994 SIP call, the Minnesota regulations are not consistent with the current status of EPA's Enhanced Monitoring rulemaking. For example, section 7007.0800 Subpart 6.C.(5) makes reference to ''an enhanced monitoring protocol'' even though in 1995 EPA abandoned the Enhanced Monitoring approach in favor of the Compliance Assurance Monitoring (CAM) approach. Thus, the reference to ''Enhanced Monitoring'' in the Minnesota regulations is likely to cause confusion, and should be revised.

Response 1: By stating that the Minnesota rule, made in response to EPA's March 24, 1994 SIP call, is inconsistent with the current status of EPA's Enhanced Monitoring Rule, the commentor makes the argument that EPA's SIP call is inconsistent with the current status of EPA's Enhanced Monitoring Rule. This is not the case. In the EPA's final Credible Evidence Revisions rule, EPA has stated that:

> EPA's decision to forego the enhanced monitoring approach in favor of the CAM proposal has no effect on the basic goals of the SIP call, which are to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications (62 FR 8314, p. 8327).

While the commentor is correct in pointing out that MPCA's SIP revision does include language in section 7007.0800 Subpart 6.C.5 that makes reference to ''an enhanced monitoring protocol,'' EPA does not believe that any confusion will arise from the language found in Minnesota's rule. The section that contains the reference to the enhanced monitoring protocol does not limit the additional methods that can be used to demonstrate compliance with, or violation of, a standard to only an enhanced monitoring protocol. Also included are, ''any other monitoring method incorporated into a permit issued under this chapter.'' If only the language pertaining to ''an enhanced monitoring protocol'' were included as a revision to the language found in MPCA's, a SIP revision might be warranted. However, because there is additional language that does not limit using other methods as well, no conflict or confusion will arise from mentioning an enhanced monitoring protocol.

Comment 2: EPA's SIP call is invalid. Neither section 110 or any other provision of the Clean Air Act requires States to include credible evidence provisions in their SIPs. Even if one accepts EPA's assertion in the recently promulgated Credible Evidence Rule, 62 FR 8314 (February 24, 1997), that sections 113(a), 113(e), and 114 of the Clean Air Act authorize EPA to use any Credible Evidence to establish violations of emissions standards and limitations, those provisions speak only to the Administrator, and the courts, not to the States.

Response 2: EPA's SIP call is valid. The purpose of the SIP call is to clarify that non-reference test data can be used in enforcement actions, and to remove any potential ambiguity regarding this data's use for Title V compliance certifications. In responding to the SIP call the MPCA submitted to EPA rule revisions that ensured that the Minnesota SIP does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedures had been performed. This is all that is required to be consistent with EPA's final Credible Evidence rule.

Comment 3: The reference to ''Minnesota Statutes'' is incorrect, the correct reference is to ''Minnesota Rules.''

Response 3: EPA recognizes that the codification from the direct final **Federal Register** rule published on April 9, 1997 did incorrectly reference ''Minnesota Statutes.'' The new codification correctly references ''Minnesota Rules.''

National Environmental Development Association Comments

Following is a summary of comments received from the National Environmental Development Association in a letter dated May 9, 1997 signed by Leslie Sue Ritts. After each comment is EPA's response.

Comment 1: EPA cannot and should not approve State SIP revisions during the pendency of judicial review of EPA's credible evidence rule.

Response 1: The commentor assumes that if EPA's Credible Evidence rule is found to be illegal, it follows that Minnesota's rule is also illegal and cannot be approved. This is not necessarily the case. If EPA's rule is found to be illegal, EPA may not be able to require Minnesota to follow the requirements of the SIP call but EPA can still approve Minnesota's SIP revision. States can submit, and EPA can approve, SIP revisions that exceed Federal requirements at any point in time. If it is found that EPA's Credible Evidence rule is found to be illegal, this does not prevent EPA from approving MPCA's SIP revision.

Comment 2: The National Environmental Development Association believes that the current rule should be withdrawn because Minnesota's rule is clearly based on a version of the enhanced monitoring proposal and an EPA ''model rule'' that were withdrawn by EPA in April 1995. References to ''presumptive'' credible evidence in the **Federal Register** notice, while also not clear on the face of the Minnesota regulations, are also plainly inconsistent with the notion in the final Federal credible evidence rule that all monitoring evidence, whatever its origin, would be weighed by a trier of fact and to provisions in the EPA credible rule that condition the use of credible evidence as ''relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.'' In addition, references in the **Federal Register** notice to Federal ''enhanced monitoring protocols'' and ''model rules'' are obsolete. These will eventually be replaced by Federal requirements for ''compliance assurance monitoring'' plans under the pending CAM rule which the Federal agency is about to finalize.

Response 2: The MPCA did not base its rule on EPA's model rule. In writing its rule, the MPCA did not feel that it had the authority to create presumptively credible evidence, since the MPCA did not feel it had the authority to create judicial ''presumptions.'' Therefore, the MPCA simply stated that violations may be based on any required monitoring method or any credible evidence. In doing this, the MPCA clarifies that its own rules cannot be used to limit a court's consideration of any credible evidence of a violation of a MPCA standard. This does not create judicial presumptions, nor does it conflict with EPA's final Credible Evidence rule.

III. Final Action

The comments received were found to warrant no changes from proposed to final action on the approval of Minnesota's Evidentiary Rule. Therefore, EPA is approving the Evidentiary Rule submitted by the MPCA for inclusion in the State's SIP. The approval of this submittal into the SIP clarifies the types of testing and monitoring data that can be used for compliance demonstrations and enforcement.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. 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.

This approval does not create any new requirements, but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning state plans on such grounds. *Union Electric Co.* v. *EPA*., 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State or local law. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 1997.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(44) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(44) This revision provides for data which have been collected under the enhanced monitoring and operating permit programs to be used for compliance certifications and enforcement actions.

(i) Incorporation by reference.

(A) Minnesota Rules, sections 7007.0800 Subpart 6.C.(5), 7017.0100 Subparts 1 and 2, both effective February 28, 1995.

* * * * *

[FR Doc. 97–27129 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5029a, FRL–5904–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC RACT for Phillip Morris, Hercules, Virginia Power Station, and the Hopewell Regional Wastewater Treatment Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions establish and require volatile organic compound (VOC) reasonably available control technology (RACT) on six major sources located in Virginia. The intended effect of this action is to approve source-specific plan approvals and Consent Agreements that establish the above-mentioned RACT requirements in accordance with the Clean Air Act (the Act).

DATES: This action is effective November 28, 1997 unless notice is received on or before October 29, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Air, Radiation, and Toxics Division, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997, the Commonwealth of Virginia submitted formal revisions to its SIP. These revisions consist of plan approvals and Consent Agreements, signed by the companies and the Virginia Department of Environmental Quality, to establish and impose source-specific VOC RACT requirements for major sources of VOC. Today's rulemaking proposes to approve the source-specific VOC RACT requirements for six companies. All of the sources are located in the Richmond moderate ozone nonattainment area.

I. Background

Under the pre-amended Clean Air Act (i.e., the Act prior to the 1990 Amendments), ozone nonattainment areas were required to adopt RACT rules for VOC sources. EPA issued three sets of control technique guideline documents (CTGs), establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The Richmond, Virginia area was designated nonattainment under the pre-amended Act and was required to adopt RACT for all CTG categories as well as non-CTG VOC sources with a potential to emit 100 tons per year (TPY) or more. Under the 1990 amendments to the Act, amended sections 172(c)(1) and 182(a)(2), required the Richmond, Virginia nonattainment area to correct its RACT requirements in effect prior to enactment of the 1990 amendments. Virginia submitted those RACT corrections as SIP revisions on May 10, 1991 and June 20, 1991. Among the regulations in that SIP revision, was a provision (Rule 120–04–0407) establishing the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Northern Virginia and Richmond nonattainment areas not covered by an existing state adopted VOC control regulation. The RACT correction SIP was approved by EPA on March 31, 1994 (See 59 FR 15117). To implement Rule 120–04–0407, the Commonwealth must submit an enforceable RACT determination for all major VOC sources not otherwise controlled under existing VOC RACT regulations of the SIP.

Sections 182(b)(2) (A), (B) and (C) of the Act require moderate and above areas to adopt standards for all sources covered by any CTG document issued by the Administrator after 1990 and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 CAA amendments; and all major sources of VOC not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. This provision of the Act makes nonattainment areas that were previously exempt from RACT requirements ''catch up'' to requirements during the earlier period, and therefore, is known as the RACT catch-up requirement. Because Rule 120–04–0407 imposed RACT on all major VOC sources in the Northern Virginia and Richmond nonattainment areas on an individual basis, this rule partially satisfied the RACT catch-up requirement. On November 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emission control areas to coincide with the revised boundaries of the Richmond and Northern Virginia ozone nonattainment areas resulting from the 1990 amendments. This SIP was approved by EPA on March 12, 1997 (59 FR 52701). To satisfy the RACT correction and catch-up requirements under sections 182(a)(2) and 182(b)(2)

(A), (B) and (C), and implement Rule 120–04–0407, Virginia has submitted source specific VOC RACT determinations for the following six companies in the Richmond, Virginia ozone nonattainment area:

(1) Philip Morris-Blended Leaf—2301 Everett Street, Richmond;

(2) Philip Morris-Park 500 Facility—Chesterfield County;

(3) Philip Morris-Tobacco Manufacturing Center—3601 Commerce Road, Richmond;

(4) Virginia Electric and Power Station—Chesterfield County;

(5) Hercules Incorporated, Aqualon Division—Hopewell; and

(6) Hopewell Regional Wastewater Treatment Facility.

II. Summary of SIP Revision

The details of the RACT requirements for the sources can be found in the docket and accompanying technical support document (TSD). Below is a summary of the facility type and the applicable RACT requirements for each source. Each SIP revision consists of a Consent Agreement signed by the source and the Virginia Department of Environmental Quality. The Consent Agreements are enforceable documents which include a description of the RACT technologies, control efficiencies, operating parameters, monitoring and reporting requirements. For further details on the sources' processes and how RACT was determined, refer to the TSD associated with this rulemaking. EPA is approving revisions to the Virginia SIP pertaining to the determination of RACT for six major sources of VOC. This action is being taken under section 110 of the Act.

1. Philip Morris—Blended Leaf, Richmond

Philip Morris—Blended Leaf is a tobacco processing facility that has potential VOC emissions greater than 100 TPY. Tobacco by-products from other Philip Morris facilities are combined to form a continuous tobacco sheet at the Blended Leaf Plant. These by-products are combined with dry and liquid low-VOC flavorings, and mixed into a slurry. The slurry is dried in a natural gas-fired dryer, cut, and packed into hogsheads for shipment. There are three drying lines each consisting of two natural gas-fired dryers. The Plant operates 24 hours each day, seven days each week, and 50 weeks per year. Based on 1991 throughput data, the total uncontrolled stack VOC emissions from the facility were estimated to be 238.4 tons per year.

RACT as prescribed in the Consent Agreement, Registration Number 50080, dated February 27, 1996 is determined to be no controls as Virginia determined that add-on controls were not economically feasible or cost effective. The Consent Agreement does require the continued use of low-VOC flavorings as well as record keeping and reporting requirements.

2. Philip Morris—Park 500, Chesterfield

Philip Morris—Park 500 is a tobacco processing facility that has potential VOC emissions greater than 100 TPY. The tobacco processing facility consists of two separate, distinct facilities which are located on adjoining property: the Reconstituted Leaf (R/L) Plant and the Bermuda Hundred Facility. At the R/L Plant, all VOC emissions are generated primarily from the tobacco drying processes and from the raw materials blending area. The uncontrolled stack VOC emissions from the R/L Plant are estimated to be 143 tons per year. At the Bermuda Hundred Facility, all VOC emissions are generated primarily from the tobacco drying processes and from the application of final flavoring to the tobacco. The uncontrolled stack VOC emissions from the Bermuda Hundred Facility are estimated to be 236.4 tons per year.

RACT as prescribed in the Consent Agreement, Registration Number 50722, dated March 26, 1997 is determined to be no controls as Virginia determined that add-on controls were not economically infeasible or cost-effective.

3. Philip Morris, Tobacco Manufacturing Center, Richmond

Philip Morris, Incorporated is a cigarette manufacturing center that has potential VOC emissions greater than 100 TPY. RACT as prescribed in the Consent Agreement, Registration Number 50076, dated July 12, 1996 requires, among other provisions, that the VOC emissions from the flavor cylinders where high-VOC-emitting flavorings are applied and the aftercut dryers in Process Lines #1 and #2 shall be controlled by a thermal oxidation unit(s) having a destruction efficiency of at least 95% on a mass basis. Each thermal oxidization unit shall be equipped with a continuous temperature monitor, automatic control dampers which prevent the flow of VOC laden process exhaust air to each unit until the minimum temperature is attained, and a pressure gauge in the duct prior to the oxidation units) to continuously monitor and insure that a negative pressure is being maintained in the exhaust system. Data from the continuous monitoring devices shall be recorded as one-minute readings and reduced to 3-hour averages on a rolling basis. A minimum temperature requirement will be established using EPA Reference Method 25 within 180 days of initial startup of the thermal oxidation units.

If Philip Morris desires to reformulate any flavorings associated with the flavor cylinders and the aftercut dryers in Process Lines #1 and #2, the respective equipment in which the reformulated flavorings are implemented will be exempt from the thermal oxidation unit(s) provided the following conditions are met:

(1) Emissions resulting from any such change in formulation must be verified by stack sampling using appropriate EPA test methods and material balance.

(2) On a daily basis, Philip Morris shall track production and flavoring throughputs. Philip Morris must calculate the emissions, in pounds per day, emanating through the stack and the emissions that would have occurred on January 1, 1993 prior to the reformulation with the affected equipment being exhausted to the thermal oxidation unit(s). Philip Morris must compare the results of these two equations. Emissions from the reformulated flavoring must always be less than the emissions which would have been emanating had the reformulation had not occurred and the affected equipment were exhausted to the thermal oxidation unit(s).

Philip Morris shall maintain records of all operating parameters necessary to demonstrate compliance. Pre-RACT facility-wide uncontrolled emissions were calculated at 1250 TPY. Post-RACT facility-wide emissions are 684 TPY.

4. Virginia Power—Chesterfield Station, Chesterfield

Virginia Power—Chesterfield Station is an electric utility that has potential VOC emissions greater than 100 TPY.

RACT as prescribed in the Consent Agreement, Registration Number 50396, dated May 30, 1996 requires, among other provisions, that the VOC emissions from boilers 3, 4, 5, and 6 be good combustion practices. Compliance shall be demonstrated by Implementation of a Work Planning and Tracking System (WATS). Virginia Power shall maintain records of operation, malfunctions, continuous monitoring and all completed scheduled and unscheduled maintenance, with the exception of minor repairs initiated and performed by individual employees in the conduct of their routine duties. No additional controls were determined to be economically feasible or cost-effective. Both pre-RACT and post-

RACT annual VOC emissions calculate to 183.6 TPY.

5. Hercules, Incorporated—Aqualon Division, Hopewell

Hercules, Incorporated—Aqualon Division is a synthetic organic chemical manufacturing facility that has potential VOC emissions greater than 100 TPY. RACT as prescribed in the Consent Agreement, Registration Number 50363, dated July 12, 1996 is as follows:

1. VOC emissions from the Cloacal Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 96% on a mass basis, respectively, calculated monthly as a six-month rolling average. VOC flow from the Cloacal Process area shall be measured and the totalized flow recorded for each batch.

2. VOC emissions from the Ethyl cellulose (E.C.) Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 90% on a mass basis, respectively, calculated monthly as a six-month rolling average.

3. VOC emissions from the Carboxymethyl cellulose (CBC) Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 98% on a mass basis, respectively, calculated monthly as a six-month rolling average. For the CBC area, VOC still output shall be continuously measured and the totalized flow recorded once per shift.

4. VOC emissions from the Nitrosyl Process area shall be controlled by solvent recovery and process scrubbers having an overall control efficiency of at least 98% on a mass basis, respectively, calculated monthly as a six-month rolling average. For the Nitrosyl area, VOC still output shall be continuously measured and the totalized flow recorded once per shift.

5. VOC emissions from the Monochloroacetic Acid (MCA) Process area and the Technical Facility shall be controlled by solvent recovery and process scrubbers. Each area, the MCA Process area and the Technical Facility, shall not exceed 15 tons of VOCs per year.

Compliance from the Cloacal, E.C., CBC, and Nitrosyl process areas shall be demonstrated by specific equations designated in the Consent Agreement. Compliance for the MCA Process area and the Technical Facility require record keeping and reporting. Pre-RACT uncontrolled VOC emissions from this facility were calculated to be 246,743 TPY. Post-RACT controlled VOC emissions from this facility calculate to 5474 TPY.

6. Hopewell Regional Wastewater Treatment Facility, Hopewell

Hopewell Regional Wastewater Treatment Facility has potential VOC emissions greater than 100 TPY.

RACT as prescribed in the Consent Agreement, Registration Number 50735, dated May 30, 1996 requires, among other provisions, that the VOC emissions from the Grit Chambers/ Parshall Flume shall be controlled by a cover and vent. Total post-RACT emissions calculate to 225.6 TPY.

III. Final Action

EPA is approving all of the provisions in the plan approvals and Consent Agreements, for the six sources discussed above, submitted by the Commonwealth of Virginia as SIP revisions. All the Consent Agreements were effective on the date of signature by both signatory parties. The Consent Agreements do not contain expiration dates.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 28, 1997 unless, by October 29, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 28, 1997. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact settlement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 1997. Filing a petition for reconsideration by the Regional Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve VOC RACT determinations for six individual sources in Virginia as a revisions to the Commonwealth's SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 26, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(120) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(120) Revisions to the State Implementation Plan submitted on April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997 by the Virginia Department of Environmental Quality regarding non-CTG VOC RACT requirements for six sources:

(i) Incorporation by reference.

(A) Letters submitted by the Virginia Department of Environmental Quality transmitting source-specific VOC RACT determinations in the form of consent agreements on the following dates: April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997.

(B) Consent agreements:

(*1*) Philip Morris—Blended Leaf, City of Richmond, VA, Consent Agreement Registration No. 50080, effective on February 27, 1996.

(*2*) Philip Morris—Park 500, Chesterfield County, VA, Consent Agreement Registration No. 50722, effective on March 26, 1997.

(*3*) Philip Morris Tobacco Manufacturing Center, City of Richmond, VA, Consent Agreement Registration No. 50076, effective on July 12, 1996.

(*4*) Virginia Power—Chesterfield Station, Chesterfield County, VA, Consent Agreement Registration No. 50396, effective on May 30, 1996.

(*5*) Hercules Incorporated—Aqualon Division, City of Hopewell, VA, Consent Agreement Registration No. 50363, effective on July 12, 1996.

(*6*) Hopewell Regional Wastewater Treatment Facility, City of Hopewell, VA, Consent Agreement Registration No. 50735, effective on May 30, 1996.

(ii) Additional material.

(A) Technical Support Documents submitted as part of the RACT determinations in paragraph (c)(120) (i) of this section by the Commonwealth of Virginia on April 9, 1996, August 8, 16, 19, 23, 1996, and March 26, 1997.

[FR Doc. 97–27124 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–5904–8]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants: Approval of Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA is approving the delegation of authority to the State of New Mexico to implement and enforce the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The provisions of full authority apply to all of the NSPS and NESHAP promulgated by the EPA from February 1, 1995, through April 1, 1996. Partial authority covers all new and amended standards promulgated after these dates, except as follows. The delegation of authority, under this document, does not apply to: The sources located in Bernalillo County, New Mexico; the sources located on Indian lands as specified in the delegation agreement and in this document; the standards of performance for new residential wood heaters (subpart AAA) under 40 CFR part 60; and NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: October 14, 1997.

ADDRESSES: The New Mexico Environment Department's request and delegation agreement may be obtained by writing to one of the following addresses:

Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, telephone: (214) 665–7214.

Air Quality Bureau, New Mexico Environment Department (NMED), Harold Runnels Building, Room So. 2100, 1190 St. Francis Drive, Santa Fe, NM 87502, telephone: (505) 827–0042.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, telephone: (214) 665–7259.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with Sections 110, 111(c)(1) and 112 (l)(1) of the Clean Air Act (the Act) authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants. Authority for the NSPS and NESHAP programs was delegated to the State of New Mexico (except for sources located in Bernalillo County and on Indian lands) on March 15, 1985.

The State requested the EPA to update the delegation of authority to the State for the NSPS and NESHAP programs from February 1, 1995, through April 1, 1996. The State's request includes a revision of Air Quality Control Regulations (AQCR) 20 NMAC 2.77 and 20 NMAC 2.78 as adopted by the New Mexico Environmental Improvement Board. These revisions incorporated the Federal NSPS and NESHAP by reference through April 1, 1996. The effective date

of the Federal delegation for NSPS under section 111 will continue to be, as has been the case in the past, the EPA's letter of approval of the State's request for the NSPS delegation update.

The Title V **Federal Register** notice (see 59 FR 59656–59660, (November 18, 1994)) outlined the State's plans to continue to incorporate by reference the Federal section 112 requirements regarding hazardous air pollutants into the New Mexico Air Quality Control Regulations, and stated that the NMED's request for approval of the part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards. Based on approval of NMED's procedural mechanism for adopting Federal section 112 standards through incorporation by reference into the State's Part 70 Operating Permit Program, the EPA can continue to update the State's delegation of section 112 standards along with the update of section 111 NSPS. The effective date of the delegation for unchanged Federal standards under section 112 is the effective date of the State's rule after its adoption. In this case, the effective date is June 19, 1996.

Since review of the pertinent New Mexico laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS and NESHAP, EPA is delegating full authority to the State for NSPS and NESHAP standards promulgated from February 1, 1995, through April 1, 1996, and authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA, subject to conditions and limitations of the original delegation agreement dated March 15, 1985. It is important to note that no delegation authority is granted to the NMED for Bernalillo County and Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters and for 40 CFR part 61 for the radionuclide NESHAP's. Specifically, the subparts for which delegation is excluded are subpart B (National Emission Standards for Radon—222 Emissions from Underground Uranium Mines), subpart H (National Emission Standards for Radionuclide Emissions from Department of Energy Facilities), subpart I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by subpart H), subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants), subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), and subpart W (National Emission Standards for Radon—222 Emissions from Licensed Uranium Mill Tailings).

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60 and 61) should be submitted by sources located outside the boundaries of Bernalillo County and in areas outside of Indian lands, directly to the NMED, Harold Runnels Building, Room So. 2100, St. Francis Drive, Santa Fe, New Mexico 87502. Albuquerque/Bernalillo County is excluded from this action because this area is granted delegation authority under AQCR 30 NSPS and 31 NESHAP to the City of Albuquerque's Environmental Health Department. Sources located on Indian lands in the State of New Mexico should submit required information to EPA Region 6 office at the address given in this notice. All of the inquiries and requests concerning implementation and enforcement of the excluded standards under 40 CFR part 60, subpart AAA and 40 CFR part 61, subparts B, H, I, R, and W, in the State of New Mexico should be directed to the EPA Region 6 Office.

The Office of Management and Budget has exempted this information notice from requirements of section 6 of Executive Order 12866.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-Fuel steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Authority: This notice is issued under the authority of sections 101, 111, 112 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7412 and 7601).

Dated: September 24, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–27126 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5908–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Frit Industries Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Frit Industries Superfund site located in Walnut Ridge, Arkansas, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The EPA, in consultation with the Arkansas Department of Pollution Control and Ecology, has determined that all appropiate RCRA response activities conducted at the site to date and scheduled in the future are enforceable and have been and will remain protective of the public health, welfare, and the environment. Moreover, this deferral to RCRA corrective action authorities is appropriate.

EFFECTIVE DATE: October 14, 1997.

ADDRESSES: The comprehensive information on the site is available at the local information repositories located at: Felix Goodson Library, Williams Baptist College, Walnut Ridge, Arkansas 72446. The telephone number for the hours of operation at Felix Goodson Library is (501) 886–6741. Requests for comprehensive copies of documents should be directed formally to the Arkansas Department of Pollution Control and Ecology, Attn: Mr. Clark McWilliams, RCRA State Project Manager, 8001 National Drive, Little Rock, Arkansas 72219. Mr. McWilliams' telephone number is (501) 682–0850 for additional information.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, Remedial Project Manager, US EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Frit Industries Site, Walnut Ridge, Arkansas. A Notice of Intent to Delete for this site was published in the **Federal Register** on July 25, 1997 (62 FR 40029). The closing date for public comment was August 25, 1997. The EPA received no comments during the comment period. The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of the most serious of those sites. Sites on the NPL may be the subject of remedial response actions financed using the Hazardous Substance Response Trust Fund (Fund). Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP, provides that in the event of a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste, Intergovernmental relations, Superfund.

Dated: September 30, 1997.

Jerry Clifford,

Acting Regional Administrator, Region 6.

For the reasons set out in the preamble, 40 CFR part 300, is amended as follows:

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for ''Frit Industries, Walnut Ridge, Arkansas''.

[FR Doc. 97–27022 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100697B]

Atlantic Tuna Fisheries; Recreational Fishery Adjustments

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

ACTION: Quota adjustment; fishery reopening; catch limit adjustment.

SUMMARY: NMFS adjusts the Angling category subquota for large school/small medium Atlantic bluefin tuna (ABT) fishery by transferring 10 mt from the Angling category subquota for school ABT, for a revised Angling category subquota of 161 mt for the large school/small medium size classes. NMFS reopens the Angling category fishery for large school and small medium ABT in the northern area (New Jersey and states north). The daily catch limit for the reopening is two large school ABT and one small medium ABT per vessel. This action is being taken to ensure reasonable fishing opportunities in the northern area without risking overharvest of this category.

DATES: The quota and catch limit adjustments, and fishery reopening are effective October 10, 1997, until 11:30 pm, October 19, 1997, or any prior date of closure or adjustment as necessary, to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347, or Mark Murray-Brown, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between categories after considering certain factors. The AA is authorized to make adjustments to quotas involving transfers between categories if, during a single year quota period, it is determined, based on landing statistics, present year catch rates, effort, and other available information, that any category, is not likely to take its entire quota as previously allocated for that year.

Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Angling Category Quota Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 108 mt of school ABT and 151 mt of large school/small medium ABT to be harvested from the regulatory area by vessels fishing under the Angling category quota during calendar year 1997 (62 FR 35107, June 30, 1997). The school ABT quota is further subdivided into 51 mt for the waters off Delaware and states south and 57 mt for the waters off New Jersey and states north. The large school/small medium ABT quota is further subdivided into 71 mt for the waters off Delaware and states south and 80 mt for the waters off New Jersey and states north.

Based on preliminary catch estimates, NMFS closed the large school/small medium ABT fishery for the southern area on July 20, 1997 (62 FR 35447, July 1, 1997) and for the northern area on October 1, 1997 (62 FR 50887, September 29, 1997). Information collected by NMFS from dockside and telephone surveys through September 28, 1997, indicates that about 11 mt of school ABT and 8 mt of large school/small medium ABT remain of the northern area subquotas. In order to provide for a reasonable opportunity to harvest the Angling category quota and collect scientific information needed to monitor the ABT stock, NMFS has determined that a reopening is warranted.

After considering the previously cited factors for making transfers between categories, the risk of overharvest of school bluefin which are subject to an

ICCAT-recommended limit, the current availability of fish in each size class, and the regional distribution of catch to date, the AA has determined that 10 mt of the remaining northern area school ABT quota should be transferred to the northern area large school/small medium Angling category fishery. Thus, the Angling category subquota for large school/small medium ABT is adjusted to 161 mt and the northern area Angling category subquota for large school/small medium ABT is adjusted to 90 mt.

Fishery Reopening

Given the revised quota, availability of fish, and recent information on catch and effort in the northern area Angling category fishery (waters off New Jersey and states north), NMFS projects that the remaining quota for large school and small medium ABT could be landed in less than 2 weeks. Therefore, NMFS reopens the Angling category for large school and small medium ABT in the northern area from October 10 until October 19, 1997. Fishing for, retaining, possessing, or landing any large school or small medium ABT, measuring 47 inches to less than 73 inches (69 cm to less than 185 cm), must cease at 11:30 p.m. local time on October 19, 1997. The northern area fishery for school ABT was previously closed for the 1997 season (62 FR 50887, September 29, 1997) and remains closed.

Catch Limit Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for improved scientific monitoring of the catch spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

For the duration of the reopening, the daily catch limit is adjusted to two large school ABT (measuring 47 inches to less than 59 inches; 120 cm to less than 150 cm)) and one small medium ABT (measuring 150 cm to less than 185 cm) per Angling category vessel. Anglers aboard Charter/Headboat and General category vessels, when authorized to engage in recreational fishing for large school and small medium ABT, are subject to the same rules as anglers aboard Angling category vessels.

Further Adjustments

Depending on the level of fishing effort and catch rates of ABT, NMFS may determine that a subsequent catch limit adjustment or revised closure date is necessary during this period. A revised closure date or adjustment to the daily catch limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Highly Migratory Species Information Line at 301–713–1279 or 508–281–9305 for updates on quota monitoring, closures, and catch limit adjustments.

Fishermen are reminded that all ABT taken under the Angling category quota must be reported within 24 hours of landing using the Catch Reporting System (1–888–USA-TUNA). Note that the fishery for school, large school, and small medium ABT in the southern area closed effective August 11, 1997 (62 FR 44423, August 21, 1997), and is therefore not affected by this reopening and catch limit adjustment. In addition, landing cards submitted to NMFS indicate that the full quota has not yet been attained in the Angling category fishery for trophy class ABT (73 inches (205 cm) and greater), and that fishery remains open in both the northern and southern areas until further notice.

Classification

This action is taken under 50 CFR 285.20, 285.22, and 285.24 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 7, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–27071 Filed 10–8–97; 10:49 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 198
Tuesday, October 14, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Workshops

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of workshops.

SUMMARY: The Nuclear Regulatory Commission has initiated a rulemaking for a comprehensive revision of its regulations governing the medical use of byproduct material in 10 CFR part 35. As part of this rulemaking, the Commission intends to solicit the active input of the various interests that may be affected by the rulemaking early in the rulemaking process. One of the mechanisms that will be used to obtain the comments and recommendations from affected interests will be the convening of workshops to discuss the fundamental approaches and issues that must be addressed in the revision of part 35. The first NRC public workshop will be held in Philadelphia, Pennsylvania on October 28, 29, and 30, 1997. The second NRC public workshop will be held in Chicago, Illinois on November 12, 13, and 14, 1997. Both workshops will be open to the public. Francis X. Cameron, Special Counsel for Public Liaison, in the Commission's Office of the General Counsel, will be the convener and facilitator for the workshops.

DATES: The first workshop will be in Philadelphia on October 28, 1997, from 9 a.m. to 5 p.m.; October 29, 1997, from 8:30 a.m. to 5 p.m.; and October 30, 1997, from 8:30 a.m. to noon. The second workshop will be in Chicago on November 12, 1997, from 9 a.m. to 5 p.m.; November 13, 1997, from 8:30 a.m. to 5 p.m.; and November 14, 1997, from 8:30 a.m. to noon.

ADDRESSES: The Philadelphia workshop will be held at the Korman Suites Hotel, 2001 Hamilton Street, Philadelphia, PA 19130, 215–569–7000. The Chicago workshop will be held at the Ramada Congress Hotel, 520 South Michigan Avenue, Chicago, IL 60605, 312–427–3800.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, Nuclear Regulatory Commission, Washington D.C. 20555, Telephone: 301–415–1642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has examined the issues surrounding its medical use program in great detail during the last four years. This process started with NRC's 1993 internal senior management review report; continued with the 1996 independent external review report by the National Academy of Sciences, Institute of Medicine; and culminated in NRC's Strategic Assessment and Rebaselining Project (SA). In particular, medical oversight was addressed in the SA Direction-Setting Issue Paper Number 7 (DSI 7) (released September 16, 1996). In its ''Staff Requirements Memorandum (SRM)—COMSECY–96–057, Materials/Medical Oversight (DSI 7),'' dated March 20, 1997, the Commission directed the staff to revise part 35, associated guidance documents, and, if necessary, the Commission's 1979 ''Medical Policy Statement.'' The Commission SRM specifically directed the restructuring of part 35 into a risk-informed, more performance-based regulation.

A June 30, 1997, SRM informed the staff of the Commission's approval, with comments, of the staff's proposed program in SECY–97–131, Supplemental Information on SECY–97–115, ''Program for Revision of 10 CFR part 35, 'Medical Uses of Byproduct Material,' and Associated **Federal Register** Notice,'' dated June 20, 1997.

After Commission approval of the staff's program to revise part 35 and associated guidance documents, the staff initiated the rulemaking process, as announced in 62 FR 42219 (August 6, 1997). The rulemaking is being conducted using a group approach. A Working Group and Steering Group, consisting of representatives of NRC, the Organization of Agreement States, and the Conference of Radiation Control Program Directors, have been established to develop rule text alternatives, rule language, and associated guidance documents. State participation in the process is intended to enhance development of corresponding rules in State regulations, to provide an opportunity for early State input, and to allow State staff to assess potential impacts of NRC draft language on the regulation of non-Atomic Energy Act materials used in medical diagnosis, treatment, or research, in the States.

As directed by the Commission, the staff has developed alternatives, with draft regulatory text, for the more significant issues associated with the regulation of the medical use of byproduct material. These alternatives to regulation in specific areas are intended to help focus the discussion during workshops and meetings during the Fall of 1997 and to assist the staff in developing the text of the proposed rule. Alternative regulatory text has been developed for: (a) The quality management program; (b) training and experience for authorized users, radiation safety officers, and medical physicists; (c) radiation safety committee; (d) patient notification of reportable events; and (e) the threshold for reportable events. In addition, alternative recommendations for revision of NRC's 1979 Medical Policy Statement have been developed. The alternatives represent a broad range of possibilities and are being provided to stimulate input from members of the public in an effort to encourage all interested parties to contribute to the development of the revised regulation. The staff has not selected any alternatives at this time and is open to additional alternatives that might be proposed, which are consistent with the guidance provided by the Commission.

Workshops

The Commission believes that it is important for interests affected by the medical use rulemaking to not only have an early opportunity to comment on the rulemaking issues, but also to have an opportunity to discuss the rulemaking issues with one another and the Agency. Accordingly, the Commission is convening two public workshops where the representatives of the interests that may be affected by the rulemaking will have an opportunity to discuss the rulemaking issues. Although the workshops are intended to foster a clearer understanding of the positions and concerns of the affected interests, as

well as to identify areas of agreement or disagreement, it is not the intent of the workshop process to develop a consensus agreement of the participants on the rulemaking issues.

To have a manageable discussion, the number of participants in each workshop will be limited. The Commission, through the facilitator for the workshop, will attempt to ensure participation by the broad spectrum of interests that may be affected by the rulemaking. These interests include: Nuclear medicine physicians; physician specialists, such as cardiologists and radiologists; medical physicists; medical technologists; nurses; medical education and certification organizations; radiopharmaceutical interests; hospital administrators; patients rights advocates; Agreement States; Federal agencies; and experts in risk analysis. Other members of the public are welcome to attend, and the public will have the opportunity to comment on the rulemaking issues and the workshop discussions at periodic intervals during the workshops. Questions about participation may be directed to the facilitator, Francis X. Cameron.

To ensure that each workshop addresses the issues in a consistent manner, the workshops will have a common pre-defined scope and agenda focused primarily on the alternatives, with draft regulatory text, developed by the Part 35 Working and Steering Groups. However, the workshop format will be sufficiently flexible to allow for the introduction of additional related issues that the participants may want to raise. The workshop commentary will be transcribed and made available to the participants and the public.

Copies of the issue papers developed by the staff will be provided to the workshop participants. Also, copies will be available for members of the public in attendance at the workshops, as well as available through NRC's Public Document Room (U.S. Nuclear Regulatory Commission, Attention: NRC Public Document Room, Washington, DC 20555–0001) and on the Internet via NRC's Technical Conference Forum (http://techconf.llnl.gov/noframe.html).

Public input is solicited during the development of the proposed rule but, to be most helpful, should be received by March 1, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission only is able to ensure consideration of comments received on or before this date. Written input and suggestions can be sent to Secretary, Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand-deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Dated at Rockville, Md., this 6th day of October 1997.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–27084 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE38

Acceptability of Plant Performance for Severe Accidents; Scope of Consideration in Safety Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is withdrawing an advance notice of proposed rulemaking that outlined alternative approaches to generic regulation addressing the challenges from severe accidents for future light water reactors. The Commission has decided that a rule change to provide generic requirements for performance during postulated severe accidents is not warranted at this time. The basis for this decision is that a purpose for the rule was to provide guidance for future designs and to facilitate then ongoing design certification rulemaking. With all current design certification rulemaking either complete or nearing completion and future applicants not foreseen, expenditure of the resources to promulgate the rule is not warranted.

FOR FURTHER INFORMATION CONTACT: Charles E. Ader, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5622.

SUPPLEMENTARY INFORMATION: On September 28, 1992, (57 FR 44513), the Commission published an advance notice of proposed rulemaking (ANPRM) to consider amending its regulations to provide generic requirements to address the challenges from severe accidents for future light water reactors. The advance notice of proposed rulemaking outlined three alternative approaches to the specification of requirements addressing severe accident performance. The first alternative, described as a hardware oriented rule, would specify reasonable design features or design characteristics directed towards prevention or mitigation of explicitly identified risk significant phenomena. The risk significant phenomena identified were: hydrogen generation, transport and combustion, high pressure melt ejection, core concrete interactions and basemat ablation, long term containment overpressurization, steam explosions from fuel-coolant interactions, and containment bypass. These phenomena represent the potential contributors to containment failure or bypass and thus the mechanisms for large offsite radioactive release. Alternative 2, described as a phenomena oriented rule, was a modification of the first alternative wherein an overall containment performance goal would be specified along with the phenomena to be considered, as identified above. The designer would then be required to perform analyses of the impact of those phenomena and develop and propose the design features to meet the goal. Regulatory guides would address analytical methods, acceptance criteria and design criteria for hardware. This approach, similar to Alternative 1, would be an overlay on the existing design basis specified in 10 CFR part 50 and justified on an enhanced safety basis. The third alternative, described as a general design criteria (GDC) oriented rule, involved development of a set of new design requirements to address specific challenges and issued as changes to Appendix A, ''General Design Criteria'' to 10 CFR part 50. Each new design criterion would describe the nature of the challenges as well as the success criterion and involve the development of Regulatory Guides to provide additional guidance on analysis methods and assumption. This approach was similar to the other alternatives, especially Alternative 2, but differs in that the existing 10 CFR part 50 design basis would be modified to include severe accidents.

A primary purpose for the generic severe accident rulemaking was to add consistency and standardization to the resolution of severe accident issues for future designs based on current technical information. While, in general, consistency among many design reviews is best achieved through generic rules, as a practical matter, since the number of new applicants is likely to remain quite limited, it is more efficient to proceed with design-specific reviews. In fact, the Commission is not aware of any new applicants in the foreseeable future.

Another purpose of the generic severe accident rulemaking, i.e., facilitation of design certification rulemaking, has been rendered moot by the experience gained in design certification rulemakings. The design certification rulemakings are completed for the General Electric Advanced Boiling Water Reactor and ABB–CE System 80+ and the only design currently under review is the Westinghouse AP600. The resolution of severe accident design specific requirements would be set forth in the AP600 design control document and approved in the AP600 design certification rulemaking.

While certain arguments in favor of generic rulemaking (i.e., promoting consistency and standardization in the resolution of severe accident issues and providing guidance to future LWR designers and applicants) continue to apply in varying degrees, practical aspects limit the need for such an activity. At this point, given the lack of any new potential plant or design applicants, the Commission believes that the benefits of generic rulemaking do not justify the allocation of resources to proceed with the development of new regulations addressing severe accidents.

Upon consideration of the potential value of a generic rule, the status of the review and design certification of future reactors, and the potential resource requirements, the Commission believes that the value in pursuing generic severe accident rulemaking does not warrant the resource expenditure. While the Commission does not perceive the need for generic rulemaking in the foreseeable future, should conditions change regarding potential applicants, the Commission would reassess the merits of rulemaking at that time.

For the reasons discussed, the Commission is withdrawing the ANPRM.

Dated at Rockville, Md. this 7th day of October, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–27082 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 933 and 935

[No. 97–60]

RIN 3069–AA69

Eligibility for Membership and Advances

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend certain of its regulations relating to combination business or farm properties on which a residence is located. The amendments would eliminate the requirement that at least 50 percent of the value of such properties be attributable to the residential portion of the property (50 percent test). The amendments are intended to assist smaller depository institutions, particularly those located in rural areas, to qualify for Federal Home Loan Bank (Bank) membership and, once admitted, to provide the collateral necessary to obtain advances.

DATES: The Finance Board will accept comments on this proposed rule in writing on or before November 13, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, Office of Policy, (202) 408–2842, or Neil R. Crowley, Associate General Counsel, Office of General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 4(a) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1424(a), establishes the eligibility criteria for depository institutions to become members of the Federal Home Loan Bank System (Bank System). Section 10(a) of the Bank Act, *id.* 1430(a), authorizes a Bank to make secured advances to its members and specifies the types of collateral that a Bank may accept when originating or renewing an advance. With respect to both membership criteria and eligible collateral, the regulations of the Finance Board permit the use of loans that are secured by business or farm properties on which there is a residence, but only if the value of the residential portion equals or exceeds 50 percent of the value of the entire parcel. The Finance Board is concerned that those regulations may be overly restrictive and therefore is proposing to amend them, as described below.

A. Membership

Section 4(a)(2) of the Bank Act requires, in part, that an insured depository institution have ''at least 10 percent of its total assets in residential mortgage loans'' in order to be eligible for membership. *Id.* 1424(a)(2). The Finance Board has defined ''residential mortgage loan'' to include, among other things, a ''home mortgage loan.'' 12 CFR 933.1(bb). The Finance Board has defined ''home mortgage loan'' to include, in part, a loan secured by a first lien on ''combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property.'' *Id.* § 933.1(n)(1)(iii). The term ''combination business or farm property'' means real property for which the value is attributable to residential, and business or farm uses. *Id.* § 933.1(i).

B. Collateral for Advances

Section 10(a)(1) of the Bank Act requires a Bank making or renewing an advance to its members to maintain a security interest in certain specified types of collateral, among which are ''first mortgages on improved residential property.'' 12 U.S.C. 1430(a)(1). The Finance Board has defined ''improved residential real property'' to mean ''residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.'' 12 CFR 935.1. The Finance Board has defined ''residential real property'' to include, among other things, ''combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property.'' *Id.* The term ''combination business or farm property'' means ''real property for which the total appraised value is attributable to the combination of residential, and business or farm uses.'' *Id.*

II. Analysis of the Proposed Rule

The Finance Board believes that community depository institutions, particularly those located in rural areas, often are essential to the housing finance activities and the broader economic well-being of the communities they serve. Such institutions may have less demand for conventional single and multi-family mortgage credit and their service areas may be characterized by low population density and a low level of economic activity. In such circumstances, those institutions may not be able to originate a substantial number of residential first mortgage loans. Moreover, many loans originated by rural banks may be made on the security of family farms, which

are in part residential but which often cannot meet the 50 percent test.

The existing regulations preclude a Bank from recognizing or accepting a first mortgage loan on combination property unless the value of the residential portion equals or exceeds 50 percent of the total value of the property. That requirement may hinder the ability of community depository institutions, particularly those in rural areas, to become members of the Bank System or, for those that are able to join, to take full advantage of the opportunity to obtain advances. The Finance Board believes that the membership and advances regulations should recognize the unique aspects of the lending practices of such institutions, and has determined that it is appropriate to reconsider whether to retain the 50 percent test in either the membership or collateral regulation.

There is nothing in the Bank Act that mandates that the residential portion of such combination properties constitute a specified percentage of the property's total appraised value. With respect to eligibility for membership, the only statutory mandate is that the loan must be secured by real estate on which there is a residence. 12 U.S.C. 1422 (5), (6). With respect to the use of whole first mortgages as collateral for advances, the only statutory mandate is that they attach to real property that previously has been improved. Id. 1430(a)(1). Subject to those requirements, the Finance Board has the authority to determine what types of combination property may be considered to be ''residential'' for purposes of the ''residential mortgage loan'' aspect of the eligibility requirements and for the ''residential real property'' aspect of the collateral requirements. Because the 50 percent test is more restrictive than the Bank Act requires, and may well exclude from consideration a significant number of loans that are secured, at least in part, by a home, the Finance Board is proposing to eliminate the ''50 percent'' requirement in both regulations.

The proposed rule would amend the definition of ''home mortgage loan'' in the membership regulations to allow a loan secured by a combination property to be considered a ''home mortgage loan'' if a permanent structure is located on the property and it actually is used as a residence. See 12 CFR 933.1(n)(1)(iii). The proposed rule would make the same changes to the definition of ''residential real property'' in the collateral provisions of the advances regulation. See id. § 935.1. Eliminating the 50 percent requirement should allow a greater number of loans secured by combined use assets to be considered ''residential mortgage loans'' or ''improved residential property,'' thus easing the membership eligibility and collateral requirements, respectively. The definitions would exclude any farm or business property that only occasionally is used for residential purposes, such as temporary, migrant, or seasonal housing, because such properties lack the characteristics of permanence and regular residential use generally associated with typical combination properties, such as a family farm or a family business.

The Finance Board believes that any additional risks that might arise if such mortgage loans are used as collateral for advances should be adequately managed in accordance with the current provisions of the advances regulation. Among other things, the advances regulation requires the Banks to establish written procedures for determining the value of collateral, and to follow those procedures in ascertaining the value of a particular asset offered as collateral. The regulation also permits the Banks to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the Bank deems necessary. Id. § 935.12. Rural lending often requires collateral valuation practices that may differ significantly from those typically employed in lending on the security of one-to-four family homes. The Finance Board expects that if the proposed amendments are adopted as a final rule each Bank will review its collateral valuation procedures, and will amend them as necessary to reflect the changes made by the amendments, before accepting as collateral any newly authorized combination properties. The Finance Board also expects that the Banks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral, taking into account the additional risks inherent in rural lending and each Bank's own capability to evaluate those risks.

With respect to the advances regulation, the Finance Board requests comments on whether elimination of the percentage requirement might expose the Banks to any undue risk of loss should a Bank need to liquidate the mortgage loans it holds as collateral. For example, the value of a mortgage on a farm property, even one on which there is a residence, may be more volatile than the value of a mortgage on a one-to-four family home, reflecting the greater volatility of the value of the underlying property. In addition, a mortgage on a combination property may be less liquid than a mortgage on a one-to-four family home. The Finance Board solicits comments on whether it should address these issues through regulation, such as by retaining a percentage of value requirement for collateral purposes, albeit at a level less than the 50 percent test. The Finance Board also solicits comments on whether there are apt to be any practical difficulties in implementing the proposed definitions. For example, will a member's loan files for a loan secured by farm property necessarily indicate whether the farm property also includes a residential structure and, if so, whether it actually is used as a residence?

The proposed rule also would amend § 933.1(bb) by adding a new paragraph (8) that would include as ''residential mortgage loans'' for membership purposes any loans that, if made by a member, would satisfy the statutory and regulatory requirements for loans made under the Community Investment Program (CIP) or under the community investment cash advance provisions of the Bank Act. The community investment cash advance program is a cash advance program that may be established by the Banks under section 10(j)(10) of the Bank Act, and includes the CIP, a program of ''community-oriented mortgage lending'' required by section 10(i) of the Bank Act. 12 U.S.C. 1430 (i), (j)(10). ''Community-oriented mortgage lending'' is defined as lending for homeownership, multifamily housing and commercial and economic development that benefits certain targeted populations or neighborhoods. *Id.* 1430(i). Under this provision, if the purpose of a loan were to meet the statutory standards, including any future regulatory standards, for these loan programs, the loan could be considered for purposes of the membership criteria. The amendment would not require that the transaction also result in a loan that is eligible for collateral under the advances regulation. The effect of this provision would be to allow such assets to be considered as residential mortgage loans for purposes of eligibility for membership, and would conform the membership regulation more closely to the advances regulation, which already includes loans financed by CIP advances within the definition of ''residential housing finance assets.'' See 12 CFR 935.1.

III. Regulatory Flexibility Act

The proposed rule would not impose any additional reporting, recordkeeping, or compliance requirements on prospective or current Bank members.

Although the Finance Board anticipates that the proposed rule will be of benefit primarily to small depository institutions, it will not have a disproportionate impact on small entities. Therefore, in accordance with the Regulatory Flexibility Act, the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information, as defined by the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 933

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, parts 933 and 935 of the Code of Federal Regulations as follows:

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

2. Amend § 933.1 by revising paragraph (n)(1)(iii), removing ''or'' at the end of paragraph (bb)(6)(iii), removing the period at the end of paragraph (bb)(7) and adding ''; or'' in its place, and adding paragraph (bb)(8) to read as follows:

§ 933.1 Definitions.

* * * * *

(n) *Home mortgage loan* * * *

(1) * * *

(iii) Combination business or farm property, on which is located a permanent structure actually used as a residence, other than for temporary or seasonal housing; or

* * * * *

(bb) *Residential mortgage loan* * * *

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Bank Act, or the regulatory requirements established for any community investment cash advance program authorized by section 10(j)(10) of the Bank Act.

* * * * *

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

2. Amend § 935.1 by revising paragraph (1)(v) in the definition of ''Residential real property'' to read as follows:

§ 935.1 Definitions.

* * * * *

Residential real property * * *

(1) * * *

(v) Combination business or farm property, on which is located a permanent structure actually used as a residence, other than for temporary or seasonal housing.

* * * * *

Dated: September 10, 1997.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97–26893 Filed 10–10–97; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Title II of Public Law 104–208 (September 30, 1996), entitled the ''Small Business Programs Improvement Act of 1996'', made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Company program, these changes include provisions affecting capital requirements, Leverage eligibility and fees, and the status of Section 301(d) Licensees. This proposed rule would implement the statutory provisions; in addition, it would make various technical corrections and clarifications, as well as changes intended to improve the fairness and flexibility of the regulations.

DATES: Comments must be submitted on or before November 13, 1997.

ADDRESSES: Written comments should be addressed to Don A. Christensen, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, S.W., Suite 6300, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: This proposed rule would implement the provisions of Title II of Public Law 104–208 (September 30, 1996) which relate to small businesses investment companies (SBICs). This rule would also make certain other substantive changes, clarifications and technical corrections to the regulations governing SBICs, including those concerning portfolio diversification, Cost of Money, and the computation of distributions to be made by SBICs that have issued Participating Securities.

Section 301(d) Licensees

Prior to October 1, 1996, an SBIC program applicant could be licensed under either section 301(c) or section 301(d) of the Small Business Investment Act of 1958, as amended (Act). A Section 301(d) Licensee, also known as a ''specialized SBIC'' or ''SSBIC'', agreed to invest only in businesses owned and controlled by socially or economically disadvantaged individuals. In return, a Section 301(d) Licensee received certain benefits not available to other SBICs, such as eligibility for certain types of subsidized Leverage (as defined in § 107.50).

Effective October 1, 1996, section 208(b)(3) of Public Law 104–208 repealed section 301(d) of the Act. However, the repeal provision was accompanied by the following language: ''The repeal * * * shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act.''

This proposed rule would revise several sections in part 107 to implement this statutory change. The revisions would eliminate provisions relating to the licensing of new SSBICs while retaining rules governing the operations of existing SSBICs.

Thus, in § 107.50, a ''Section 301(d) Licensee'' would be defined as ''a company licensed prior to October 1, 1996 under section 301(d) of the Act as in effect on the date of licensing, that may provide Assistance only to Disadvantaged Businesses.'' Current § 107.110, which deals with organization of a section 301(d) license applicant, would be removed. Similarly, § 107.120 would be revised by

eliminating references to the licensing of an SSBIC to operate as the subsidiary of another Licensee or group of Licensees. Any existing SSBIC which was licensed as a subsidiary would be permitted to continue its operations under the same conditions as before; however, the proposed rule would not allow an existing SSBIC that is not already a subsidiary of another Licensee to become one. SBA has noted no demand on the part of existing Licensees to reorganize in this fashion.

The proposed revision of § 107.230(d)(4) would eliminate future use of the provision which allowed Section 301(d) Licensees to include in their Private Capital, without limitation, funds indirectly obtained from State or local government sources. Under the proposed rule, such funds would be included in Private Capital only if they were invested in or committed in writing to the Licensee prior to October 1, 1996. Otherwise, Section 301(d) Licensees would be limited to State and local government funds equal to 33 percent of their Regulatory Capital under current § 107.230(d)(3), which applies to all Licensees. This change is necessary to bring the regulations into conformity with the Act as amended by Public Law 104–208.

Other proposed changes reflect amendments to the Act which eliminated subsidized SBA Leverage. Such Leverage was previously available to SSBICs in the form of Debentures with an interest rate subsidy or Preferred Securities with a 4 percent dividend. Although subsidized Leverage can no longer be issued, the Act does not require SSBICs to prepay or redeem such Leverage prior to its scheduled maturity. In addition, an SSBIC may apply for any type of non-subsidized Leverage (Debentures or Participating Securities) for which it is eligible.

To implement these changes, current §§ 107.1100 and 107.1110 would be condensed into proposed § 107.1100. The proposed section would eliminate the separate descriptions of the types of Leverage available to Section 301(c) and Section 301(d) Licensees and would eliminate all references to subsidized Leverage.

SBA is also proposing revisions to § 107.1160 in order to conform with the Act. The entire section, which sets forth conditions governing the issuance of Leverage by a Section 301(d) Licensee, would apply only to Leverage issued on or before September 30, 1996. After that date, a Section 301(d) Licensee would be eligible to apply for Leverage under § 107.1150, subject to the same terms and conditions as other Licensees.

Similarly, the proposed revisions to the definition of ''Preferred Securities'' in § 107.50 and to §§ 107.1400, 107.1420 and 107.1430 reflect the fact that SBA's authority under the Act to purchase Preferred Securities ceased as of October 1, 1996. The appropriation of funds for such securities actually ended as of October 1, 1995, but some Preferred Securities were issued in fiscal year 1996 by Licensees drawing against SBA's commitments of fiscal year 1995 funds.

Finally, the provisions of current § 107.1350 which allow a Section 301(d) Licensee to retire certain Debentures by issuing Preferred Securities would be eliminated. The remainder of the section, dealing with the retirement of Debentures through the issuance of Participating Securities, would be redesignated as § 107.1585 and would apply to both SBICs and SSBICs.

Common Control

''Common Control'' as defined in § 107.50 currently means ''a condition where two or more Licensees, either through ownership, management, contract, or otherwise, are under the Control of one group or Person.'' However, the defined term as used in paragraphs (4) and (5) of the definition of ''Associate'' is clearly intended to refer to Persons other than Licensees. To accommodate this usage, the proposed rule would revise the Common Control definition to refer to ''two or more Persons'' rather than ''two or more Licensees''. The portion of the definition under which certain circumstances establish a presumption of Common Control would continue to apply only to two or more Licensees.

Management and Ownership Diversity

Section 208(c)(3) of Public Law 104–208 amended the Act to require that new SBICs have diversity between management and ownership. For any SBIC licensed on or after September 30, 1996, SBA must ensure that the management ''is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.'' SBA has required diversity between management and ownership since 1994 for Participating Securities issuers and since 1996 for other new leveraged Licensees. Therefore, in response to the new statutory requirement, SBA is proposing only minor changes to improve the effectiveness of § 107.150.

Under current § 107.150(a), a Licensee or license applicant can demonstrate diversity if at least 30 percent of its Regulatory Capital is held by at least three shareholders or limited partners (or one acceptable Institutional Investor) unrelated to management. Specifically, these investors cannot be Associates of the Licensee or applicant, or Affiliates of any of its Associates. The proposed rule would retain these concepts, but would eliminate the phrase ''Affiliate of an Associate''. Instead, proposed § 107.150(a) would specify that to qualify for diversity purposes, an investor must not be an Associate of the Licensee or applicant and must not ''Control, be Controlled by, or be under Common Control with'' an Associate. SBA does not intend for this language to be substantively different from the current language, but believes that readers may find it easier to understand. In addition, the proposed rule would address certain other characteristics of ''diversity investors'' which are not covered in the current regulation, but which SBA considers important.

Proposed § 107.150(a) would specify that the investors relied upon to satisfy the diversity requirement cannot be Affiliates of one another. SBA believes that if such investors are related parties, the requirement that there be at least three of them is rendered essentially meaningless. The proposed rule also would give SBA discretion to reject for diversity purposes an investor whose ownership interest is not significant, either in terms of absolute dollars or percentage of ownership. This provision underscores the purpose of the diversity rules, which is to encourage the presence of investors who are likely to have a serious interest, similar to SBA's, in the fair and prudent management of the SBIC.

The proposed changes reflect policies which SBA has been developing in its review of license applications. In particular, SBA has used informal internal guidelines to evaluate whether a proposed investor's interest is substantial enough to qualify for diversity purposes. SBA is continuing to refine these guidelines and expects to incorporate them into its standard operating procedures.

Capital Requirements

Under the Act as amended by section 208(c) of Public Law 104–208, SBICs licensed on or after October 1, 1996 must meet increased minimum capital requirements. Previously, the statutory minimum capital requirement was $2.5 million. The new requirements would be implemented in proposed § 107.210, which combines and revises elements of current §§ 107.210 and 107.220. Proposed § 107.210(a)(1) would require

a company that does not wish to be eligible to issue Participating Securities to have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA would be able to license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant meets certain conditions set forth in the proposed regulation. As mandated by the Act, this exception is limited to those instances where ''special circumstances and good cause'' can be shown.

Proposed § 107.210(a)(2) contains essentially the same language as the current § 107.220(a). It would require a company licensed on or after October 1, 1996, that wishes to be eligible to apply for Participating Securities to have Regulatory Capital of at least $10,000,000, with a permitted exception for an applicant which demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount (but under no circumstances less than $5,000,000). SBA regulations have required this level of Regulatory Capital for Participating Securities issuers since 1994.

The proposed rule would not permit prospective Participating Securities issuers to be licensed pursuant to the exception available to other applicants, under which a license may be granted with Regulatory Capital as low as $3,000,000. For applicants planning to issue Participating Securities, SBA believes that the ability to meet the standard minimum capital requirement is an important indicator of the credibility of management. SBA also doubts that any such applicant can demonstrate financial viability with Regulatory Capital of only $3,000,000, even on a temporary basis.

In addition to the Regulatory Capital requirements described above, proposed § 107.210(a) would also require any company licensed on or after October 1, 1996, to have Leverageable Capital of at least $2,500,000. Leverageable Capital is a subset of Regulatory Capital; while both include capital actually contributed to a Licensee by its private investors, the major difference between them is that Regulatory Capital also includes the Licensee's unfunded binding commitments from Institutional Investors. The proposed rule, which is consistent with SBA's current licensing policy, reflects the Agency's belief that the presence of a certain minimum level of Leverageable Capital demonstrates an applicant's seriousness and readiness to operate actively as an SBIC.

The proposed rule would not require SBICs licensed before October 1, 1996 to increase their capital. Under proposed § 107.210(b), such companies would have to meet the applicable minimum capital requirements under the regulations in effect on September 30, 1996 (see §§ 107.210 and 107.220 as in effect on that date). These requirements vary depending upon the date a company was licensed and the type of SBA Leverage it has issued or wants to issue.

See also the section of this preamble entitled ''Eligibility for Leverage and Leverage Commitments''.

Valuations

Section 208(f)(2) of Public Law 104–208 included one provision related to the valuation of portfolio securities held by Licensees which was not already reflected in the regulations. Under this provision, as part of the annual audit of a Licensee's financial statements, the independent auditor must provide to SBA a statement that the Licensee's valuations were performed in accordance with its SBA-approved valuation policy, as required by section 310(d)(2) of the Act. SBA has included this requirement in proposed § 107.503(e). SBA is also proposing various non-substantive wording changes in § 107.503 to improve the clarity of the section.

Reports To Be Filed With SBA

Current § 107.660 requires an SBIC to provide SBA with copies of reports given to its investors or filed with the Securities and Exchange Commission, and to notify SBA when it becomes a party to litigation or other proceedings. Proposed § 107.660(d) would add a requirement for a Licensee to notify SBA if an officer, director, general partner or other Control Person is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation. Key personnel associated with a license applicant currently must provide this type of information as part of the personal history statement included in the SBIC license application. The purpose of the proposed rule is to give SBA a mechanism for updating such information as needed to ensure the integrity of the SBIC program.

Financing of Smaller Enterprises

Since April 1994, SBICs have been required to direct a certain percentage of their investment activity to businesses which fall significantly below the maximum size permitted for a Small Business. These businesses were originally referred to as ''Smaller Businesses'', a term which was changed to ''Smaller Enterprises'' in a final rule published in the **Federal Register** on March 13, 1997 (62 FR 11759).

Under proposed § 107.710, the basic requirement for a Licensee to invest at least 20 percent of the total dollar amount of its Financings in Smaller Enterprises would remain unchanged. However, proposed § 107.710(c) would add a new requirement to implement section 208(c)(2) of Public Law 104–208. This provision applies to SBICs licensed on or before September 30, 1996, which issue Leverage after that date and which do not meet the current minimum capital requirement (Regulatory Capital of at least $5,000,000 for Debentures or at least $10,000,000 for Participating Securities). For such Licensees, at least 50 percent of the aggregate dollar amount of their Financings extended after September 30, 1996 must be invested in Smaller Enterprises. As a practical matter, SBA has found that Licensees to which this requirement applies typically invest almost exclusively in Smaller Enterprises.

Like the current regulation, the proposed rule would measure compliance with the requirements to finance Smaller Enterprises as of the end of a Licensee's fiscal year. Under current § 107.710(e), a Licensee which has not achieved the required percentage of investments in Smaller Enterprises is allowed one additional year to bring its portfolio into compliance. The proposed rule would retain this provision. However, such a Licensee would not be eligible for additional Leverage until it reaches the required percentage. See also the section of this preamble entitled ''Eligibility for Leverage and Leverage Commitments''.

Passive Businesses

SBICs are generally prohibited from investing in passive businesses. However, an exception is provided for holding companies which pass through the financing proceeds to an active subsidiary. The precise nature of this exception has changed over time. Prior to 1996, the general prohibition did not apply ''to any Small Concern wholly owning another eligible Small Concern engaged in a regular and continuous business operation.'' Under current § 107.720(b)(2), which became effective January 31, 1996, an SBIC may finance a passive business ''if, for all Financings extended, it passes substantially all the proceeds through to the same eligible Small Business that is not passive.''

The goal of the 1996 revision was to eliminate the requirement for the passive business to be the 100 percent owner of the operating business, while still ensuring some substantial relationship between the two by

allowing funds to be passed through to only one active entity. SBA now believes that the latter provision may unnecessarily restrict some Small Businesses. For example, a holding company may be established with two operating subsidiaries, one engaged in manufacturing and the other in distribution of the manufactured product. Under the current regulation, if the holding company received financing from an SBIC, it could pass through the proceeds to only one subsidiary, even though both subsidiaries are essentially components of the same business.

At the same time, SBA continues to believe that there must be a significant relationship between a financed passive business and the active business which ultimately receives the proceeds. To satisfy this goal, proposed § 107.720(b)(2) would permit financing of a passive Small Business if it passes substantially all the proceeds through to one or more ''subsidiary companies'', defined as companies in which the financed passive business owns at least 50 percent of the voting securities. The current provision limiting the pass-through of proceeds to only one Small Business would be eliminated.

Co-Investment With Associates

Licensees may co-invest with Associates, subject to the conditions in § 107.730(d). This section sets forth certain circumstances under which the terms of a co-investment are presumed to be fair and equitable to the SBIC, so that no specific demonstration of equity is required. Under current § 107.730(d)(3)(iv), this presumption applies to co-investments by two non-leveraged SBICs. The proposed rule would apply the same presumption to co-investments by a non-leveraged SBIC and its non-SBIC Associate. The rationale behind the presumption is the same in both cases: SBA has no financial exposure, and is therefore unconcerned that a Licensee may be disadvantaged relative to its Associate.

Portfolio Diversification Requirements

Under current § 107.740, a leveraged SBIC may not have more than 20 percent of its Regulatory Capital invested in or committed to a single Small Business or group of related businesses, unless SBA gives its prior written approval (for SSBICs, the limit is 30 percent of Regulatory Capital). The purpose of this ''overline'' limit is to avoid excessive risk by ensuring a certain degree of portfolio diversification.

Since the beginning of the Participating Securities program, SBA has been aware that the current regulation may have an unintended effect. Participating Securities issuers operate under detailed rules governing distributions to SBA as well as to their private investors. These regulations permit a Licensee to return capital to its non-SBA partners under certain conditions, thereby reducing its Regulatory Capital and overline limit. SBA is concerned that a Licensee in these circumstances may suddenly have multiple violations of the overline regulation, even though its portfolio was sufficiently diversified based on its original Regulatory Capital.

To address this problem, proposed § 107.740(a) would base a Licensee's maximum permitted investment in or commitment to a Small Business on its Regulatory Capital at the time the investment or commitment is made. The limit would apply to the total amount of Financings and Commitments extended to the Small Business by the Licensee. For example, if a Licensee had invested $1,000,000 in a Small Business and wanted to provide follow-on financing at a time when its Regulatory Capital was $8,000,000, the amount of the follow-on financing could not exceed $600,000 (20 percent of $8,000,000, minus the $1,000,000 already invested).

It should be noted that the proposed rule would require a Licensee to be in compliance at the date of a Commitment and at the date of a Financing. Thus, a Licensee preparing to fund a Commitment it had made to a Small Business must ensure that it has sufficient Regulatory Capital as of the closing date to support the completed Financing.

Proposed § 107.740(a) would continue to permit overline investments with the prior written approval of SBA.

Cost of Money

Current § 107.855 sets forth limits on interest rates and other charges that SBICs may impose on Small Businesses. SBA is proposing three changes to these ''Cost of Money'' rules. The first change reflects section 208(d)(6) of Public Law 104–208, under which SBICs must pay to SBA an additional charge of 1 percent per year on any Leverage issued after September 30, 1996 (except for draws against commitments made by SBA in fiscal year 1996). The proposed rule would allow a Licensee to include this charge in its base rate when computing its Cost of Money ceiling. The base rate would be equal to either the current Debenture Rate plus the 1 percent charge (see § 107.855(c)), or the Licensee's own Cost of Capital with the 1 percent charge treated as additional interest expense in the computation (see § 107.855(d)). Although this change may increase the cost of borrowing for some Small Businesses, SBA believes that it is warranted because it reflects the increase in Licensees' cost of funds. There would be no change in the basic Cost of Money limitations of 19 percent for Loans and 14 percent for Debt Securities which Licensees may use regardless of the level of prevailing interest rates.

For Section 301(d) Licensees which elect to compute a Cost of Money ceiling based on their own Cost of Capital, proposed § 107.855(d)(4) would clarify that interest expense on a subsidized SBA-guaranteed debenture may be computed using the debenture's face (unsubsidized) interest rate. This provision was inadvertently deleted when the regulations were revised in January 1996, but has since remained in effect as a matter of SBA policy.

Finally, SBA is proposing to clarify the treatment of warrants with respect to Cost of Money. The regulations governing Cost of Money apply to Loans (which have no provision for obtaining equity in a Small Business) and Debt Securities (which involve some type of equity feature). SBA generally interprets these rules to exclude from Cost of Money any returns realized on the equity portion of a Debt Security because such returns normally are neither assured nor predictable. However, SBA has become aware of certain situations under which the current regulations may effectively require inclusion of the value of warrants in Cost of Money.

This may occur when a Licensee lends cash to a Small Business, and receives in return not only a note for the amount lent, but also detachable warrants to acquire equity in the Small Business. Generally accepted accounting principles require the Licensee to determine the fair value, if any, of the warrants received and to record the warrants at that value, while discounting the note by the same amount. The discount is then amortized to interest income over the life of the note. Under current § 107.855(f), the income created through amortization of the discount is included in Cost of Money.

SBA believes that this provision unduly disadvantages SBICs which allocate substantial value to the warrants acquired, relative to SBICs which assign zero or nominal value. Typically, SBICs invest in private companies which have no readily ascertainable market value. Thus, the value allocated to such companies' warrants is often determined through negotiation rather than the application of precise methods. Given the level of

uncertainty associated with such valuations, SBA prefers to create a level playing field in which all returns realized on detachable warrants are excluded from Cost of Money.

Proposed § 107.855(g)(1) would address this concern by allowing a specific exclusion from Cost of Money for a discount on the loan portion of a Debt Security, if the discount results solely from the allocation of fair value to detachable stock purchase warrants as required by generally acceptable accounting principles. Discounts in general would still be included in Cost of Money. For example, if a Licensee provided $1,000,000 to a Small Business and received a note for $1,100,000, the amortization of the $100,000 discount over the life of the note would be treated as additional interest income for Cost of Money purposes.

Control

Proposed § 107.865 contains two clarifications to the existing regulation concerning Control of a Small Business by an SBIC. Under current § 107.865(c), a Licensee can rebut a presumption of Control if certain criteria concerning the ownership of the Small Business and the composition of its board of directors are satisfied. The proposed rule would eliminate references to the rounding of percentages in determining whether the board of directors meets the established criteria. The current language is confusing because it is unclear how the rounding is to be applied; SBA believes that removing it would permit a plain reading of the regulation.

The second proposed clarification involves current § 107.865(d), which sets forth the conditions under which a Licensee may take temporary Control of a portfolio company. The proposed rule would permit such Control where reasonably necessary for the protection of a Licensee's existing investment; the only revision is the addition of the word ''existing''. The proposed language is not a substantive change; it is intended simply to make explicit SBA's long-standing interpretation of this provision.

Eligibility for Leverage and Leverage Commitments

Section 208 of Public Law 104–208 established certain requirements which an SBIC must satisfy in order to obtain SBA Leverage. Proposed § 107.1120 (c) and (d) would implement these requirements. An SBIC licensed after September 30, 1996, with Regulatory Capital of less than $5,000,000 would be ineligible for Leverage until it reached the $5,000,000 level. An SBIC licensed on or before September 30, 1996, would not be required to increase its capital in order to obtain additional Leverage; however, if its Regulatory Capital was less than $5,000,000 ($10,000,000 for a company seeking to issue Participating Securities), it would have to certify in writing that at least 50 percent of the aggregate dollar amount of its Financings extended after September 30, 1996 would be provided to Smaller Enterprises (see also proposed § 107.710(c)). Finally, any Licensee seeking Leverage would be required to certify in writing that it is in compliance with the general requirement to provide 20 percent of its total Financings to Smaller Enterprises under § 107.710(b).

SBICs can obtain Leverage by applying directly for funding when it is needed or by obtaining a Leverage commitment from SBA which it can draw down over a period of time. SBA is proposing minor changes to the current rules governing the commitment process. The proposed rule would eliminate the minimum and maximum amounts for a Leverage commitment in current § 107.1200(c). SBA believes that these limits are unnecessary. Under the proposed rule, commitment amounts would have to be in multiples of $5,000 to accommodate requirements of the Leverage funding process; in all other respects, the amount of a commitment would be at SBA's discretion. Similarly, the current limitations in § 107.1230(b) on the amount that a Licensee can draw against its commitment would be eliminated. The proposed rule would require draws, like commitments, to be in multiples of $5,000; in addition, SBA would have discretion to determine a minimum draw amount, and would publish notice of any such determination in the **Federal Register** from time to time.

Leverage Fees

SBA is proposing changes in §§ 107.1130 and 107.1210 to implement provisions of section 208(d)(6) of Public Law 104–208 which affect the fees SBICs must pay in order to obtain SBA Leverage. These fee changes were effective October 1, 1996, and were implemented on an interim basis by SBA Policy Notice 1000–6.

Under proposed § 107.1130, a Licensee would pay a nonrefundable ''leverage fee'' to SBA when Debentures or Participating Securities are issued. The fee is 3 percent of the face amount of the Leverage issued, replacing the 2 percent user fee and the 1 percent commitment fee previously in effect. If a Licensee receives a Leverage commitment from SBA, it must prepay the 3 percent fee at the time it receives the commitment (see proposed § 107.1210(a)); otherwise, the fee is payable when the Leverage is issued.

Proposed § 107.1130(d) would require a Licensee to pay to SBA an additional ''Charge'' on Debentures and Participating Securities (see also § 107.50 for the definition of this proposed new term). For both types of Leverage, the Charge is 1 percent per annum. The Charge is payable under the same terms and conditions as the interest on Debentures or the Prioritized Payments on Participating Securities, as applicable. Thus, a Debenture issuer would pay the Charge in two semi-annual installments together with its interest payments. In contrast, a Participating Securities issuer would pay the Charge only when it had profits and was distributing Prioritized Payments under § 107.1540. The Charge would not apply to Leverage drawn down against a commitment obtained from SBA on or before September 30, 1996.

Participating Securities—General

SBICs began to issue Participating Securities in 1995. As Licensees and SBA have gained experience with the program, there have been a number of regulatory changes intended to correct errors and to eliminate inconsistencies and confusing language. The proposed rule continues this process of correction and clarification, and also includes certain substantive changes.

Current § 107.1500 sets forth general terms and conditions of the Participating Security. One of these conditions, set forth in § 107.1500(b)(4), is that a Licensee must make Equity Capital Investments equal to the amount of Participating Securities it issues, and must maintain such investments in an amount equal to its outstanding balance of Participating Securities. The proposed rule would implement a provision of Public Law 104–208 by eliminating the maintenance requirement. Thus, a Licensee would be responsible only for investing the appropriate dollar amount in Equity Capital Investments, and would not have to be concerned with the timing of the liquidation of those investments. The same change would also be reflected in proposed § 107.1820, which sets forth conditions that an SBIC must comply with in connection with its issuance of Participating Securities. In this section, under paragraph (e)(9), the failure to maintain a specified amount of Equity Capital Investments would be eliminated from the list of Restricted Operations Conditions.

Proposed § 107.1500(e), concerning amounts to be paid upon redemption of Participating Securities, includes the

new 1 percent annual Charge on Leverage issued on or after October 1, 1996 (see the section entitled ''Leverage Fees'' in this preamble). Proposed § 107.1500(f), concerning the priority of Participating Securities when a Licensee liquidates, reflects the same change. In addition, this paragraph would clarify that only Earned Prioritized Payments (that is, those Prioritized Payments which the Licensee has sufficient profits to pay) have priority in liquidation; the Licensee has no obligation to pay Accumulated Prioritized Payments (those not covered by available profits).

Liquidity Requirements for Participating Securities

The proposed rule includes two minor changes to the liquidity requirements in § 107.1505. Currently, a Licensee must perform the liquidity impairment computation at the end of its fiscal year, when it applies for Leverage, and when it intends to make a Distribution. Under proposed § 107.1505(a)(2), SBA would be able to exempt a Licensee applying for Leverage from the computation requirement. SBA has found that many SBICs in the early stages of their existence are extremely liquid; in these cases, the Agency believes that the formal liquidity computation provides no additional useful information and need not be performed.

The second proposed change involves the computation of the liquidity ratio in § 107.1505(b). Various components of the ratio are assigned weights which reflect the ease and/or probability of their conversion to cash. One of the components of ''Total Current Funds Available'' (the numerator of the liquidity ratio) is Publicly Traded and Marketable Securities, as reported on SBA Form 468. Under the current regulation, a Licensee is given credit for 65 percent of the reported value of these securities in the liquidity computation. In contrast, the proposed rule would allow the Licensee to count 100 percent of the reported value as a source of liquidity. SBA is proposing this change because Licensees are expected to take appropriate discounts (for restrictions, large holdings relative to trading volume, etc.) when valuing their securities, as required by SBA's valuation guidelines for SBICs. Since these discounts are already reflected in the portfolio valuations reported on Form 468, SBA considers it unnecessary to discount these values further in the liquidity computation.

Earmarked Profit (Loss)

Under § 107.1510, Participating Securities issuers are required to compute Earmarked Profit (Loss) as a preliminary step in determining the amounts of various Distributions. SBA is proposing two changes to this section. The first would affect only a Licensee holding assets not subject to SBA Profit Participation (''non-Earmarked Assets''). For a hypothetical SBIC in this situation (none are currently licensed), the proposed rule would simplify the computation of the ''Earmarked Asset Ratio''. This ratio is intended to measure the proportion of the total portfolio which consists of Earmarked Assets, but is currently complicated by the inclusion of a factor described as ''weighted average uninvested proceeds of Participating Securities''. SBA believes that this amount would be extremely difficult, if not impossible, to compute in practice; even if it could be determined, it would have little effect on the resulting ratio because it is included in both the numerator and denominator. Therefore, SBA is proposing to eliminate this factor entirely from the Earmarked Asset Ratio computation in § 107.1510(c). The proposed rule would also simplify the Earmarked Asset Ratio formula by replacing ''weighted average'' Earmarked Assets and ''weighted average'' Loans and Investments with simple averages. The intent of this change is that the ''average'' amounts specified would represent average monthly balances, as computed by the Participating Securities software developed by SBA. The Agency believes this method provides reasonable precision without requiring detailed tracking of the number of days outstanding for each portfolio investment, as the weighted average method requires.

The other proposed change affecting the Earmarked Profit (Loss) computation is in § 107.1510(d)(1)(ii), which deals with the amortization of leverage fees paid to SBA and partnership syndication costs incurred by an SBIC. Currently, for the purpose of computing Earmarked Profit (Loss), such costs must be amortized over five years. The proposed rule would require amortization over not less than five years. This change would accommodate companies which amortize the fees over a longer period for financial statement purposes and would prefer not to make an additional adjustment when performing the required profit computations.

Prioritized Payments

Section 107.1520 tells a Licensee how to compute Prioritized Payments and how to determine whether it has profits which will cause Prioritized Payments to become ''earned'' and therefore payable to SBA. Three changes to this section are proposed. First, the proposed rule would implement a provision of Public Law 104–208 by including ''Charges'' (the 1 percent annual fee discussed in this preamble under the heading ''Leverage Fees'') on outstanding Participating Securities in the required computations. Although Charges are not part of Prioritized Payments, they are payable under the same terms and conditions, as set forth in the proposed section.

Second, the computation of profit for the purposes of § 107.1520 would be revised under proposed § 107.1520(d). Under the current regulations, a Licensee's ''profit'' equals its cumulative Earmarked Profit minus its cumulative Earned Prioritized Payments from prior periods. This computation ignores the fact that some or all of the profit computed in this manner may have already been distributed under other sections of the regulations, either to SBA as Profit Participation or to the Licensee's private investors. SBA received no comments addressing this concern when the regulations governing Participating Securities were originally proposed in April 1994 or revised in January 1996; nevertheless, the Agency is concerned that the current regulation may, in effect, place duplicate claims on the same income. The proposed rule would take prior profit distributions into account in determining whether a Licensee has profits which can be used to pay Prioritized Payments.

Third, proposed § 107.1520(f) would provide additional detail concerning the computation of Adjustments, a type of compounding of unpaid Prioritized Payments. The current regulation is written in general terms which do not explain exactly how certain amounts should be calculated. The proposed rule follows the method which is currently used in the software developed by SBA to perform the allocation and distribution computations required for Participating Securities.

Profit Participation

An SBIC which has issued Participating Securities must allocate Profit Participation to SBA when it has earned profits over and above the amount necessary to pay its Prioritized Payments in full. Under current § 107.1530, Profit Participation is determined by computing a ''Base'' and a ''Profit Participation Rate'', and multiplying the Base by the Rate. The proposed rule would modify both the Base and the Rate under certain circumstances.

The Base for Profit Participation represents a cumulative measure of a Licensee's Earmarked Profit after Prioritized Payments, Adjustments and Charges. A Participating Securities issuer must compute its Base as of the end of each fiscal year, but may also compute the Base for a period of less than one year in order to make an interim distribution of profits. If an SBIC elects to make such a distribution, it faces the possibility that the Profit Participation it pays to SBA for the interim period will be greater than the Profit Participation it would have been obligated to pay had it waited until the end of the fiscal year. This can happen because the SBIC suffers losses during the remainder of the year, or simply because additional Prioritized Payments accumulate during that time; either or both of these factors would reduce the SBIC's year-end Base. Under current § 107.1530(c), an SBIC which has paid ''excess'' Profit Participation under these conditions can treat the excess as ''Unused Loss'' at year end, thereby reducing the Base which it will use the next time it computes Profit Participation. However, this approach captures only a part of the SBIC's loss; the actual loss incurred between the interim distribution date and the fiscal year end is equal to the difference between the interim and year-end Bases, not just the Profit Participation computed on that difference. For this reason, SBA is concerned that the current regulation may impose a significant penalty on a Licensee which chooses to make an interim distribution, and may unduly distort an SBIC's decisions concerning the timing of distributions. Proposed § 107.1530(c) would allow a Licensee in the circumstances described to treat the full amount of the difference between its interim and year-end Bases as Unused Loss.

Most SBICs operate for a period of time before issuing Participating Securities; in some cases, companies are already investing actively even before they are licensed. In the computation of the Base, the current regulations do not address the question of whether net income or loss from fiscal years prior to the issuance of Participating Securities may be included. Under proposed § 107.1530(c)(3), a Licensee would be permitted to include prior losses in its Base with SBA approval, which would be required only once when the Licensee computes the Base for the first time. SBA expects to approve inclusion of prior losses in most cases, but is proposing the approval requirement to cover unusual circumstances, such as a company with non-Earmarked Assets or one which has operated for an extended period of time before issuing Participating Securities. The proposed rule does not discuss net income realized in prior fiscal years because SBA has not seen this situation in practice; the Agency considers this an unlikely occurrence which would be handled on a case by case basis.

The Profit Participation Rate is computed using a formula in which the key variable is the ratio of Participating Securities to Leverageable Capital (the ''PLC ratio''). Proposed § 107.1530(e) would retain the basic definition of the PLC ratio as the highest ratio of outstanding Participating Securities to Leverageable Capital that an SBIC has ever attained, as well as the exception which allows the ratio to be reduced if Leverageable Capital increases above its highest previous level, subject to certain conditions. Proposed § 107.1530(e)(2) (i) and (ii) would simplify the method for recomputing the PLC ratio following an increase in Leverageable Capital. The new PLC ratio would equal the highest dollar amount of Participating Securities the SBIC has ever had outstanding, divided by the SBIC's current Leverageable Capital. This computation would replace the present three-step method which is not only quite complex, but also can produce anomalous results when a Licensee's highest dollar amount of Participating Securities outstanding does not coincide with its highest ratio. SBA does not believe that any Licensee would be disadvantaged by this change.

After computing the Base and the Profit Participation Rate, an SBIC computes Profit Participation under § 107.1530(h). In the proposed rule, this paragraph has been reworded to improve its clarity. No substantive changes are proposed.

Tax Distributions

Limited partnership SBICs which have paid their Prioritized Payments in full and still have remaining Retained Earnings Available for Distribution are permitted to make an annual ''tax distribution'' to their investors, with SBA also receiving a share. Both the Act and § 107.1550 of the regulations use the term ''tax distribution'', based on the concept of allowing partnerships (or other flow-through entities) to distribute cash that investors can use to pay their taxes on the income allocated to them by the partnership. In practice, the permitted tax distribution may or may not correspond to a particular investor's actual tax liability, since the computation uses assumed rather than actual tax rates and does not distinguish between taxable and tax-exempt investors.

SBA is proposing one substantive change in § 107.1550(a)(1), which would be revised to include the 1 percent per annum Charge on Participating Securities issued on or after October 1, 1996 (except for those issued pursuant to a commitment obtained from SBA before that date). Under Public Law 104–208, Charges are payable as a preferred return to SBA under the same terms and conditions as Prioritized Payments; therefore, a Licensee must pay all its Prioritized Payments, Adjustments and Charges before it can make a distribution under § 107.1550.

The other proposed revisions in § 107.1550 are clarifications rather than substantive changes. In the formula used to compute a Licensee's Maximum Tax Liability, proposed § 107.1550(b)(1) would specify that Prioritized Payments allocated to SBA are to be excluded from the net ordinary income and capital gains allocated to partners. Proposed § 107.1550(b)(2) would clarify that while a Licensee may use either individual or corporate tax rates to compute Maximum Tax Liability, it must apply the same type of rate, either individual or corporate, to both ordinary income and capital gains. Finally, proposed § 107.1550(b)(3) would specify that in computing combined Federal and State tax rates to be used in the Maximum Tax Liability formula, a Licensee must assume that State income taxes are deductible for Federal income tax purposes. All of these changes are consistent with SBA's interpretation of the current regulations.

Distributions Based on ''Retained Earnings Available for Distribution''

As of the end of each fiscal year, if a Participating Securities issuer has Retained Earnings Available for Distribution (''READ'') remaining after paying all of its Prioritized Payments and making a tax distribution (if applicable), it must distribute the balance of READ in accordance with § 107.1560. SBA is proposing two clarifications to this section, as well as one minor substantive change.

Proposed § 107.1560 (a)(4) and (b)(1) would both be revised to clarify that the amount of READ to be distributed is determined after giving effect to any preceding distributions of Prioritized Payments under § 107.1540 and tax distributions under § 107.1550. The current regulation may not be clear on this point, although SBA has always interpreted it in a manner consistent with the proposed rule.

Current § 107.1560(e) contains a table which gives SBA's percentage share of

any distributions made under §§ 107.1560 or 107.1570(a). The heading of the first column refers to the Licensee's ''ratio of Leverage to Leverageable Capital as of the fiscal year end''. This heading is appropriate for distributions under § 107.1560, which are always computed as of the end of a fiscal year, but may be confusing for interim distributions under § 107.1570(a). If a Licensee makes an interim distribution, the intent of the regulations is to measure the ratio of Leverage to Leverageable Capital as of the end of the interim period for which the distribution is made. The proposed rule would clarify this point by replacing ''fiscal year'' with ''fiscal period'' in the column heading.

Proposed § 107.1560(a)(1) would be revised to include the 1 percent per annum Charge on Participating Securities issued on or after October 1, 1996. Under Public Law 104–208, Charges are payable as a preferred return to SBA under the same terms and conditions as Prioritized Payments; therefore, a Licensee must pay all its Prioritized Payments, Adjustments and Charges before it can make any other distribution under § 107.1560.

Optional Distributions Not Based on READ

A Licensee which has no READ may be able to make distributions to its private investors and SBA in accordance with § 107.1570(b). Distributions under this section are at the option of the SBIC and essentially constitute returns of capital. The current regulation sets forth conditions for making a distribution of this type. Under the proposed rule, two of these conditions would be revised. First, § 107.1570(b)(1)(i) would require an SBIC to pay any earned Charges, along with its Earned Prioritized Payments and earned Adjustments, before distributing under § 107.1570(b). This change is in accordance with section 208(d)(6) of Public Law 104–208; similar changes proposed in §§ 107.1550 and 107.1560 are discussed earlier in this preamble.

Second, under current § 107.1570(b)(1)(ii), a Licensee must have ''distributed all Profit Participation computed under § 107.1530'' before distributing under § 107.1570(b). This language may present a problem for an SBIC because of the following circumstances: Profit Participation is computed only on the basis of realized income or loss; however, the ability to distribute Profit Participation depends on the availability of READ, which also takes into account unrealized losses in a Licensee's portfolio. Thus, it is possible that a Licensee may compute Profit Participation to be allocated to SBA, but may be unable to pay it until some later date. Under these conditions, the Licensee would be blocked from distributing under § 107.1570(b). To remedy this situation, the proposed rule would require a Licensee to distribute Profit Participation only to the extent permitted based on its READ. SBA believes that the language in section 303(g)(10) of the Act, which requires payment of all Profit Participation ''due'' to SBA before a Licensee can return capital, provides sufficient flexibility to support this interpretation.

Notice of Participating Securities Distributions

The current regulations do not require SBICs with Participating Securities to notify SBA before making distributions. In practice, Licensees generally have sought SBA's assistance with the distribution calculations and have given SBA sufficient opportunity to review the results. Because of the complexity of some of the required computations, and the difficulty of correcting errors after a distribution takes place, SBA is proposing to formalize this practice. The proposed rule would require an SBIC to notify SBA 10 business days before a planned distribution under §§ 107.1540 through 107.1570, unless SBA permits otherwise. This language would give SBA the flexibility to allow distributions on shorter notice, if the circumstances warrant, without requiring Licensees to submit a formal request for a written exemption. SBA believes that this provision would not unreasonably constrain a Licensee's freedom of action and would provide important protection for Licensees as well as the Agency.

Timing of Participating Securities Distributions

The current regulations permit Participating Securities issuers to make distributions only on quarterly ''Payment Dates'' (February 1, May 1, August 1 and November 1 of each year). This structure was adopted to coincide with the terms of the public fundings of Participating Securities, under which investors receive interest payments and any returns of principal to which they are entitled on these dates. In the preamble to the final rule published on January 31, 1996 (61 FR 3177), SBA stated that it intended to seek a solution that would provide Licensees with greater flexibility in making distributions, particularly distributions in the form of securities.

Proposed § 107.1575 would allow an SBIC to make distributions (either in cash or in kind) on dates other than Payment Dates with SBA's prior written approval. SBA wishes to provide SBICs with as much flexibility as possible; however, for administrative and oversight purposes, the Agency feels strongly that it must have an opportunity to review planned distributions in advance.

Distributions based on fiscal year end results, such as required annual distributions of Prioritized Payments, would have to be made no later than the second Payment Date following the Licensee's fiscal year end. This requirement is consistent with the current regulation, which requires such distributions to be made on either the first or second Payment Date.

For any distribution made on other than a Payment Date, the distribution date would be used as the cutoff date for all the required computations (Earmarked Profits, Prioritized Payments, etc.). This approach may require a Licensee to perform a mid-month closing of its financial statements, which may not be as clean or convenient as a month-end closing. However, SBA believes it is the only approach which will accommodate all potential distributions, particularly distributions of securities on which realized gain cannot be recognized before the distribution date.

If a distribution to SBA includes a redemption of Participating Securities, the proposed rule specifies that the effective date of the redemption will be the next Payment Date following the distribution date. This provision is necessary because Participating Securities are funded through the purchase by investors of Trust Certificates, under which principal can be returned only on Payment Dates. Because of this structure, a Licensee will also be responsible for Prioritized Payments through the next Payment Date on the amount of Participating Securities to be redeemed.

In-Kind Distributions by Licensees

Participating Securities issuers are permitted to make distributions to SBA in the form of securities under the conditions set forth in § 107.1580. The current regulation limits in-kind distributions to those distributions required or permitted by §§ 107.1560 and 107.1570. Distributions of Prioritized Payments, which are governed by § 107.1540, must be made in cash. Because Prioritized Payments precede any other distributions, this limitation can have a potentially significant effect on the timing and value of distributions in general. To alleviate this concern, proposed § 107.1580(a) would allow distributions

under §§ 107.1540, 107.1560 and 107.1570 to be made in the form of securities. Distributions under § 107.1550 would continue to be permitted on a cash-only basis, since the stated purpose of such distributions is to provide investors in flow-through entities with sufficient cash to pay their anticipated tax liabilities.

Characteristics of SBA's Leverage Guarantee

Section 303(b) of the Act authorizes SBA to guarantee the timely payment of all principal and interest as scheduled on Debentures or Participating Securities, pursuant to regulations issued by the Agency. In the final rule published January 31, 1996 (61 FR 3177), the section of the regulations which implemented this provision of the Act was dropped inadvertently. Proposed § 107.1720 would restore the previous language setting forth the unconditional nature and other characteristics of SBA's guarantee.

Capital Impairment

SBA is not proposing any substantive changes in the Capital Impairment computations set forth in §§ 107.1830 through 107.1850, but is proposing one clarification. Current § 107.1830(a) has caused some confusion by stating that the current Capital Impairment regulations apply to a Licensee if it has outstanding Leverage issued on or after April 25, 1994. While this statement is true, it is incomplete. This is because SBA Leverage is subject to the Capital Impairment regulations in effect on the date the Leverage is issued. Thus, a Licensee must comply with the current impairment rules if it has Leverage issued on or after April 25, 1994; however, if it has Leverage issued before that date as well, it must also comply with the impairment rules in effect when such Leverage was issued. Proposed § 107.1830(a) would clarify this point by specifically linking the applicability of the Capital Impairment regulations to the Leverage issued. In the same paragraph, the proposed rule would also state that a Licensee must comply with any specific conditions to which it has agreed by contract with SBA. This is not a substantive change, but simply makes explicit a Licensee's obligation to abide by the terms of any agreement it has made with the Agency.

Miscellaneous Corrections and Editorial Changes

The definition of ''Commitment'' in § 107.50 would be reworded in the third person (i.e., to refer to ''a Licensee'' instead of ''you'') to conform to the style in which the other definitions are written.

In current § 107.720(c), the SIC code for Operative Builders is incorrect. The proposed rule contains the correct 4-digit code (1531).

Proposed § 107.1590 sets forth special rules applicable to Participating Securities issuers licensed on or before March 31, 1993. The proposed rule would eliminate the current paragraph (c), which allows Licensees to repay outstanding Debentures with the proceeds of newly issued Participating Securities, subject to certain conditions. Since this paragraph properly applies to all Licensees, regardless of licensing date, its content would be transferred to the new proposed § 107.1585. The substance of § 107.1590 would remain unchanged.

In § 107.1600, references to section 321 of the Act would be changed to section 319, reflecting the amendment of the Act by Public Law 104–208.

In the definition of Trust Certificate Rate and in §§ 107.1240 and 107.1520(a)(1), certain technical changes have been proposed to facilitate the interim Leverage funding mechanism currently under consideration by SBA.

Limited Liability Companies

Section 208(b)(1) of Public Law 104–208 amended the Act to permit SBICs to organize as limited liability companies (LLCs). SBA is studying the legal and administrative issues which may arise in connection with LLCs, and will publish a proposed rule to implement this form of organization by SBICs at a later date.

Although SBA regulations do not yet provide for LLC Licensees, SBA has the statutory authority to license such companies. SBA's current policy is to accept a license application from an LLC only if the LLC is organized under Delaware's Limited Liability Company Act and does not intend to issue Participating Securities, which SBA has not yet developed in a form suitable for use by an LLC. SBA may reconsider these limitations as SBA acquires greater familiarity with the LLC form of organization and as a body of case law is created under the various state LLC laws. The adoption of a Uniform LLC Act by a significant number of states also would induce SBA to reexamine its current preference for Delaware law.

Until SBA regulations are revised to accommodate LLC Licensees, such Licensees should understand that SBA regards the members of the LLC to be equivalent to the general partners in a partnership Licensee unless the LLC's operating agreement clearly indicates otherwise. Thus, all members of an LLC Licensee will automatically be considered Control Persons and Associates of the Licensee unless the LLC's operating agreement vests management authority only in certain members of the company.

Compliance With Executive Orders, 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be a significant regulatory action for purposes of Executive Order 12866 because it would not have an annual effect on the economy of more than $100 million, and that it would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The purpose of the proposed rule is to implement provisions of Public Law 104–208 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements that have not already been approved by the Office of Management and Budget.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA hereby proposes to amend Part 107 of Title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 et seq., 683, 687(c), 687b, 687d, 687g and 687m, Pub. L. 104–208.

2. Section 107.50 is proposed to be amended by revising the definitions for

Commitment, Common Control, Preferred Securities, Section 301(d) Licensee, and Trust Certificate Rate, and adding a definition of Charge, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Charge means an annual fee on Leverage issued on or after October 1, 1996 (except for Leverage issued pursuant to a commitment made by SBA before October 1, 1996), which is payable to SBA by Licensees, subject to the terms and conditions set forth in 107.1130(d).

* * * * *

Commitment means a written agreement between a Licensee and an eligible Small Business that obligates the Licensee to provide Financing (except a guarantee) to that Small Business in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the Licensee's obligation to fund the commitment, but these conditions must be outside the Licensee's control.

Common Control means a condition where two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more Licensees are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA.

* * * * *

Preferred Securities means nonvoting preferred stock or nonvoting limited partnership interests issued to SBA prior to October 1, 1996, by a Section 301(d) Licensee. Such securities were issued at par value in the case of preferred stock, or at face value in the case of preferred limited partnership interests.

* * * * *

Section 301(d) Licensee means a company licensed prior to October 1, 1996 under section 301(d) of the Act as in effect on the date of licensing, that may provide Assistance only to Disadvantaged Businesses. A Section 301(d) Licensee may be organized as a for-profit corporation, as a non-profit corporation, or as a limited partnership.

* * * * *

Trust Certificate Rate means a fixed rate determined by the Secretary of the Treasury at the time Participating Securities or Debentures are pooled, taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

* * * * *

§ 107.110 [Removed]

3. Section 107.110 is proposed to be removed.

4. Section 107.120 is proposed to be revised to read as follows:

§ 107.120 Special rules for a Section 301(d) Licensee owned by another Licensee.

A Section 301(d) Licensee which was licensed to operate as the subsidiary of one or more Licensees (participant Licensees) may continue to do so, subject to the following:

(a) Each participant Licensee must continue to own at least 20 percent of the voting securities of the Section 301(d) Licensee.

(b) A participant Licensee must continue to treat its entire capital contribution to the subsidiary as a reduction of its Leverageable Capital. The participant Licensee's remaining Leverageable Capital must be sufficient to support its outstanding Leverage.

(c) A participant Licensee may not transfer its Leverage to a subsidiary Section 301(d) Licensee.

5. In § 107.150, the introductory text of paragraph (a)(1) is proposed to be revised to read as follows:

§ 107.150 Management and ownership diversity requirement.

* * * * *

(a) *Requirement one.* * * *

(1) At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned by Persons unrelated to management. To satisfy this requirement, such Persons must not be your Associates (except for their status as your shareholders or limited partners) and must not Control, be Controlled by, or be under Common Control with any of your Associates. You must have as investors at least three such Persons who are not Affiliates of one another and whose investments are significant in both dollar and percentage terms, as determined by SBA. As an alternative, you may substitute one investor who is an acceptable Institutional Investor for the three investors who are otherwise required. For purposes of this paragraph (a)(1), the following Institutional Investors are acceptable:

* * * * *

6. Section 107.210 is proposed to be revised to read as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) *Companies licensed on or after October 1, 1996.* A company licensed on or after October 1, 1996 must have Leverageable Capital of at least $2,500,000 and must meet the applicable minimum Regulatory Capital requirement:

(1) *Licensees other than Participating Securities issuers.* A Licensee that does not wish to be eligible to apply for Participating Securities must have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA in its sole discretion and based on a showing of special circumstances and good cause may license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant:

(i) Has satisfied all licensing standards and requirements except the minimum capital requirement, as determined solely by SBA;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $5,000,000.

(2) *Participating Securities issuers.* A Licensee that wishes to be eligible to apply for Participating Securities must have Regulatory Capital of at least $10,000,000, unless it demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount. Under no circumstances can the Licensee have Regulatory Capital of less than $5,000,000.

(b) *Companies licensed before October 1, 1996.* A company licensed before October 1, 1996 must meet the minimum capital requirements applicable to such company, as required by the regulations in effect on September 30, 1996. See § 107.1120(c)(2) for Leverage eligibility requirements.

§ 107.220 [Removed]

7. Section 107.220 is proposed to be removed.

8. Section 107.230 is proposed to be amended by revising the introductory

text of paragraph (d)(4) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(d) *Qualified Non-private Funds.*

* * *

(4) Funds invested in or committed in writing to any Section 301(d) Licensee prior to October 1, 1996, from the following sources: * * *

* * * * *

9. In § 107.503, paragraphs (a), (b) and (e), and the heading and first sentence of paragraph (c), are proposed to be revised to read as follows:

§ 107.503 Licensee's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division.

(b) *SBA approval of valuation policy.* You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain SBA's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA.

* * *

* * * * *

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy established in accordance with section 310(d)(2) of the Act.

10. Section 107.660 is proposed to be amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

§ 107.660 Other items required to be filed by Licensee with SBA.

* * * * *

(d) *Notification of criminal charges.* If any officer, director, general partner or other Control Person is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts which pertain to the incident.

* * * * *

11. Section 107.710 is proposed to be amended by adding a sentence at the end of paragraph (e) and by revising paragraphs (b) and (c) to read as follows:

§ 107.710 Requirement to finance Smaller Enterprises.

* * * * *

(b) *Smaller Enterprise Financings.* (1) *General rule.* At the close of each of your fiscal years, at least 20 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been invested in Smaller Enterprises. If you were licensed after April 25, 1994, the 20 percent requirement applies to the total dollar amount of the Financings you extended since you were licensed plus any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital.

(2) *Phase-in for new Licensees.* At the close of your first full fiscal year after licensing, at least 10 percent of the total dollar amount of the Financings you extended, including any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital, must have been invested in Smaller Enterprises. At the close of each fiscal year thereafter, you must meet the requirement in paragraph (b)(1) of this section.

(c) *Special requirement for certain leveraged Licensees.* (1) This paragraph (c) applies if you were licensed on or before September 30, 1996, and you issued Leverage after that date, and you have Regulatory Capital of:

(i) Less than $10,000,000 if such Leverage was Participating Securities; or

(ii) Less than $5,000,000 if such Leverage was Debentures.

(2) At the close of each of your fiscal years, at least 50 percent of the total dollar amount of the Financings you extended after September 30, 1996 must have been invested in Smaller Enterprises.

* * * * *

(e) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120 (c) and (d)).

12. In § 107.720, paragraph (b)(2) and the introductory text of paragraph (c)(1) are proposed to be revised to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

* * * * *

(b) *Passive businesses.* * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive business.

(c) *Real estate businesses.* (1) You are not permitted to finance any business classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual, with the following exceptions: * * *

* * * * *

13. In § 107.730, paragraph (d)(3)(iv) is proposed to be revised to read as follows:

§ 107.730 Financings which constitute conflicts of interest.

* * * * *

(d) *Financings with Associates.* * * *

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* * * *

(iv) Both you and your Associate are non-leveraged Licensees, or you are a non-leveraged Licensee and your Associate is not a Licensee.

* * * * *

14. In § 107.740, paragraph (a) is proposed to be revised to read as follows:

§ 107.740 Portfolio diversification (''overline'' limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or want to be eligible for Leverage. Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) 20 percent of your Regulatory Capital as of the date of the Financing or Commitment if you are a Section 301(c) Licensee; or

(2) 30 percent of your Regulatory Capital as of the date of the Financing or Commitment if you are a Section 301(d) Licensee.

* * * * *

15. Section 107.855 is proposed to be amended by revising paragraphs (c)(1), (c)(4)(i) and (d)(4), redesignating paragraphs (g)(1) through (g)(10) as paragraphs (g)(2) through (g)(11), and adding a new paragraph (g)(1) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money'')

* * * * *

(c) *How to determine the Cost of Money ceiling for a Financing.* * * *

(1) Choose a base rate for your Cost of Money computation. The base rate may be either the Debenture Rate currently in effect plus the applicable Charge determined under § 107.1130(d)(1), or your own ''Cost of Capital'' as determined under paragraph (d) of this section.

* * * * *

(4) * * *

(i) The current Debenture Rate plus the applicable Charge determined under § 107.1130(d)(1);

* * * * *

(d) *How to determine your Cost of Capital.* * * *

(4) For all qualified borrowings outstanding at your last fiscal year or fiscal quarter end, determine the aggregate interest expense for the past four fiscal quarters, excluding amortization of loan fees. For the purposes of this paragraph (d)(4):

(i) Interest expense on Debentures includes the 1 percent Charge paid by a Licensee under § 107.1130(d)(1); and

(ii) Section 301(d) Licensees with outstanding subsidized Debentures are presumed to have paid interest at the rate stated on the face of such Debentures, without regard to any subsidy paid by SBA.

* * * * *

(g) *Charges excluded from the Cost of Money.* * * *

(1) Discount on the loan portion of a Debt Security, if such discount exists solely as the result of the allocation of value to detachable stock purchase warrants in accordance with generally accepted accounting principles.

* * * * *

16. In § 107.865, the first sentence of paragraph (c)(2) and paragraph (d)(1) are proposed to be revised to read as follows:

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

* * * * *

(c) *Rebuttals to presumption of Control.* * * *

(2) The management of the Small Business can elect at least 40 percent of the board members of a corporation, general partners of a limited partnership, or managers of a limited liability company, as appropriate, and the Investor Group can elect no more than 40 percent. * * *

* * * * *

(d) *Temporary Control permitted.* * * *

(1) Where reasonably necessary for the protection of your existing investment;

* * * * *

17. Section 107.1100 is proposed to be revised to read as follows:

§ 107.1100 Types of Leverage and application forms.

(a) *Types of Leverageable available.* You may apply for Leverage from SBA in one or both of the following forms:

(1) The purchase or guarantee of your Debentures.

(2) The purchase or guarantee of your Participating Securities.

(b) *Application forms.* Use SBA Form 1022 to apply for Debentures and SBA Form 1022B to apply for Participating Securities.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division, 409 Third Street, S.W., Washington, DC 20416.

§ 107.1110 [Removed]

18. Section 107.1110 is proposed to be removed.

19. Section 107.1120 is proposed to be amended by revising paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (e) through (g), and adding a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(c) Meet the minimum capital requirements of § 107.210, subject to the following additional conditions:

(1) If you were licensed after September 30, 1996 under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000.

(2) If you were licensed on or before September 30, 1996, and have Regulatory Capital of less than $5,000,000 (less than $10,000,000 if you wish to issue Participating Securities):

(i) You must certify in writing that at least 50 percent of the aggregate dollar amount of your Financings extended after September 30, 1996 will be provided to Smaller Enterprises (as defined in § 107.710(a)); and

(ii) You must demonstrate to SBA's satisfaction that the approval of Leverage will not create or contribute to an unreasonable risk of default or loss to the United States government, based on such measurements of profitability and financial viability as SBA deems appropriate.

(d) Certify in writing that you are in compliance with the requirement to finance Smaller Enterprises in § 107.710(b).

* * * * *

20. Section 107.1130 is proposed to be amended by revising the heading and paragraphs (a) through (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 107.1130 Leverage fees and additional charges payable by Licensee.

(a) *Leverage fee.* You must pay a leverage fee to SBA for each issuance of a Debenture or Participating Security. The fee is 3 percent of the face amount of the Leverage issued.

(b) *Payment of leverage fee.* (1) If you issue a Debenture or Participating Security to repay or redeem existing Leverage, you must pay the leverage fee before SBA will guarantee or purchase the new Leverage security.

(2) If you issue a Debenture or Participating Security that is not used to repay or redeem existing Leverage, SBA will deduct the leverage fee from the proceeds remitted to you, unless you prepaid the fee under § 107.1210.

(c) *Refundability.* The leverage fee is not refundable under any circumstances.

(d) *Additional charge for Leverage.*— (1) *Debentures.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Debentures issued on or after October 1, 1996, payable under the same terms and conditions as the interest on the Debentures. This Charge does not apply to Debentures issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

(2) *Participating Securities.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Participating Securities issued on or after October 1, 1996, payable under the same terms and conditions as the Prioritized Payments on the Participating Securities. This Charge does not apply to Participating Securities issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

* * * * *

21. Section 107.1160 is proposed to be amended by adding introductory text to read as follows:

§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

This section applies to Leverage issued by a Section 301(d) Licensee on or before September 30, 1996. Effective October 1, 1996, a Section 301(d) Licensee may apply to issue new Leverage, or refinance existing Leverage, only on the same terms permitted under § 107.1150.

* * * * *

22. Section 107.1200 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 107.1200 SBA's Leverage commitment to a Licensee—application procedure, amount, and term.

* * * * *

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

23. Section 107.1210 is proposed to be revised to read as follows:

§ 107.1210 Payment of leverage fee upon receipt of commitment.

(a) *Prepayment of leverage fee.* As a condition of SBA's Leverage commitment, and before you draw any Leverage, you must prepay the leverage fee established under § 107.1130(a). The fee is equal to 3 percent of the face amount of the Debentures or Participating Securities reserved under the commitment.

(b) *Automatic cancellation of commitment.* Unless you pay the full amount of the leverage fee by 5 P.M. Eastern Time on the 30th calendar day following the issuance of SBA's Leverage commitment, the commitment will be automatically canceled.

24. In § 107.1230, paragraphs (a) and (b) are proposed to be revised to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

(a) *Licensee's authorization of SBA to purchase or guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture or Participating Security and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

* * * * *

25. Section 107.1240 is proposed to be amended by revising paragraphs (a)(1), (b), (c) and (d) to read as follows:

§ 107.1240 Funding of Licensee's draw request through sale to short-term investor.

(a) *Licensee's authorization of SBA to arrange sale of securities to short-term investor.* * * *

(1) The sale of your Debenture or Participating Security to a short-term investor at a rate that may be different from the Trust Certificate Rate which will be established at the time of the pooling of your security;

* * * * *

(b) *Sale of Debentures to a short-term investor.* If SBA sells your Debenture to a short-term investor:

(1) The sale price will be the face amount.

(2) At the next scheduled date for the sale of Debenture Trust Certificates, whether or not the sale actually occurs, you must pay interest to the short-term investor for the short-term period. If the actual sale of Trust Certificates takes place after the scheduled date, you must pay the short-term investor interest from the scheduled sale date to the actual sale date. This additional interest is due on the actual sale date.

(3) Failure to pay the interest constitutes noncompliance with the terms of your Leverage (see § 107.1810).

(c) *Sale of Participating Securities to a short-term investor.* If SBA sells your Participating Security to a short-term investor, the sale price will be the face amount.

(d) *Licensee's right to repurchase its Debentures before pooling.* You may repurchase your Debentures from the short-term investor before they are pooled. To do so, you must:

(1) Give SBA written notice at least 10 days before the cut-off date for the pool in which your Debenture is to be included; and

(2) Pay the face amount of the Debenture, plus interest, to the short-term investor.

26. Subpart I of Part 107 is proposed to be amended by removing the undesignated center heading ''Exchange of Outstanding Debentures for Participating or Preferred Securities—Section 301(d) Licensees'', by redesignating § 107.1350 as § 107.1585, and by revising redesignated § 107.1585 to read as follows:

§ 107.1585 Exchange of Debentures for Participating Securities.

You may, in SBA's discretion, retire a Debenture through the issuance of Participating Securities. To do so, you must:

(a) Obtain SBA's approval to issue Participating Securities;

(b) Pay all unpaid accrued interest on the Debenture, plus any applicable prepayment penalties, fees, and other charges;

(c) Have outstanding Equity Capital Investments (at cost) equal to the amount of the Debenture being refinanced; and

(d) Classify all your existing Loans and Investments as Earmarked Assets.

27. In § 107.1400, the heading and introductory text are proposed to be revised to read as follows:

§ 107.1400 Dividends or partnership distributions on 4 percent Preferred Securities.

If you issued Preferred Securities to SBA on or after November 21, 1989, you must pay SBA a dividend or partnership distribution of 4 percent per year, from the date you issued Preferred Securities to the date you repay them, both inclusive. The dividend or partnership distribution is:

* * * * *

28. Section 107.1420 is proposed to be revised to read as follows:

§ 107.1420 Articles requirements for 4 percent Preferred Securities.

If you have outstanding 4 percent Preferred Securities, your Articles must contain all the provisions in §§ 107.1400 and 107.1410.

§ 107.1430 [Amended]

29. Section 107.1430 is proposed to be revised by removing the last sentence.

30. In § 107.1500, paragraphs (b)(1) and (b)(4), the last sentence of paragraph (e), and paragraph (f)(2) are proposed to be revised to read as follows:

§ 107.1500 General description of Participating Securities.

* * * * *

(b) *Special eligibility requirements for Participating Securities.* * * *

(1) Minimum capital (see § 107.210).

* * * * *

(4) Equity investing, as set forth in this paragraph (b)(4). If you issue Participating Securities, you must invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments, as defined in § 107.50.

* * * * *

(e) *Mandatory redemption of Participating Securities.* * * * You must pay the Redemption Price plus any unpaid Earned Prioritized Payments and any earned Adjustments and earned Charges (see § 107.1520).

(f) *Priority of Participating Securities in liquidation of Licensee.* * * *

(2) Any Earned Prioritized Payments and any earned Adjustments and earned Charges (see § 107.1520); and

* * * * *

31. In § 107.1505, the last sentence of paragraph (a) and paragraph (b) are proposed to be revised to read as follows:

§ 107.1505 Liquidity requirements for licensees issuing Participating Securities.

(a) *Definition of Liquidity Impairment.* * * * You are responsible for calculating whether you have a condition of Liquidity Impairment:

(1) As of the close of your fiscal year;

(2) At the time you apply for Leverage, unless SBA permits otherwise; and

(3) At such time as you contemplate making any Distribution.

(b) *Computation of Liquidity Ratio.* Your Liquidity Ratio equals your Total Current Funds Available (A) divided by your Total Current Funds Required (B), as determined in the following table:

CALCULATION OF LIQUIDITY RATIO

Financial account	Amount reported on SBA Form 468	Weight	Weighted amount
(1) Cash and invested idle funds	.....	× 100	.....
(2) Commitments from investors	.....	× 1.00	.....
(3) Current maturities	.....	× 0.50	.....
(4) Other current assets	.....	× 1.00	.....
(5) Publicly Traded and Marketable Securities	.....	× 1.00	.....
(6) Anticipated operating revenue for next 12 months [1]	.....	× 1.00	.....
(7) Total Current Funds Available	.....		A
(8) Current liabilities	.....	× 1.00	.....
(9) Commitments to Small Businesses	.....	× 0.75	.....
(10) Anticipated operating expense for next 12 months	[1]	× 1.00	.....
(11) Anticipated interest expense for next 12 months	[1]	× 1.00	.....
(12) Contingent liabilities (guarantees)	.....	× 0.25	.....
(13) Total Current Funds Required	.....		B

[1] As determined by Licensee's management under its business plan.

* * * * *

32. In § 107.1510, the introductory text, the last sentence of paragraph (c) and paragraph (d)(1)(ii) are proposed to be revised to read as follows:

§ 107.1510 How a Licensee computes Earmarked Profit (Loss).

Computing your Earmarked Profit (Loss) is the first step in determining your obligations to pay Prioritized Payments, Adjustments and Charges under § 107.1520 and Profit Participation under § 107.1530.

* * * * *

(c) *How to compute your Earmarked Asset Ratio.* * * * Otherwise, compute your Earmarked Asset Ratio using the following formula:

$EAR = (EA)(LI) \times 100$

where:

EAR=Earmarked Asset Ratio

EA=Average Earmarked Assets (at cost) for the fiscal year or interim period

LI=Average Loans and Investments (at cost) for the fiscal year or interim period

(d) *How to compute your Earmarked Profit (Loss) if Earmarked Asset Ratio is 100 percent.* * * *

(1) * * *

(ii) For the purpose of determining Net Income (Loss), leverage fees paid to SBA and partnership syndication costs that you incur must be capitalized and amortized on a straight-line basis over not less than five years.

* * * * *

33. Section 107.1520 is proposed to be revised to read as follows:

§ 107.1520 How a Licensee computes and allocates Prioritized Payments to SBA.

This section tells you how to compute Prioritized Payments, Adjustments and Charges on Participating Securities and determine the amounts you must pay. To distribute these amounts, see § 107.1540.

(a) *How to compute Prioritized Payments and Adjustments*—(1) *Prioritized Payments.* For a full fiscal year, the Prioritized Payment on an outstanding Participating Security equals the Redemption Price times the related Trust Certificate Rate. For an interim period, you must prorate the annual Prioritized Payment. If your Participating Security was sold to a short-term investor in accordance with § 107.1240, the Prioritized Payment for the short-term period equals the Redemption Price times the short-term rate.

(2) *Adjustments.* Compute Adjustments using paragraph (f) of this section.

(3) *Charges.* Compute Charges in accordance with § 107.1130(d)(2).

(b) *Licensee's obligation to pay Prioritized Payments, Adjustments and Charges.* You are obligated to pay Prioritized Payments, Adjustments and Charges only if you have profit as determined in paragraph (d) of this section.

(1) Prioritized Payments that you must pay (or have already paid) because you have sufficient profit are ''Earned Prioritized Payments''.

(2) Prioritized Payments that have not become payable because you lack sufficient profit are ''Accumulated Prioritized Payments''. Treat all Prioritized Payments as ''Accumulated'' until they become ''Earned'' under this section.

(3) Adjustments (computed under paragraph (f) of this section) and Charges (computed under § 107.1130(d)(2)) are ''earned'' according to the same criteria applied to Prioritized Payments.

(c) *How to keep track of Prioritized Payments.* You must establish three accounts to record your Accumulated and Earned Prioritized Payments:

(1) *Accumulation Account.* The Accumulation Account is a memorandum account. Its balance represents your Accumulated Prioritized Payments, unearned Adjustments and unearned Charges.

(2) *Distribution Account.* The Distribution Account is a liability account. Its balance represents your unpaid Earned Prioritized Payments, earned Adjustments and earned Charges.

(3) *Earned Payments Account.* The Earned Payments Account is a memorandum account. Each time you add to the Distribution Account balance, add the same amount to the Earned Payments Account. Its balance represents your total (paid and unpaid) Earned Prioritized Payments, earned Adjustments and earned Charges.

(d) *How to determine your profit for Prioritized Payment purposes.* As of the end of each fiscal year and any interim period for which you want to make a Distribution:

(1) Bring the Accumulation Account up to date by adding to it all Prioritized Payments and Charges through the end of the appropriate fiscal period.

(2) Determine whether you have profit for the purposes of this section by doing the following computation:

(i) Cumulative Earmarked Profit (Loss) under § 107.1510(f); minus

(ii) The Earned Payments Account balance; minus

(iii) All Distributions previously made under §§ 107.1550, 107.1560 and 107.1570(a); minus

(iv) Any Profit Participation previously allocated to SBA under § 107.1530, but not yet distributed.

(3) The amount computed in paragraph (d)(2) of this section, if greater than zero, is your profit. If the amount is zero or less, you have no profit.

(4) If you have a profit, continue with paragraph (e) of this section. Otherwise, continue with paragraph (f) of this section.

(e) *Allocating Prioritized Payments to the Distribution Account.* (1) If you have a profit under paragraph (d) of this section, determine the lesser of:

(i) Your profit; or

(ii) The balance in your Accumulation Account.

(2) Subtract the result in paragraph (e)(1) of this section from the Accumulation Account and add it to the Distribution Account and the Earned Payments Account.

(f) *How to compute Adjustments.* You must compute Adjustments as of the end of each fiscal year if you have a balance greater than zero in either your Accumulation Account or your Distribution Account, after giving effect to any Distribution that will be made no later than the second Payment Date following the fiscal year end.

(1) Determine the combined average Accumulation Account and Distribution Account balances for the fiscal year, assuming that Prioritized Payments accumulate on a daily basis without compounding.

(2) Multiply the average balance computed in paragraph (f)(1) of this section by the average of the Trust Certificate Rates for all the Participating Securities poolings during the fiscal year.

(3) Add the amounts computed in this paragraph (f) to your Accumulation Account.

(g) *Licensee's obligation to pay Prioritized Payments after redeeming Participating Securities.* This paragraph (g) applies if you have redeemed all your Participating Securities, but you still hold Earmarked Assets and still have a balance in your Accumulation Account.

(1) You must continue to perform all the procedures in this § 107.1520 as of the end of each fiscal quarter and prior to making any Distribution. You must distribute any Earned Prioritized Payments, earned Adjustments and earned Charges in accordance with § 107.1540.

(2) After you dispose of all your Earmarked Assets and make any required Distributions in accordance with § 107.1540, your obligation to pay any remaining Accumulated Prioritized Payments, unearned Adjustments and unearned Charges will be extinguished.

34. Section 107.1530 is proposed to be amended by removing paragraphs (e)(3) and (e)(4) and revising paragraphs (c), (e)(2) and (h) to read as follows:

§ 107.1530 How a Licensee computes SBA's Profit Participation.

* * * * *

(c) *How to compute the Base.* As of the end of each fiscal year and any year-to-date interim period for which you want to make a Distribution, compute your Base using the following formula:

$$B = EP - PPA - UL$$

where:

B=Base

EP=Earmarked Profit (Loss) for the period from § 107.1510

PPA=Prioritized Payments for the period from § 107.1520(a)(1), Adjustments (if applicable) from § 107.1520(f), and Charges (if applicable) from § 107.1130(d)(2)

UL=''Unused Loss'' from prior periods as determined in this paragraph (c).

(1) If the Base computed as of the end of your previous fiscal year (your ''Previous Base'') was less than zero, your Unused Loss equals your Previous Base.

(2) If your Previous Base was zero or greater, your Unused Loss equals zero, with the following exception: If you made an interim Distribution of Profit Participation during your previous fiscal year, and your Previous Base was lower than the interim Base on which your Distribution was computed, then your Unused Loss equals the difference between the interim Base and the Previous Base. For example, assume you are computing your Base as of December 31, 1997, your fiscal year end. Your Previous Base, computed as of December 31, 1996, was $3,000,000. During 1996, you made an interim Distribution which was computed on a Base of $3,500,000 as of June 30, 1996. The $500,000 difference between the 1996 interim and year-end Bases would be carried forward as Unused Loss in the computation of your Base as of December 31, 1997.

(3) If you had no Participating Securities outstanding as of the end of your last fiscal year, you may request SBA's approval to treat your Undistributed Net Realized Loss, as reported on SBA Form 468 for that year, as Unused Loss. If you did not file SBA Form 468 because you were not yet licensed as of the end of your last fiscal year, you may request SBA's approval to treat pre-licensing losses as Unused Loss.

* * * * *

(e) *Compute the ''PLC ratio''.* * * *

(2) *Exception.* You may reduce the ratio computed under paragraph (e)(1) of this section if you have increased your Leverageable Capital above its highest previous level. The increase must have taken place at least 120 days before the date as of which your Base is computed. In addition, the increase must have been expressly provided for in a plan of operations submitted to and approved by SBA in writing, or must be the result of the takedown of commitments or the conversion of non-cash assets that were included in your Private Capital. If these conditions are satisfied, compute your reduced PLC ratio as follows:

(i) Divide the highest dollar amount of Participating Securities you have ever had outstanding by your increased Leverageable Capital.

(ii) If the result in paragraph (e)(2)(i) is lower than your PLC ratio currently in effect, such result will become your new PLC ratio.

* * * * *

(h) *Computing SBA's Profit Participation.* If the Base from paragraph (c) of this section is greater than zero, you must compute SBA's Profit Participation as follows:

(1) Multiply the Base from paragraph (c) by the Profit Participation Rate from paragraph (g).

(2) If your last Profit Participation computation was for an interim period during the same fiscal year and used a higher Profit Participation Rate than the

Rate you just used in paragraph (h)(1) of this section, you must adjust the amount computed in paragraph (h)(1) as follows:

(i) Determine the difference between the Profit Participation Rate you just used in paragraph (h)(1) and the Rate used in your previous computation;

(ii) Multiply the difference by the Base from your last Profit Participation computation; and

(iii) Add the result to the amount you computed in paragraph (h)(1).

(3) Reduce the Profit Participation computed in paragraphs (h)(1) and (h)(2) by any amounts of Profit Participation that you distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any previous interim period(s) during the fiscal year. The result is SBA's Profit Participation (unless it is less than zero, in which case SBA's Profit Participation is zero).

* * * * *

35. Section 107.1540 is proposed to be amended by adding a sentence at the end of the introductory text to read as follows:

§ 107.1540 Distributions by Licensee—Prioritized Payment and Adjustments.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

* * * * *

36. Section 107.1550 is proposed to be amended by adding a sentence at the end of the introductory text and by revising paragraphs (a)(1) and (b) to read as follows:

§ 107.1550 Distributions by Licensee—permitted ''tax Distributions'' to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) *Conditions for making a tax Distribution.* * * *

(1) You have paid all your Prioritized Payments, Adjustments, and Charges, so that the balance in both your Distribution Account and your Accumulation Account is zero (see § 107.1520).

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) Compute your Maximum Tax Liability for a full fiscal year only. Use the following formula:

$M=(TOI \times HRO) + (TCG \times HRC)$

where:

M=Maximum Tax Liability

TOI=Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year immediately preceding the Distribution, excluding Prioritized Payments allocated to SBA

HRO=The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section

TCG=Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year immediately preceding the Distribution, excluding Prioritized Payments allocated to SBA

HRC=The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

(2) You may compute the highest combined marginal Federal and State income tax rate on ordinary income and capital gains using either individual or corporate rates. However, you must apply the same type of rate, either individual or corporate, to both ordinary income and capital gains.

(3) In determining the combined Federal and State income tax rate, you must assume that State income taxes are deductible from Federal income taxes. For example, if the Federal tax rate was 35 percent and the State tax rate was 5 percent, the combined tax rate would be $[35\% \times (1-.05)]+5\% = 38.25\%$.

(4) For purposes of this paragraph (b), the ''State income tax'' is that of the State where your principal place of business is located, and does not include any local income taxes.

* * * * *

37. In § 107.1560, in the first column of the table in paragraph (e), the column heading is proposed to be revised to read ''If your ratio of Leverage to Leverageable Capital as of the fiscal period end is:'', a sentence is proposed to be added at the end of the introductory text, and paragraphs (a)(1), (a)(4) and (b) are proposed to be revised to read as follows:

§ 107.1560 Distributions by Licensee—required Distributions to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) *Conditions for making distributions.* * * *

(1) You must have paid all Prioritized Payments, Adjustments and Charges, so that the balance in both your Distribution Account and your Accumulation Account is zero (see §§ 107.1520 and 107.1540).

* * * * *

(4) The amount you distribute under this section must not exceed your remaining Retained Earnings Available for Distribution.

(b) *Total amount you must distribute.* Unless SBA permits otherwise, the total amount you must distribute equals the result (if greater than zero) of the following computation:

(1) Your Retained Earnings Available for Distribution as of the end of your fiscal year, after giving effect to any Distribution under §§ 107.1540 and 107.1550; minus

(2) All previous Distributions under this § 107.1560 and § 107.1570(a) that were applied as redemptions or repayments of Leverage; plus

(3) All previous Distributions under § 107.1570(b) that reduced your Retained Earnings Available for Distribution.

* * * * *

38. Section 107.1570 is proposed to be amended by adding a sentence at the end of the introductory text and by revising the heading and paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 107.1570 Distributions by Licensee—optional Distributions to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

* * * * *

(b) *Other optional Distributions.* * * *

(1) *Conditions for making a Distribution.* * * *

(i) You have distributed all Earned Prioritized Payments, earned Adjustments, and earned Charges, so that the balance in your Distribution Account is zero (see § 107.1520).

(ii) You have distributed all Profit Participation computed under § 107.1530 which you are required to distribute under § 107.1560 or permitted to distribute under § 107.1570(a), as appropriate, and you have made all required Distributions under § 107.1560.

* * * * *

39. Section 107.1575 is proposed to be added to subpart I to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) *Permitted distributions on other than payment dates.* Notwithstanding any provisions to the contrary in §§ 107.1540 through 107.1570, you may make Distributions on dates other than Payment Dates as follows:

(1) Required annual Distributions under §§ 107.1540(a)(1), and any Distributions under §§ 107.1550 and 107.1560, must be made no later than the second Payment Date following the end of your fiscal year;

(2) Required Distributions under § 107.1540(b) must be made no later than the first Payment Date following the end of the applicable fiscal quarter;

(3) Optional Distributions under § 107.1540(a)(2) and § 107.1570 may be made on any date.

(b) *Conditions for making distribution.* All Distributions under this § 107.1575 are subject to the following conditions:

(1) You must obtain SBA's written approval before the distribution date;

(2) You must use the distribution date as the ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distributions, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570;

(3) If your Distribution includes an amount which SBA will apply as a redemption of Participating Securities, the effective date of such redemption, for all purposes including future computations of Prioritized Payments, will be the next Payment Date following the distribution date.

40. In § 107.1580, the introductory text of paragraph (a) is proposed to be revised to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind distributions.* A Distribution under §§ 107.1540, 107.1560 or 107.1570 may consist of securities (an ''In-Kind Distribution''). Such a Distribution must satisfy the conditions in this paragraph (a).

* * * * *

41. Section 107.1590 is proposed to be amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraph (a)(1) to read as follows:

§ 107.1590 Special rules for companies licensed on or before March 31, 1993.

* * * * *

(a) *Election to exclude pre-existing portfolio.* * * *

(1) The proceeds of your first issuance of Participating Securities are not used to refinance outstanding Debentures (see § 107.1585(a)). SBA will consider payment or prepayment of any outstanding Debenture to be a refinancing unless you demonstrate to SBA's satisfaction that you can pay the Debenture principal without relying on the proceeds of the Participating Securities.

* * * * *

42. In § 107.1600, the first sentence of paragraph (a) and paragraph (b) are proposed to be revised to read as follows:

§ 107.1600 SBA authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Sections 319 (a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. * * *

(b) *Periodic exercise of authority.* SBA will issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 319 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or TCs.

* * * * *

43. Section 107.1720 is proposed to be added to subpart I to read as follows:

§ 107.1720 Characteristics of SBA's guarantee.

If SBA agrees to guarantee a Licensee's Debentures or Participating Securities, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, SBA will make timely payments of principal and interest on the Debentures or the Redemption Price of and Prioritized Payments on the Participating Securities.

44. In § 107.1820, paragraph (e)(9) is proposed to be revised to read as follows:

§ 107.1820 Conditions affecting issuers of Preferred Securities and/or Participating Securities.

* * * * *

(e) *Restricted Operations Conditions.* * * *

(9) *Failure to meet investment requirements.* You fail to make the amount of Equity Capital Investments required for Participating Securities (§ 107.1500(b)(4)), if applicable to you; or you fail to maintain as of the end of each fiscal year the investment ratios or amounts required for Leverage in excess of 300 percent of Leverageable Capital (§ 107.1160 (c)) or Preferred Securities in excess of 100 percent of Leverageable Capital (§ 107.1160(d)), if applicable to you. In determining whether you have met the maintenance requirements in § 107.1160(c) or (d), SBA will disregard any prepayment, sale, or disposition of Venture Capital Financings, any increase in Leverageable Capital, and any receipt of additional Leverage, within 120 days prior to the end of your fiscal year.

* * * * *

45. In § 107.1830, paragraph (a) is revised to read as follows:

§ 107.1830 Licensee's Capital Impairment—definition and general requirements.

(a) *Applicability of this section.* This § 107.1830 applies to Leverage issued on or after April 25, 1994. For Leverage issued before April 25, 1994, you must comply with paragraphs (e) and (f) of this section and the Capital Impairment regulations in this part in effect when you issued your Leverage. For all Leverage issued, you must also comply with any contractual provisions to which you have agreed.

* * * * *

Dated: September 25, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–26720 Filed 10–10–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–77–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that currently requires measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. This action would add repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an emergency exit door or replacing the bearing of the door lifting mechanism, if necessary. This proposal is prompted by reports of seizure of a bearing and increased door handle forces that were outside the limits of the required hand forces due to

seizure of two teflon line bearings on the lifting shaft. The actions specified by the proposed AD are intended to prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

DATES: Comments must be received by November 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from 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.

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 (425) 227–2589; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–77–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 5, 1995, the FAA issued AD 95–08–07, amendment 39–9196 (60 FR 19155, April 17, 1995), applicable to all Airbus Model A310 series airplanes, to require measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. That action was prompted by a report that, during routine maintenance, excessive force was required to lift the interior control handle of the emergency exit door. The requirements of that AD are intended to prevent impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

Actions Since Issuance of Previous Rule

Since issuance of AD 95–08–07, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that, during the inspection required by that AD, the seizure of one bearing was found on an affected airplane. The DGAC also advises that, following accomplishment of the inspection required by that AD, increased door handle forces that were outside the limits of the required hand forces were required to lift the interior control handle of the emergency exit doors. The cause of the excessive force was attributed to the seizure of two teflon line bearings on the lifting shaft. This condition, if not corrected, could impede passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–52–2060, dated July 22, 1996, which describes procedures for performing repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an exit door or replacing the bearings of the door lifting mechanism, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–239–205(B), dated October 23, 1996, in order to assure the continued airworthiness of these airplanes in France.

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 Federal Aviation 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 Proposed 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, the proposed AD would supersede AD 95–08–07 to continue to require measurement of the force required to move the interior control handle of the emergency exit doors, and various follow-on corrective actions, if necessary. The proposed AD also would require repetitive functional tests to measure the force necessary to move the interior control handle of the emergency exit doors; and adjusting an exit door or replacing the bearings of the door lifting mechanism, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously; except that any discrepancy of the mechanism inside the emergency exit door would be required to be repaired in accordance with a method approved by the FAA.

Differences Between the Proposal and the Relevant French AD

This proposed rule would differ from the parallel French airworthiness directive 96–239–205(B), in that it would exclude from the applicability those airplanes that have been modified in accordance with Supplemental Type Certificate (STC) ST0001NY. This STC, which was issued by the FAA, converted airplanes from a passenger to a cargo-carrying configuration. Thus, the emergency exit doors of these airplanes are no longer available for use. Therefore, the FAA has determined that Airbus Model A310 series airplanes that have been modified in accordance with

the identified STC are not subject to the addressed unsafe condition.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 6 Airbus Model A310 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 95–08–07 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $360, or $60 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $360, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed 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 proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9196 (60 FR 19155, April 17, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 97–NM–77–AD. Supersedes AD 95–08–07, Amendment 39–9196.

Applicability: All Model A310 series airplanes, except those airplanes that have been modified in accordance with Supplemental Type Certificate (STC) ST0001NY; 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 (f) 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 impeding passenger evacuation during an emergency due to difficulty in lifting the interior control handle that is used to open the emergency exit door, accomplish the following:

Restatement of Requirements of AD 95–08–07, Amendment 39–9196

(a) Within 60 days after May 2, 1995 (the effective date of AD 95–08–07), measure the amount of force required to move the interior control handle of the emergency exit doors, in accordance with Airbus All Operators Telex (AOT) 52–08, Revision 1, dated December 1, 1994.

(b) If the force required to move the interior control handle of the door is equal to or does not exceed 20 daN (45 foot-pounds), no further action is required by this paragraph for that door.

(c) If the force required to move the interior control handle of the door exceeds 20 daN (45 foot-pounds), prior to further flight, perform a full functional test of the emergency exit doors to measure the amount of force required to open the doors, in accordance with the AOT.

(1) If the force required to open the door does not exceed 20 daN (45 foot-pounds), no further action is required by this paragraph for that door.

(2) If the force required to open the door exceeds 20 daN (45 foot-pounds), prior to further flight, perform a visual inspection to detect discrepancies of the mechanism inside the door, in accordance with the AOT.

(i) If no discrepancy is found, prior to further flight, replace seized bearings with new or serviceable bearings, in accordance with AOT.

(ii) If any discrepancy is found, prior to further flight, repair the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the findings of discrepancies to Airbus Industrie, Engineering Services, Attention: Mr. R. Filaquier, AI/SE E121, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Requirements of This AD

(e) Within 3 months after the effective date of this AD, perform a functional test to measure the force necessary to move the interior control handle of the emergency exit doors, in accordance with Airbus Service Bulletin A310–52–2060, dated July 22, 1996.

(1) If the emergency exit door opens and the force required to move the interior control hand is less than or equal to the limits specified in the service bulletin, repeat the test thereafter at intervals not to exceed 3 months.

(2) If the emergency exit door does not open or the force required to move the interior handle is greater than the limits specified in the service bulletin, prior to further flight, perform an inspection to detect discrepancies of the mechanisms inside the door, in accordance with the service bulletin.

(i) If no discrepancy is detected, prior to further flight, replace the bearings with new bearings, in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 3 months.

(ii) If any discrepancy is detected, prior to further flight, adjust the emergency exit doors in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 3 months.

(f) 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. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) 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.

Issued in Renton, Washington, on October 7, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27090 Filed 10–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that currently requires an inspection to determine the thickness of the intercostal that attaches the third crew member seat to the floor structure in the flight compartment, and replacement, if necessary. That AD was prompted by a report from the manufacturer indicating that intercostals have been installed that are not of sufficient thickness (and consequent strength) to support the third crew member seat during emergency landing dynamic conditions. The actions specified by that AD are intended to prevent the failure of this intercostal during an emergency landing, which could consequently result in injury to the flight crew. This action would revise the applicability of the existing AD by removing several airplanes.

DATES: Comments must be received by November 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–127–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 12, 1997, the FAA issued AD 97–11–02, amendment 39–10031 (62 FR 28795, May 28, 1997), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, to require a one-time inspection to determine the thickness of the intercostal that attaches the third crew member seat to the floor structure in the flight compartment to determine the thickness of this part, and replacement with a new intercostal of the correct thickness, if necessary. That action was prompted by a report from the manufacturer indicating that intercostals have been installed that are not of sufficient thickness (and consequent strength) to support the third crew member seat during emergency landing dynamic conditions. The requirements of that AD are intended to prevent the failure of this intercostal during an emergency landing, which could consequently result in injury to the flight crew.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has issued Alert Service Bulletin J41–A53–030, Revision 1, dated August 8, 1996, and Revision 2, dated February 14, 1997. The inspection and replacement procedures described in these revisions are identical to those described in the original version of the service bulletin (which was referenced in AD 97–11–02). The only change effected by Revisions 1 and 2 is to remove airplanes having constructors numbers 41044, 41068, 41069, and 41070 from the effectivity listing of the alert service bulletin, since these airplanes are not subject to the addressed unsafe condition. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified these alert service bulletins as mandatory.

The FAA has been advised that Jetstream Aircraft Limited has revised its corporate name to British Aerospace Regional Aircraft.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA

has examined the findings of the CAA, 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 Proposed 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, the proposed AD would revise AD 97–11–02 to continue to require a one-time inspection of the intercostal of the third crew member seat to the floor structure in the flight compartment to determine the thickness of this part, and replacement with a new intercostal of the correct thickness, if necessary. The proposed AD also would limit the applicability of the existing AD by removing several airplanes.

Cost Impact

Since this proposed AD would merely delete airplanes from the applicability of the existing AD, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this AD are reiterated in their entirety (as follows) for the convenience of affected operators:

The FAA estimates that 14 Jetstream Model 4101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $840, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10031 (62 FR 28795, May 28, 1997), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 97-NM–127-AD. Revises AD 97–11–02, Amendment 39–10031.

Applicability: Jetstream Model 4101 airplanes, as listed in Jetstream Alert Service Bulletin J41-A53–030, Revision 2, dated February 14, 1997; certificated in any category.

Note: 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 (d) 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 failure during emergency landing dynamic conditions of the intercostal that attaches the third crew member seat (''third crew seat'') to the floor structure in the flight compartment, which could consequently result in injury to the flight crew, accomplish the following:

(a) Within 30 days after July 2, 1997 (the effective date of AD 97–11–02, amendment 39–10031), inspect the intercostal in the floor structure that supports the third crew seat in the flight compartment to determine the thickness of this part, in accordance with Part 1 of Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, Revision 1, dated August 8, 1996, or Revision 2, dated February 14, 1997.

(b) If the thickness of the intercostal is 0.064 inch, no further action is required by this AD.

(c) If the thickness of the intercostal is 0.048 inch, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, Revision 1, dated August 8, 1996, or Revision 2, dated February 14, 1997. After replacement, no further action is required by this AD. Or

(2) Prior to further flight, install a placard, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, Revision 1, dated August 8, 1996, or Revision 2, dated February 14, 1997, to prohibit use of the third crew seat when the total weight of carry-on items stored in the forward right stowage area is more than 100 pounds. Within 6 months after installation of the placard, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with any of the service bulletins. After installation of the new intercostal, the placard may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on October 7, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–27091 Filed 10–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–252936–96]

RIN 1545–AU85

Rewards for Information Relating to Violations of Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to rewards for information that relates to violations of the internal revenue laws. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 12, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (REG–252936–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (REG–252936–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., 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.

FOR FURTHER INFORMATION CONTACT: Judith A. Lintz (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by December 15, 1997. Comments are specifically requested concerning: Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collections of information (see below); how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§ 301.7623–1T(b)(3), 301.7623–1T(d), and 301.7623–1T(f). The collections of information are required to provide information relating to violations of the internal revenue laws, and to identify the proper claimant of a reward. The collection of information is voluntary with respect to the provision of information relating to violations of the internal revenue laws. The collections of information are required to obtain a benefit with respect to filing a claim for reward. The likely respondents are individuals, although non-individual claimants are also allowed.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: on occasion.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 7623. The temporary regulations contain rules relating to rewards for information that relates to violations of the internal revenue laws. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary 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.

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that in the past approximately 10,000 persons have filed claims for reward on an annual basis. Of these persons, almost all have been individuals. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person who timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of the regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7623–1 is revised to read as follows:

§ 301.7623–1 Rewards for information relating to violations of internal revenue laws.

[The text of this proposed revised section is the same as the text of § 301.7623–1T published elsewhere in this issue of the **Federal Register.**]

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26859 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–111–FOR]

Virginia Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Virginia Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment makes changes to the Ranking and Selection section and to the AML Water Project Evaluation form. The proposed amendment is intended to revise the Virginia program to be consistent with SMCRA, and to improve the efficiency of the Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. on November 13, 1997. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on November 10, 1997. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 29, 1997.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement:

Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Discussion of the Proposed Amendment

By letter dated September 19, 1997 (Administrative Record No. VA–926), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed Program Amendment to the Virginia Program. This amendment is intended to revise the Virginia program to be consistent with SMCRA at section 402(g)(6), and to improve the efficiency of the Virginia program.

The proposed amendments are as follows.

Ranking and Selection 884.13(c)(2)

In this section, Virginia proposes to change the heading of the paragraph titled ''*Acid Mine Drainage Abatement—Treatment*'' to read ''*Set Aside Funds,*'' and to revise the language of that subsection to include the provisions of part A of section 402(g)(6) of SMCRA.

The revised language is as follows:

Set Aside Funds

In accordance with Section 402(g)(6) of SMCRA, Virginia may, without regard to the 3 year limitation referred to in Section 402(g)91)(D) of SMCRA, receive and retain up to 10 percent of the total grants made annually under Section 402(g) (1) and (5) of SMCRA by the Secretary for deposit into either:

A. A special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by Virginia solely to achieve the priorities stated in section 403(a) of SMCRA after September 30, 1995, or

B. An acid mine drainage abatement and treatment fund established under State law as provided for under 30 CFR Part 876. An interest bearing acid mine drainage abatement and treatment fund will be utilized by Virginia, in consultation with the Natural Resources Conservation Service, to implement acid mine drainage abatement-treatment plans approved by the Secretary of the Interior.

These plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit.

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

(c) An identification of the sources of acid mine drainage within the hydrologic unit.

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

(e) The cost of undertaking the proposed abatement and treatment measures.

(f) An identification of existing and proposed sources of funding for such measures.

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

Under this program, the term qualified hydrologic unit means a hydrologic unit:

(a) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

(b) Which contains lands and water that are:

1. Eligible pursuant to Section 404 and include any of priorities stated in SMCRA paragraph (1), (2), or (3) of Section 403(a); and

2. Proposed to be the subject of the expenditures by the State from amounts available from the forfeiture of bonds required under Section 509 or from other State sources to mitigate acid mine drainage.

AML Water Project Evaluation Form

The AML Water Project Evaluation form is currently part of the approved Virginia program. Virginia is proposing to change four sections and has provided the following rationale for the changes.

Appropriate Project Costs (Cost Per Connection)

This was revised to more realistically reflect the cost/hook-ups being experienced. most cost/hook-ups now reflect a 10,000–20,000 range. This is because of the high cost for construction due to the distance between households, and he mountainous terrain.

Affordability

''Costs for 4,200 gal. of treated water'' was changed to read ''Costs for 3,500 gal. of treated water'' to show the average use and to match usage rates used by other funding agencies as reflected in the review manual application.

Level of Commitment of Non-AML Funds

The points award were modified to encourage local funding and leverage AML funding to the maximum extent possible.

AML Bonus Award

This new review category is meant to promote and encourage awards to proposed projects which incorporate regionalization and consolidated management. Regionalization of water systems reduces costs and promotes efficiency in providing water to the greatest number of households. Points awarded for this will be between 1–5, and a total perfect score will now be 105. The average score on projects is 60–80.

In addition to the above changes to the form, Virginia requested that the AML Water Project Evaluation form—figure 2 be removed from the AML State Reclamation Plan and placed into the Administrative Record since additional changes to the form may be necessary in the future.

The full text of proposed program amendment submitted by Virginia is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Virginia program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on October 29, 1997. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES**. A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on

proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–27066 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 5026b; FRL–5904–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Approval of VOC RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing volatile organic compound (VOC) reasonably available control technology (RACT) for six major sources of VOCs located in Virginia. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

DATES: Comments must be received in writing by October 29, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 566–2092, at the EPA Region III office or via e-mail at gaffney.kristeen@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: Refer to the information pertaining to this action, VOC RACT determinations for individual sources located in Virginia, provided in the Direct Final action of the same title located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: Spetember 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–27128 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 5029b; FRL–5904–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: VOC RACT for Phillip Morris, Hercules, Virginia Power Station and the Hopewell Regional Wastewater Treatment Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve six State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing volatile organic compound (VOC) reasonably available control technology (RACT) for six major sources located in Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn.

DATES: Comments must be received in writing by October 29, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165, at the EPA Region III office.

SUPPLEMENTARY INFORMATION: Refer to the information pertaining to this action, VOC RACT determinations for individual sources located in Virginia, provided in the Direct Final action of the same title located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 97–27127 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 090397A]

RIN 0648–AJ12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes to increase the total allowable catch (TAC) for Atlantic group Spanish mackerel and for Gulf group king mackerel, revise the commercial trip limits off the Florida east and south coasts for the Gulf and Atlantic groups of king mackerel, and allow the operator and crew on for-hire vessels to take the bag limit of Gulf group king mackerel. The intended effects of this proposed rule would be to protect king and Spanish mackerel from overfishing and maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: Written comments must be received on or before October 29, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the environmental assessment and regulatory impact review supporting aspects of this action relating to Atlantic migratory groups of king and Spanish mackerel should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699, Phone: 803–571–4366, Fax: 803–769–4520.

Requests for copies of the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis supporting aspects of this action relating to Gulf group king and Spanish mackerel should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway North, Suite 1000, Tampa, FL, 33619, Phone: 813–228–2815, Fax: 813–225–7015.

Requests for copies of NMFS' supplementary analysis of economic impacts on small entities for purposes of the Regulatory Flexibility Act (RFA) should be sent to Mark Godcharles, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Councils made recommendations to the Regional Administrator, Southeast Region, NMFS (RA), for changes in TACs, trip limits, and bag limits in separate regulatory amendments. For Atlantic migratory groups, the Councils recommended increasing the commercial quota and recreational allocation for Spanish mackerel and modifying the commercial trip limits off Florida for king mackerel. For Gulf migratory group king mackerel, the Councils recommended increasing the commercial quota and recreational allocation, revising the commercial trip limit off the Florida east coast, and restoring the bag limit applicable to operator and crew of for-hire vessels. The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

TACs, Allocations, and Quotas

The South Atlantic Fishery Management Council (SA Council) recommended increasing the annual TAC for the Atlantic migratory group of Spanish mackerel from 7.0 million lb (3.18 million kg) to 8.0 million lb (3.63 million kg), to be effective commencing with the fishing year that began April 1, 1997. The Gulf of Mexico Fishery Management Council (Gulf Council) recommended increasing the annual TAC for the Gulf migratory group of king mackerel from 7.8 million lb (3.54 million kg) to 10.6 million lb (4.81 million kg), to be effective commencing with the fishing year that began July 1, 1997.

Consistent with the FMP's framework procedure, the recommended TACs are within the range of the acceptable biological catch (ABC) established by the Councils and calculated by the Mackerel Stock Assessment Panel (MSAP). The TACs represent a biologically conservative approach supported by the Councils' Scientific and Statistical Committees and Mackerel Advisory Panels. The respective commercial quotas and recreational allocations would be increased under these proposed increased TACs. Because the increased quotas and allocations would be higher than recent harvest levels, no early or unexpected fishery closures or quota/allocation overruns are likely.

The Councils' recommended TACs are within ABCs that were calculated to increase or maintain stocks at a 30-percent spawning potential ratio (SPR) level. That SPR level represents the threshold under which stocks are considered overfished by terms of the FMP, the level selected by the MSAP at which stocks produce maximum sustainable yield, and the optimum yield (OY) target level approved for Gulf mackerel groups under Amendment 8. A 40-percent OY target level was

approved for the Atlantic mackerel groups.

Currently, the Gulf group king mackerel is the only mackerel group considered overfished (SPR level estimated at 22 percent). The proposed TAC for this group is within an ABC range that would rebuild the stock in about 10 years to the 30-percent SPR level given the uncertainties of long-term stock-recruitment relationships and fishing mortality. Later this year, NMFS expects to advise the Councils, as required by section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), of fisheries that are overfished. The Councils then must reevaluate and, as necessary, revise or develop rebuilding programs to ensure consistency with the requirements of section 304(e) of the Magnuson-Stevens Act.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of TAC. Under the established percentages, the proposed revised TACs of 8.0 million lb (3.63 million kg) for Atlantic group Spanish mackerel and 10.6 million lb (4.81 million kg) for Gulf group king mackerel would be allocated as follows:

Migratory group/species	m. lb	m. kg
Atlantic Group Spanish Mackerel—TAC	8.0	3.63
Recreational allocation (50%)	4.0	1.81
Commercial quota (50%)	4.0	1.81
Gulf Group King Mackerel—TAC	10.6	4.81
Recreational allocation (68%)	7.21	3.27
Commercial quota (32%)	3.39	1.54

These allocations and quotas would be effective for Atlantic group Spanish mackerel commencing with the fishing year that began April 1, 1997, and for Gulf group king mackerel commencing with the fishing year that began July 1, 1997. Also for Gulf group king mackerel, the increased commercial quota would result in concomitant increases in that group's zone and subzone commercial quotas.

Atlantic Group Spanish Mackerel: Commercial Vessel Trip Limits

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone (i.e., south of a line extending directly east from the Georgia/Florida boundary), the trip limits vary depending on the percentage of the adjusted quota landed. The adjusted quota is the commercial quota reduced by an amount calculated to allow continued harvest of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. Along with the increased commercial quota, the SA Council recommended that the adjusted quota be increased from 3.25 million lb (1.47 million kg) to 3.75 million lb (1.70 million kg).

Gulf Group King Mackerel: Commercial Vessel Trip Limits and Recreational Bag Limits

The Gulf Council recommended revising the vessel trip limits for the commercial sector of the Gulf group king mackerel fishery in the Florida east coast subzone. The Council recommended establishing a 50-fish daily trip limit to ensure full utilization of the quota while preventing early season closure. There would be no step-down in the trip limit when 75 percent of the quota is taken, as is currently the case. For the 1996/97 season, the quota was taken under a 50-fish daily trip limit that was reduced to 25 fish per day on March 1, 1997, when 75 percent of the quota was taken. However, for the 1997/98 season, newly effective regulations (62 FR 23671; May 1, 1997) specify a daily trip limit of 750 lb (340 kg) reducing to 500 lb (227 kg) if 75 percent of the quota is taken by February 15. The Councils have now concluded that a trip limit of 750 lb (340 kg) is too high and would lead to an early closure of the fishery. Lower daily landings under the proposed 50-fish trip limit would help prevent the quota from being reached before the season ends March 31 and should contribute to more stable markets. The Councils also recommended changing the trip limit from pounds of fish to number of fish to facilitate at-sea enforcement.

The Gulf Council also recommended that the operator and crew on for-hire vessels (i.e., charter vessels and headboats) be allowed to take the bag limit of Gulf group king mackerel. The Gulf Council determined that the zero bag limit for operators and crews, implemented on June 2, 1997, was no longer appropriate considering that, with the proposed increases, the recreational allocation and TAC would not likely be exceeded.

Atlantic Group King Mackerel: Commercial Vessel Trip Limits

The SA Council recommended revising the vessel trip limits for the commercial sector of the Atlantic group king mackerel fishery off the southeast coast of Florida and off Monroe County (including the Florida Keys). The Council recommended changing the trip limits from pounds to number of fish to facilitate at-sea enforcement and to provide a year-round 50-fish daily trip limit for king mackerel, both Atlantic and Gulf groups, off the east coast of Florida.

For the exclusive economic zone (EEZ) off southeast Florida between the Volusia/Brevard and Dade/Monroe County boundaries, the Council recommended changing the king mackerel trip limit from 500 lb (227 kg) to 50 fish from April 1 through October 31. Off Monroe County, the Council recommended changing the daily vessel trip limit from 1,250 lb (567 kg) to 125 fish per day from April 1 through October 31.

The RA initially concurs that implementation of the Councils' recommendations is necessary to protect the king and Spanish mackerel stocks and prevent overfishing and are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. Accordingly, the Councils' recommended changes are published for comment.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The initial regulatory flexibility analysis for the rule consists of the following three parts: An initial regulatory flexibility analysis prepared by the Gulf Council (Gulf Council's IRFA) for Gulf groups of king and Spanish mackerel; a regulatory impact review (RIR) prepared by the SA Council for Atlantic groups of king and Spanish mackerel; and NMFS' Supplementary Analysis under RFA.

The Gulf Council's IRFA describes the significant, positive, economic impacts this proposed rule, if adopted, would have on small entities affected by the proposed management changes for the Gulf groups of king and Spanish mackerel. The SA Council prepared a RIR evaluating the economic impacts on small entities affected by the proposed management changes for Atlantic groups of king and Spanish mackerel. Based on the Gulf Council's IRFA, the SA Council's RIR, and its own Supplementary Analysis, NMFS has determined that this regulatory action, if approved and implemented through final regulations, would have significant economic impacts on a substantial number of small entities for purposes of the RFA. A summary of the Gulf Council's IRFA, the SA Council's RIR, and NMFS' supplementary analysis follows.

All commercial fishing and charter/headboat businesses are considered

small entities and both the SA and Gulf Councils concluded that a substantial number of small entities (greater than 20 percent) operating in commercial and for-hire recreational fisheries for Atlantic and Gulf groups of king and Spanish mackerel would be affected by the proposed changes. Specifically, the proposed increases in Atlantic group Spanish mackerel and Gulf group king mackerel commercial quotas and recreational allocations, and the proposed changes in trip limits for Gulf and Atlantic groups of king mackerel would affect most of the small businesses engaged in the fisheries. Although the exact numbers of small businesses operating in these fisheries is unknown, as of October 18, 1996, Federal permits allow a total of 3,819 vessels from Atlantic (1,722 vessels) and Gulf states (2,097 vessels) to operate in mackerel fisheries in the EEZ. For Atlantic states, 1,093 vessels possess commercial permits, 393 possess charter/headboat permits, and 236 vessels possess both permits. For Gulf states, 1,266 vessels possess commercial permits, 613 possess charter/headboat permits, and 218 vessels possess both permits.

The SA Council concluded, based upon the RIR, that the proposed revisions would not have a significant economic impact on a substantial number of small entities participating in fisheries for the Atlantic groups of king and Spanish mackerel. The RIR analysis included examination of the proposals to: (1) Increase TAC for Atlantic group Spanish mackerel, and (2) change Atlantic group king mackerel trip limits for the Florida east coast and Monroe County from pounds to number of fish. Increases in the commercial quota and recreational allocation for Spanish mackerel are not expected to increase the revenues of commercial harvesters or charter vessel operators because the current quota and allocation, which are lower than the proposed quota and allocation, are not being caught. The change in the trip limit for king mackerel may reduce the overall catch of the fishermen in the Florida area because the change to trip limits based on 50 fish instead of 500 lb (227 kg) of fish is actually a reduction in pounds landed per trip since the average weight of a king mackerel in that area is less than 10 lb (5 kg). Nonetheless, the resulting decrease in revenues for those fishermen is expected to be well below 5 percent of total revenues. Therefore, the SA Council determined that: (1) Any impacted businesses would be small entities; (2) any change in annual gross revenues likely would be much less than 5 percent; (3) any increase in compliance costs would be much less than a 5-percent increase in total costs of production; (4) capital costs of compliance would represent a very small portion of capital; and (5) no entity would be expected to cease business operations. For these reasons, the SA Council's RIR analysis concluded that these proposed measures were not significant under the RFA and an IRFA was not prepared for the South Atlantic mackerels.

The Gulf Council examined the potential impacts of the recommendations for Gulf group king mackerel and found that the increase in the TAC of 36 percent would result in a comparable increase in commercial revenues. Further, the restoration of the bag limit to captain and crew on for-hire vessels would be expected to increase revenues to charter vessel operators and/or crews, and that compliance and other costs of the proposed TAC increase are not significant. Accordingly, the Gulf Council determined that: (1) The proposed changes would increase revenues of a large portion of the small businesses by more than 5 percent; (2) the proposed actions would not be expected to result in major increases in compliance costs to the industry; (3) there would be no differential impact between large and small entities because all firms expected to be impacted by the proposals are small entities; (4) the industry would not be expected to incur additional capital costs as a result of the proposed actions; and (5) the proposed actions would not be expected to force any entities out of business. Since it was determined that the proposed rule would have a significant impact on a substantial number of small business entities, the Gulf Council prepared an IRFA.

Considering all the management measures proposed by both Councils in aggregate, NMFS anticipates that the TAC increase for Gulf group king mackerel will more than offset the revenue decline expected for South Atlantic group king mackerel and will result in a significant and positive economic impact on a substantial number of small entities participating in the commercial and for-hire recreational fisheries for Atlantic group Spanish mackerel and Gulf group king mackerel. Specifically, more than 20 percent of the 3,819 permitted small entities affected will experience an increase in gross revenues of more than 5 percent because of the large increase in revenues expected to result from the proposal to increase the TAC for Gulf Group king mackerel by 36 percent. Copies of these analyses are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 6, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2.

* * * * *

3. In § 622.42, paragraphs (c)(1)(i) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) *Gulf migratory group*. The quota for the Gulf migratory group of king mackerel is 3.39 million lb (1.54 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—2.34 million lb (1.06 million kg), which is further divided into quotas as follows:

(*1*) *Florida east coast subzone*—1.17 million lb (0.53 million kg).

(*2*) *Florida west coast subzone*—1.17 million lb (0.53 million kg), which is further divided into quotas by gear types as follows:

(*i*) 585,000 lb (265,352 kg) for vessels fishing with hook-and-line gear.

(*ii*) 585,000 lb (265,352 kg) for vessels fishing with run-around gillnets.

(*3*) The Florida east coast subzone is that part of the eastern zone north of 25°20.4′ N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat.

(B) *Western zone*—1.05 million lb (0.48 million kg).

* * * * *

(2) * * *

(ii) *Atlantic migratory group*. The quota for the Atlantic migratory group of Spanish mackerel is 4.00 million lb (1.81 million kg).

* * * * *

4. In § 622.44, paragraphs (a)(1) (iii) and (iv), paragraph (a)(2)(i), and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(iii) In the area between 28°47.8′ N. lat. and 25°20.4′ N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 50 fish from April 1 through October 31.

(iv) In the area between 25°20.4′ N. lat. and 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 125 fish from April 1 through October 31.

(2) * * *

(i) *Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

* * * * *

(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.75 million lb (1.70 million kg). * * *

* * * * *

[FR Doc. 97–27043 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[I.D. 100197B]

Caribbean Fishery Management Council; Public Hearing

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

ACTION: Public hearing; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Caribbean Council) will convene public hearings on Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands (Coral FMP).

DATES: Written comments will be accepted until November 25, 1997. The public hearings will be on October 21, 22, and 23, 1997, from 7:00 p.m. to 10:00 p.m.

ADDRESSES: Written comments should be sent to Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918. Copies of Amendment 1 to the Coral FMP are available at the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918.

The hearings will be held as follows:

October 21, 1997, at the Boulon Center, 16–21 Inighed, Cruz Bay, St. John, U.S.V.I.

October 22, 1997, at the Legislature Chambers, 1 Baracc Yard, Veterans Drive, Charlotte Emily, St. Thomas, U.S.V.I.

October 23, 1997, at the Caravelle Hotel, 44A Queens Cross, Christiansted, St. Croix, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, (787) 766–5926; fax (787) 766–6239.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council will be holding public hearings on the draft Amendment Number 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the United States Virgin Islands for Establishing a Marine Conservation District. The Council will be considering the establishment of a proposed ''no-take'' marine conservation district (MCD) in the EEZ due south of St. John, U.S.V.I. Fishing and the anchoring of fishing vessels would be prohibited in the MCD. The proposed MCD would cover approximately 20 square nautical miles and would be delineated by connecting the following coordinate points in the order listed:

Point	Latitude	Longitude
A	18°15.3′ N	64°46.9′ W
B	18°15.0′ N	64°42.2′ W
C	18°12.1′ N	64°42.2′ W
D	18°11.0′ N	64°46.9′ W

Dated: October 7, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–27072 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 62, No. 198

Tuesday, October 14, 1997

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

Submission for OMB Review; Comment Request

October 3, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1955, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- National Agricultural Statistics Service

Title: Agricultural Surveys Program.
OMB Control Number: 0535–0213.
Summary of Collection: Information is collected on crop acreage and production, livestock inventory and stocks of grain.
Need and Use of the Information: The information is used throughout Government and agriculture for policy, production, and marketing decisions.
Description of Respondents: Farms.
Number of Respondents; 252,900.
Frequency of Responses: Reporting: Monthly; quarterly; semi-annually; annually.
Total Burden Hours: 139,260.

- Farm Service Agency

Title: Report of Acreage (7 CFR part 718).
OMB Control Number: 0560–0004.
Summary of Collection: The Farm Service Agency requires that producers report acreage for crops that need verification of compliance, loan eligibility, or crop loans.
Need and Use of the Information: The information is used to verify that the producer is eligible for agricultural programs.
Description Of Respondents: Farms; State, Local or Tribal Government.
Number of Respondents: 616,121.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 462,093.

- Human Resources Management

Title: USDA Applicant Supplemental Sheet.
OMB Control Number: 0505–0009.
Summary of Collection: Applicants are requested to provide employment, veteran, and disability status, and race/national origin.
Need and Use of the Information: The information will be used to evaluate USDA's recruitment and hiring activities.
Description of Respondents: Individuals or households.
Number of Respondents: 50,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 4,000.

- Rural Housing Service

Title: 7 CFR 1980–I, ''Community Programs Guaranteed Loans''.
OMB Control Number: 0575–0137.
Summary of Collection: This regulation promulgates the policies and procedures for community program loans guaranteed by the Rural Housing Service and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing or liquidating such loans.
Need and Use of the Information: The information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes.
Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 125.
Frequency of Responses: Reporting: Quarterly; annually.
Total Burden Hours: 17,677.

- Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.
OMB Control Number: 0581–0093.
Summary of Collection: Information is collected from producers, handlers and processors including production, disposition, qualification data, and assessment information.
Need and Use of the Information: The information is used to strengthen marketplace position and to maintain, develop, and expand markets for the various commodities.
Description of Respondents: Business or other for-profit; Individuals or households; Farms.
Number of Respondents: 319,342.
Frequency of Responses: Recordkeeping; reporting: On occasion; Weekly; monthly; annually.
Total Burden Hours: 366,874.

- Animal and Plant Health Inspection Service

Title: Importation of Animal and Poultry, Animal/Poultry Products, Certain Animal Embryos, Semen and Zoological Animals.
OMB Control Number: 0579–0040.
Summary of Collection: Information is collected from importers concerning the type of product to be imported into the United States.
Need and Use of the Information: The information is used to evaluate the health status and risk factors associated with moving animals or animal products into the United States.
Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 178,335.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 64,113.
Expedited review has been requested for this submission.

- Rural Housing Service

Title: 7 CFR 1927–B, ''Real Estate Title Clearance and Loan Closing''.
OMB Control Number: 0575–0147.
Summary of Collection: Information is collected concerning real estate title, estate title clearance, closing of loans, assumptions, voluntary conveyances and credit sales in connection with insured loans.
Need and Use of the Information: The information is used to ensure that loans made with Federal funds are legally secured.
Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; farms.
Number of Respondents: 40,000
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 54,816.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–27102 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. CN–97–005]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cotton Classing, Testing, and Standards.

DATES: Comments on this notice must be received by December 14, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments may be mailed to USDA, AMS, Cotton Programs, 1400 Independence Avenue, S.W., Stop 0224, Room 2641–S, Washington D.C. 20250–0224. All comments received will be available for public inspection at this address during the hours 8:00 a.m. to 4:00 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Cotton Classing, Testing, and Standards
OMB Number: 0581–0008.
Expiration Date of Approval: April 30, 1998
Type of Request: Extension and revision of a currently approved information collection.
Abstract: Information solicited is used by the USDA to administer and supervise activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The information requires personal data, such as name, type of business, address, and description of classification services requested. These programs are conducted under the United States Cotton Standards Act (7 U.S.C. 51b), the Cotton Statistics and Estimates Act of 1927 (U.S.C. 473c), and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622h).
Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.83 hours per response.
Respondents: Cotton merchants, warehouses, and gins.
Estimated Number of Respondents: 307
Estimated Number of Responses per Respondent: 3.932 (1207/307)
Estimated Total Annual Burden on Respondents: 100 Hours

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Amelia M. Eduardo, Assistant to the Associate Deputy Administrator, Cotton Programs, AMS, USDA 1400 Independence Avenue, SW, Stop 0224, Room 2641–S, Washington, D.C. 20250. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 6, 1997.

Mary E. Atienza,

Deputy Administrator, Cotton Programs.

[FR Doc. 97–27100 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–092–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Imported Fire Ant regulations.

DATES: Comments on this notice must be received by December 15, 1997 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–092–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–092–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Imported Fire Ant regulations, contact Mr. Michael Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247. For copies of more detailed information on the information collection, contact Ms. Cheryl Jenkins, Information Collection Coordinator, at (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Title: Imported Fire Ant.

OMB Number: 0579–0102.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for preventing the interstate spread of injurious plant pests, such as the imported fire ant, from infested areas of the United States to noninfested areas. Implementing this mission often requires the use of domestic quarantines to restrict the interstate movement of articles that could carry the plant pest.

Restricting the interstate movement of regulated articles from an infested area to a noninfested area is crucial to our mission of preventing the interstate spread of the imported fire ant.

Nursery owners who elect to enter our Imported Fire Ant-Free Nursery Program visually inspect their premises for the presence of imported fire ants, record the results in a notebook or logsheet, and also record any treatments they perform if fire ants are discovered.

State plant protection officials collect this information by interviewing the nursery owner, reviewing the owner's inspection and treatment records, and inspecting the nursery site. The information obtained is used for issuing the various certificates, permits, and other documents that enable the nursery owner to move regulated items (such as potted nursery plants, sod, or other products) across State lines to markets outside the areas quarantined because of imported fire ant.

Without this information collection, we would be unable to collect the information we need to effectively implement our imported fire ant quarantine.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(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 our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .3561 hours per response.

Respondents: U.S. nursery owners, shippers, and State and county plant health protection authorities.

Estimated number of respondents: 2,704.

Estimated number of responses per respondent: 3.4038.

Estimated annual number of responses: 9,204.

Estimated total annual burden on respondents: 3,278 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of October 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–27098 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Request for Reinstatement and Revision of a Previously Approved Information Collection.

AGENCY: Farm Service Agency and the Commodity Credit Corporation, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) to request reinstatement, with change, of a previously approved collection in support of the Peanut Warehouse Storage Loan and Handler Operations and the Peanut Poundage Quota and Marketing Regulations Governing the 1996–2002 crop of peanuts as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

DATES: Comments on this notice must be received on or before December 15, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Carolyn Hunter, Marketing Specialist, Tobacco and Peanuts Division, Farm Service Agency, United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0514, (202) 690–0013, facsimile (202) 720–9015; or Internet e-mail, chunter@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Peanut Poundage Quota and Marketing Regulations for the 1996 Through 2002 Crops.

OMB Control Number: 0560–0006.

Type of Request: Reinstatement, with change, of a previously approved information collection.

Abstract: The information relative to reports and recordkeeping as authorized by the Secretary are used by the FSA and CCC to monitor and control compliance with the peanut program as outlined in parts 729 and 1446. If the information is not monitored and data not required, the peanut program could not operate and the 1996 Act would not be implemented as required by Congress. The 1996 Act changed the peanut poundage quota program by reducing the national quota, providing temporary seed quota allocation, removing the carryover of undermarketed quota, allowing the transfer of peanut poundage quota to any other farm within the same State, providing for increasing marketing assessments under certain conditions to cover losses in area marketing pools and restricting transfer of peanuts from additional loan to quota loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Individual producers.

Estimated Number of Respondents: 255,116.

Estimated Total Annual Burden of Respondents: 301,690 hours.

Title: Peanut Warehouse Storage Loan and Handler Operations for the 1996 Through 2002 Crops.

OMB Control Number: 0560–0014.

Type of Request: Reinstatement, with change, of a previously approved information collection.

Abstract: The information relative to reports and recordkeeping as authorized by the Secretary are used by the FSA and CCC to monitor and control compliance with the peanut program as outlined in parts 729 and 1446. If the information is not monitored and data not required, the peanut program could

not operate and the 1996 Act would not be implemented as required by Congress. The 1996 Act changed the peanut warehouse storage loan and handler operations program by adding restrictions on transfer of peanuts from additional loan to quota loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Individual producers and warehousemen.

Estimated Number of Respondents: 179,383.

Estimated Total Annual Burden of Respondents: 54,119.

Request for Comments: Comments on this information request are sought.

Proposed topics for comment include may include, but need not be limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; or (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Carolyn Hunter, at the address listed above. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Signed at Washington, D.C., on October 1, 1997.

Bruce R. Weber,

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

[FR Doc. 97–27105 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Reporting System, Management Evaluation, Data Analysis, and Corrective Action

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is an extension of collection currently approved under Office of Management and Budget No. 0584–0010.

DATES: Written comments must be submitted on or before December 15, 1997.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Joseph H. Pinto, Chief, State Administration Branch, Food Stamp Program, Food and Consumer Service, U. S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Joseph H. Pinto, (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Performance Reporting System, Management Evaluation, Data Analysis, and Corrective Action.

OMB Number: 0584–0010.

Expiration Date: October 31, 1997.

Type of Request: Reinstatement without change, of this previously approved collection of information.

Abstract: The purpose of the Performance Reporting System (PRS) is to ensure that each State agency and project area is operating the Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, (Act) and corresponding program regulations. Under Section 11 of the Act, State agencies must maintain necessary records to ascertain that the Food Stamp Program is operated in compliance with the Act and regulations and must make these records available to the Food and Consumer Service (FCS) for inspection and audit.

Management Evaluation (ME) Review Schedules—Unless the State receives approval for an alternative ME review schedule, each State agency is required, under 7 CFR Part 275 to submit one review schedule every one, two, or three years, depending on the project area make-up of the State.

Data Analysis—Under 7 CFR Part 275, each State must establish a system for analysis and evaluation of all data available to the State. Data analysis and evaluation is an ongoing process that facilitates the development of effective and prompt correction action.

Corrective Action Plans—Under 7 CFR Part 275, State agencies must prepare a Corrective Action Plan (CAP) addressing identified deficiencies. The State agencies must develop a system for monitoring and evaluating corrective action and submit CAP updates to FCS twice a year.

Affected Public: 53 State governments.

Estimated Number of Respondents: 2896 (includes project areas within the 53 State governments responsible for the administration and operation of the Food Stamp Program).

Number of responses per respondent: 2.0614.

Estimated Total annual responses: 5,970.

Hours per response: 99.3534.

Number of record keepers: 53.

Estimated Annual hours per record keepers: 1.451.

Total record keeping hours: 75.

Total annual reporting hours: 593,215 (total hours per response plus total recordkeeping hours).

Dated: October 1, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–27103 Filed 10–10–97; 8:45 am]

BILLING CODE 3410–30–P

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 2:00 pm, Wednesday, October 29, 1997.

PLACE: SDG–59, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Review and approval of the minutes of the March 12, 1997 Board of Trustees meeting meeting.
2. Report on end of fiscal year financial status of the Foundation endowment fund.
A. Review of investment policy and current portfolio.
3. Discussion of the proposed 1998/99 scholarship competition.
4. Other Business brought before the Board of Trustees.

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, President, Telephone: (703) 756–6012.

Gerald J. Smith,

President.

[FR Doc. 97–27220 Filed 10–9–97; 10:24 am]

BILLING CODE 4738–91–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Report of Privately-Owned Building or Zoning Permits Issued (Building Permits Survey)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Linda P. Hoyle, Bureau of the Census, Manufacturing and Construction Division, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 457–1321.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series are key economic indicators. Two such series are (a) Housing Units Authorized by Building Permits and (b) Housing Starts. Both are based on data from samples of permit-issuing places. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy.

The Bureau of the Census uses Form C–404 to collect data to provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family, and to select samples for the Census Bureau's demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas.

We are making the following changes to the form:

a. No longer collect data on publicly-owned construction authorized by building permits because we no longer need these data.

b. Combined two separate items, single-family houses attached and single-family houses detached, into one item because we no longer needed to collect these data separately.

c. We deleted one question, ''Are you aware of any new permit-issuing jurisdictions?'' because we no longer need this information.

We will collect data for new residential nonhousekeeping buildings; new nonresidential buildings; additions, alterations, and conversions; and demolitions and razing of buildings only through a reimbursable agreement. If we do not get that agreement, we will collect data for only new privately-owned residential buildings authorized by building permits.

II. Method of Collection

We collect this information by mail and electronically through files we download or receive on diskettes.

Monthly, we collect this information by mail for 8,170 permit-issuing jurisdictions and electronically for 550 jurisdictions. Annually, we collect this information by mail for 10,180 jurisdictions.

III. Data

OMB Number: 0607–0094.

Form Number: C–404.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 18,900.

Estimated Time Per Response: 16 minutes for monthly respondents who report by mail, 3 minutes for monthly respondents who report electronically, and 25 minutes for annual respondents who report by mail.

Estimated Total Annual Burden Hours: 30,716.

Estimated Total Annual Cost: We estimate that the cost to the respondents to provide the data will be $438,636 based on an average hourly salary of $14.65 [1] for state and local government employees.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited 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 (including hours and cost) 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 technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

[1] Taken from the Census Bureau's Annual Survey of State and Local Government Employment.

Dated: October 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27135 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Building and Zoning Permit Systems

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 28, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Linda Hoyle, Manufacturing and Construction Division, Bureau of the Census, Room 2105-FOB 4, Washington, DC 20233–6900, phone number (301) 457–1321.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census produces statistics used to monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country.

The Bureau of the Census uses Form C–411 to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places. The questions pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued.

The universe of permit-issuing places is the sampling frame for the Building Permits Survey (BPS) and the Survey of Construction. These two sample surveys provide widely used measures of construction activity, including the economic indicators, Housing Units Authorized by Building Permits and Housing Starts.

We made the following changes to the form:

a. We deleted two questions:

(1) ''What kind of permits does your office issue?'' and

(2) ''When did your government first begin issuing permits?''

The first question asked for the same information as another question. We no longer need the information requested in the second question.

b. We added two questions:

(1) ''If the jurisdiction listed in Section A.1 is a county, does your office issue permits for portions of jurisdictions located in other counties?'' and

(2) ''If the jurisdiction listed in Section A.1 is a city, town, village, borough or township, is it in more than one county?''

We need the above information to ensure that we update our universe of permit-issuing places correctly for these types of places.

We will request information about permits issued for new residential nonhousekeeping; new nonresidential building; additions, alterations, and conversions; and demolitions and razing of buildings only through a reimbursable agreement. If we do not get that agreement, we will only collect information about permits issued for new residential buildings.

II. Method of Collection

The form is sent to a jurisdiction when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed, based on information from a variety of sources including survey respondents, regional councils and Census' Geography Division which keeps abreast of changes in corporate status. Responses typically approach 100 percent.

III. Data

OMB Number: 0607–0350.

Form Number: C–411.

Type of Review: Regular submission.

Affected Public: State and Local Governments.

Estimated Number of Respondents: 2,000 per year.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 500 hours.

Estimated Total Annual Cost: The cost to the respondents is estimated to be $7,325 based on an average hourly salary of $14.65 [1] for state and local government employees.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC Section 182.

IV. Request for Comments

Comments are invited 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 (including hours and cost) 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 technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–27136 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review.

SUMMARY: On April 8, 1997, the Department of Commerce (the Department) published the preliminary results of the ninth administrative

[1] Taken from the Census Bureau's Annual Survey of State and Local Government Employment.

review of the antidumping (AD) duty order on certain fresh cut flowers from Colombia. This review covers a total of 351 producers and/or exporters of fresh cut flowers to the United States during the period March 1, 1995 through February 29, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review period.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Roy Malmrose, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4105 and (202) 482–5414, respectively.

APPLICABLE STATUTE AND REGULATIONS: The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). 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 Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 C.F.R. Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1997, we published a notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review (Preliminary Results), wherein we invited interested parties to comment. See 62 FR 16772 (April 8, 1997). At the request of interested parties, we held a public hearing on June 6, 1997.

Scope of Review

Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Rescission

At the time of our Preliminary Results, we had received responses from 63 firms indicating that they did not ship during the period of review (POR). As a check on this information, we requested and received from the U.S. Customs service a listing of all companies which shipped subject merchandise to the United States during the POR. Customs' listing confirmed 40 of the companies' claims that they had no shipments during the POR and the Department verified that one company did not export subject merchandise. For the remaining 22 that claimed no shipments, but whose names appeared on Customs' list, we determined that those companies failed to cooperate to the best of their ability and assigned them an adverse facts available (AFA) rate.

Subsequent to the Preliminary Results, we received information about those 22 companies. We examined documentation for each firm and found that the entries reported by Customs for 21 of these firms resulted from either a mistaken listing of the respondent firm as the producer or an incorrect listing of the flower type and HTS number. Therefore, we have determined that these companies did not ship the subject merchandise during the POR. For a complete list of these companies, see section entitled ''Non-Shippers'' in this notice. (The remaining company is discussed below.)

Consistent with our administrative practice, we have rescinded our review of the 62 companies with no shipments during the POR. See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 1734 (January 13,1997) (rescinding review in part with respect to respondents which, the Department determined, had no shipments of the subject merchandise during the POR); see also, 19 CFR 351.213(d)(3) (62 FR 27296 (May 19, 1997)) (although this review is not governed by these new regulations, they do reflect current practice).

Regarding the remaining company, Flores Tiba, Customs' data indicated five entries of subject merchandise exported by Flores Tiba during the POR. On June 5 and July 21, 1997, Flores Tiba submitted information demonstrating that while portions of Customs data were incorrect, Flores Tiba did have one entry of subject merchandise during the POR. Flores Tiba explained that the company does not produce or export subject merchandise in its normal course of business; the sale in question was a special order of a negligible quantity. For this reason, the sale had been overlooked.

Flores Tiba's submissions notwithstanding, the Department lacks the necessary information to calculate a margin for Flores Tiba's entry during the POR. Therefore, in accordance with section 776(a) of the Act, the Department has resorted to the use of facts available (FA) for Flores Tiba. However, upon consideration of Flores Tiba's explanation for the oversight, we have determined that an adverse inference is not warranted. Given that Flores Tiba does not normally produce or export the subject merchandise, it is not unreasonable that a small sale such as this would be overlooked. Moreover, the error was discovered too late to allow respondent sufficient time to correct the deficiency (*i.e.*, to submit the information which would allow us to calculate a margin). Therefore, as FA, we have assigned Flores Tiba the non-selected respondent rate of 2.26 percent.

Duty Absorption

On March 29, 1996, petitioner, the Floral Trade Council (FTC), requested that the Department determine whether AD duties had been absorbed by respondents during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after publication of the order, whether AD duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer which is affiliated with such foreign producer or exporter. The statute requires the Department to notify the International Trade Commission of its findings regarding duty absorption for consideration in conducting a five-year ''sunset'' review (to determine whether revocation of the order would be likely to lead to continuation or recurrence of dumping and of material injury). Section 751(a)(4) was added to the Act by the URAA. The regulations governing this review do not address this provision of the Act.

For ''transition orders,'' as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's recently enacted regulations provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 62 FR 27296 (May 19, 1997). The preamble issued when these regulations were proposed in 1996

explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. See 61 FR at 7308, 7317 (February 27, 1996). Although these recently enacted regulations are not binding upon the Department, they do constitute a public statement of how the Department expects to proceed in construing section 751(a)(4) of the amended statute. This approach ensures that interested parties will have the opportunity to request a duty absorption determination prior to the time for sunset review of transition orders under section 751(c). Because the order on certain fresh cut flowers from Colombia has been in effect since 1986, this is a transition order. Consequently, based on the policy stated above, it is appropriate for the Department to examine duty absorption in this ninth review, which was initiated in 1996.

In accordance with the statute, at section 751(a)(4), the Department must determine whether duty absorption has occurred if the subject merchandise is sold in the United States through an importer affiliated with the foreign producer or exporter. Of the selected respondents, the following have affiliated importers: The Agrodex Group (Agrodex), the Caicedo Group (Caicedo), the Claveles Colombianos Group (Clavecol), the Cultivos Miramonte Group (Miramonte), the Floraterra Group (Floraterra), the Florex Group (Florex), the Guacatay Group (Guacatay), the HOSA Group (HOSA), the Maxima Farms Group (Maxima), the Queen's Flowers Group (Queen's) and the Tuchany Group (Tuchany). Furthermore, we have determined that there are dumping margins for the following companies with respect to the percentages of their U.S. sales (by quantity) indicated below:

Name of company	Percentage of U.S. affiliated importer sales with margins
Agrodex	1.11
Caicedo	100
Clavecol	9.13
Floraterra	33.40
Florex	8.85
Guacatay	15.20
HOSA	15.88
Maxima	34.98
Miramonte	17.53
Queens	9.90
Tuchany	22.33

In the case of Caicedo, we are unable to calculate a margin based on its response and have, therefore, determined its dumping margin entirely on the basis of AFA. We also have determined, based on AFA, that there are margins on all sales. Lacking other information, we find duty absorption on all sales. See, *e.g.*, Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 31566, 31568 (June 10, 1997). With respect to those companies whose margins are not determined based on FA, we presume that the duties will be absorbed for those sales which were dumped, unless there is evidence (*e.g.*, an agreement between the affiliated importer and the unaffiliated purchaser) that the unaffiliated purchasers in the United States will pay the full duty ultimately assessed on the subject merchandise. Although in this case certain companies have provided invoices which separately list an amount for estimated AD duties which they are charging their unaffiliated purchasers, this is not evidence of payment of antidumping duties by the customer, and none of these companies has presented evidence of agreements with unaffiliated purchasers to pay ultimately assessed AD duties. Therefore, we find that the AD duties have been absorbed by the above-listed firms on the percentage of U.S. sales indicated. *See* 62 FR 31568.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results and partial rescission of the order. We received case and rebuttal briefs from the FTC, the Asociacion Colombiana de Exportadores de Flores (Asocolflores), an association of Colombian flower producers representing many of the respondents in this case, and HOSA and Caicedo.

General Issues

Comment 1: Asocolflores argues that the Department's decision to limit the review to the largest exporters and then apply to non-selected respondents the weighted-average margin of these selected respondents violates due process and the AD statute. Asocolflores contends that the 13 largest producers are not a statistically valid sample and thus their average rate is not representative for the non-selected respondents. It adds that the Department has no right to disregard questionnaire responses received from non-selected respondents.

The FTC disagrees contending that the statute gives the Department exclusive authority to assign margins based on a sample of the largest exporters. The FTC also notes that the Department disclosed to all parties the alternatives and considered comments before deciding on this methodology.

DOC Position: We agree with the FTC. According to the statute and SAA, the authority to select respondents, whether using samples or choosing the largest exporters, rests exclusively with the Department. *See* section 777A(a–c) of the Act and SAA at 202. Given the large number of respondents in this case and the new statutory deadlines, the Department concluded that limiting the number of exporters examined was administratively necessary. The Department requested comments on two proposed options for limiting the number of companies to be examined. After analyzing those comments from the interested parties, we chose to limit the number of companies examined by reviewing the largest exporters. *See* Memorandum for Barbara Stafford from Team dated November 21, 1996. With respect to not examining the responses received from non-selected respondents, the statute does not require that we look at every questionnaire response placed on the record. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19036 (April 30, 1996).

Finally, with regard to applying the weighted-average margin of selected respondents to the non-selected respondents, section 777A(c)(2) of the Act provides the Department with the authority to determine margins by limiting its examination to a statistically valid sample of exporters or the largest volume of the subject merchandise that can be reasonably examined. This subparagraph is formulated as an exception to the general rule that each company for which a review is requested will be individually examined and receive a calculated margin. The method for establishing the rate for the non-selected respondents is left to the agency's discretion. As discussed in comment 2, the weighted-average of the calculated rates is a reasonable method.

Comment 2: Asocolflores states that the Department properly excluded the one rate based entirely on AFA in calculating the rate applied to non-selected responding companies. However, citing *Serampore Indus. Pvt. Ltd.* v. *United States* (696 F. Supp. 665, 669 (CIT 1988)) and *Romer* v. *Evans*, 116 S. Ct. 1620, 1627 (1996), Asocolflores contends that there is no legal basis for the Department's exclusion of zero and *de minimis* margins from the margin applied to non-selected respondent companies.

Asocolflores claims that due process would be violated if only selected respondents benefitted from zero or *de minimis* margins. If some of the respondents selected by the Department show zero or *de minimis* margins, Asocolflores states, it is reasonable to assume that some of the non-selected respondents also would have received the same had they been individually reviewed. Asocolflores reminds the Department that the purpose in limiting the review to only 13 selected respondents was to use their rates to project the rates of the non-selected respondents. Acknowledging that the AD statute provides for the exclusion of zero and *de minimis* margins in calculating the cash deposit rate for non-examined producers in an investigation, Asocolflores differentiates this situation from the final results of an administrative review which give rise to actual duty payments (as opposed to cash deposit rates). Asocolflores emphasizes that, because the Department decided to limit the number of respondents, all exporters and importers do not have the ability to obtain their own assessment rates as they normally would in an administrative review.

The FTC objects to the position advanced by Asocolflores, stating that there is no valid basis for excluding margins based on AFA on one hand while including *de minimis* margins on the other. On the contrary, the FTC argues that the Department should include margins based on AFA in the rate applied to non-selected responding companies since it is likely that some non-selected respondents would have failed to qualify for their own calculated rate due to failed verifications, failure to submit responses, etc. The FTC cites the Court of International Trade (CIT) in *Floral Trade Council* v. *United States* (16 CIT 654, 657, 799 F. Supp. 116, 119 (1992)) where it said, ''this court has approved 'all other' rates based on an average that includes BIA rates'' and later where it says ''[n]ot all BIA rates are inappropriate for use in calculating unified 'all other' rates'' (*Id.* At 658, 799 F. Supp. at 120).

DOC Position: We have continued to calculate the cash deposit rate for non-selected respondents by excluding both AFA and zero/*de minimis* rates. While there may be situations when it would be appropriate to include AFA or zero/*de minimis* rates in the rate to be applied to companies whose entries are not individually examined, there is no over-arching rule as to their inclusion or exclusion. With respect to the precedents cited by the FTC and Asocolflores, the situation here differs in that we have, for the first time, restricted a review to the largest exporters.

Underlying the arguments of both the FTC and Asocolflores is the notion that the selected respondents are somehow representative of the whole group of potential producers/exporters. As in investigations, where only the largest producers/exporters are selected, those selected here cannot necessarily be said to be representative of the whole population. Therefore, we cannot treat the selected companies as a statistical sample and compute a margin that is based on the results for all of the selected companies. As for Asocolflores' concerns that due process would be denied to non-selected respondents should we not include zero/*de minimis* margins, we disagree. Once the Department decides to limit its review to certain producers/exporters, including zero/*de minimis* rates while excluding AFA rates would yield an unbalanced result because, as the FTC points out, some non-selected firms might also have received AFA.

As stated above, this is the first time in a review of this or any order that we have examined only the largest producers/exporters. In deciding how to calculate the rate to apply to non-selected companies that responded to our questionnaire, we reviewed our past practice and determined that the most analogous situation we have dealt with in the past is in non-market economy (NME) investigations where the number of companies that submit full responses is too large to be investigated. In those investigations, as in the present case, what we did paralleled the statutorily mandated formula for calculating the all-others rate, *i.e.*, the weighted-average rate of investigated companies not including AFA and zero/*de minimis* rates.

Comment 3: Asocolflores and other respondents allege that the Department erred in assigning an ''all others'' rate of 3.53 percent from the Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Colombia, 52 FR 6842 (March 5, 1987) (Flowers (LTFV)) to the companies that were unlocatable in this review rather than an ''all others'' cash deposit rate of 3.1 percent from the Amendment to Final Determination of Sales at Less Than Fair Value in Accordance with Court Decision, 56 FR 12508 (March 26, 1991).

DOC Position: We agree with Asocolflores that the correct ''all others'' cash deposit rate from Flowers (LTFV) is 3.1 percent and should be assigned to the unlocatable companies in this review.

Comment 4: Both Asocolflores and the FTC acknowledge that the Department should develop a mechanism which allows respondents to preserve their eligibility for revocation. However, the FTC argues that such eligibility should be limited to those companies that are selected for review and have two years of no dumping. According to the FTC, this option comports most closely with the AD law by providing for the revocation of orders only for companies that have been subjected to actual reviews. Asocolflores opposes this option because it limits revocation eligibility to the largest exporters (assuming the Department continues to review only the largest exporters). Asocolflores claims there is no basis for denying revocation eligibility to smaller producers.

Asocolflores favors the approach whereby companies would be allowed to make a retrospective claim that they have not dumped for the past three years in the form of a ''changed circumstances'' review in the eleventh period (*i.e.*, the first review period in which revocations could be possible under this order). Asocolflores argues that this approach conserves the administrative resources of the Department, reduces the verification burden, and is easier to administer. Moreover, Asocolflores suggests that, under the new regulations, a retrospective revocation review in the eleventh POR could be limited to an examination of data for only the ninth and eleventh periods, further reducing the administrative burden and simplifying verification.

The FTC concedes that the ''changed circumstances'' approach is the most efficient and states that if the Department chooses not to follow the FTC's preferred option (eligibility only for companies which have been reviewed), the ''changed circumstances'' approach should be adopted, provided the companies are subject to verification for the entire three-year period. The FTC also expressed its concerns that a company may be entitled to base revocation on a period for which no review was requested.

DOC Position: Having reviewed the comments we received on this issue, we have decided to adopt the following procedure for addressing requests for revocation by small companies in this proceeding. We believe this procedure addresses many of the concerns raised by the parties and, at the same time, meets the resource constraints faced by the Department.

Under this procedure, companies that were not selected for examination in

prior reviews (because of the large number of companies for which a review was requested) will have a mechanism for obtaining revocation on the basis of three consecutive years of sales at not less than normal value. The first opportunity for such a procedure will occur in the review of the period March 1, 1997 to February 28, 1998 (the eleventh review period). Companies that request a review for that period may also request revocation if they meet the following criteria: (1) a review was requested for the company in each of the two years immediately preceeding the period of review in which revocation is requested, but the company was not selected for examination in either of those two preceding reviews; and 2) with the request for revocation the company (a) certifies that it sold subject merchandise at not less than normal value during the period described in 19 C.F.R. 351.213(e)(1) and for two consecutive years immediately preceeding that period; (b) provides the certifications required under 19 C.F.R. 351.222(e)(ii) and (iii); and (c) submits a statement acknowledging that its entries are subject to assessment of AD duties at the non-selected respondent rate in one or both of the two preceding review periods. If a company meets these criteria, Commerce will examine the company's sales during the current period of review for purposes of determining a dumping margin in accordance with section 751(a) of the Act. In accordance with section 751(a)(2) of the Act, the results of that analysis will form the basis for any assessment of antidumping duties on entries during that period and for cash deposits. In addition, for the purposes of revocation only, Commerce will examine data for the two prior years to determine whether the company sold subject merchandise at not less than normal value. If Commerce determines that the company sold subject merchandise at not less than normal value in each of the three years examined and the other conditions of 19 CFR 351.222 are met, it will revoke the order with respect to that company.

The Use of Facts Available

Comment 5: While Caicedo acknowledges that there were a number of problems encountered at the Bogota verification, the company argues that the rate applied in the preliminary results (25.58 percent) is inappropriate for two reasons. First, Caicedo argues that the rate chosen as the highest rate ever applied to the Caicedo Group was in fact never applied to the Caicedo Group. In fact, asserts Caicedo, the rate was applied in the third review to one of the farms that is now part of the Caicedo Group, but which, in that review, was treated as an individual company. The companies which now comprise the Caicedo Group, asserts Caicedo, were not treated as a group until the fourth review (citing Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part), 59 FR 15159 (March 31, 1994) (Flowers (90–91)). Second, Caicedo argues that a recent decision by the Court of Appeals for the Federal Circuit (CAFC) (*D&L Supply Co.* v. *United States,* 133 F. 3d 1220 Fed Cir. 1997) (D&L Supply) calls for the Department to select a FA rate that reasonably reflects conditions in the industry. When compared to the majority of the calculated rates in this and previous reviews, Caicedo asserts that the 25.58 percent rate has no relationship to commercial practice in this industry.

Caicedo suggests that it would be more appropriate to use either the highest rate received by the group during the reviews in which the companies were treated as a group or by constructing group rates for the earlier reviews by averaging the rates applied to the individual members of the group in those reviews. According to Caicedo, these methods would produce a rate which relates to the past practices of the Caicedo Group and which reflects conditions in the industry.

Furthermore, Caicedo argues that the Department has the discretion not to apply the highest available rate and asserts that the facts in this case do not warrant the highest available rate. Caicedo argues that one of the stated reasons for applying FA, *i.e.,* the fact that Caicedo had not adjusted its material and labor costs for inflation, is inappropriate. Caicedo claims that the Department did not ask for this information in either the original or supplemental questionnaires, despite the fact that Caicedo had clearly explained in its questionnaire response that the inflation adjustment had not been included. Therefore, claims Caicedo, it cannot be penalized for not providing this information.

Finally, Caicedo argues that the company's situation during this review should be taken into consideration. According to Caicedo, the affiliated Miami importer went through a period of downsizing during the review period, as a result of which Caicedo was forced to sell during the review period to approximately 60 unaffiliated U.S. importers. This disruption in the normal U.S. selling practice made the preparation of the sales response a particularly arduous task. Caicedo's task was further complicated by the fact that the Group was operating with a reduced staff. In light of this situation, Caicedo argues that mistakes discovered at verification, such as the misclassification of constructed export price (CEP) versus export price (EP) sales and the inappropriate use of the date of receipt of payment as the date of sale, were not that serious and do not warrant the use of a rate which Caicedo asserts will put the company out of business.

The FTC argues that the Department should apply an AFA rate of 76.60 percent (the highest rate for any company during this and any prior segment of this proceeding) because Caicedo failed to cooperate during the review and verification process. The FTC argues that such a failure to cooperate could have only been willful, given Caicedo's past experience in this order. The FTC asserts that in order to ensure cooperation in the future, the Department should apply a rate of 76.60 percent, since it is clear that the application of 25.58 percent to a member of the Caicedo group during a past review did not affect Caicedo's behavior during the current review.

Regarding Caicedo's arguments that the 25.58 percent rate should not apply to the Caicedo Group because that rate was never applied to the group as defined in any prior administrative review, the FTC argues that the relevant issue is not the composition of the Caicedo Group during prior review periods, but the composition during this review period, when Cauca was in fact one of the members of the Caicedo Group. Because Cauca is part of the Caicedo Group in this review, it may fairly be assumed that Caicedo's margin of dumping in this POR ''bears some relationship'' to the past practices of all of the companies within the group, including Cauca. Moreover, the Department cannot calculate an average of the rates applicable to group members in prior review periods. To accurately calculate a weighted-average, we would need verified 1995–1996 sales figures.

DOC Position: While we have concluded that the deficiencies in Caicedo's responses and the problems at verification reflected a failure on Caicedo's part to cooperate to the best of its ability, we disagree with the FTC's conclusion that the earlier rate of 25.58 percent is not sufficiently adverse. While we acknowledge that the problems with the responses and the verification rendered Caicedo's information unuseable for purposes of calculating a dumping margin, we found

that the company made significant efforts to respond to our requests for information and to undergo verification.

As detailed in the preliminary results, Caicedo misclassified CEP sales and misreported many dates of sale, using the date that payment was received rather than invoice date. (Caicedo's comments regarding inflation adjustments are addressed further below.) We recognize that the company faced difficult circumstances during the review period, but we find that a company that has successfully participated in numerous reviews, as Caicedo has, can reasonably be expected to have done a better job of responding to our inquires. Consequently, in accordance with section 776(b) of the Act, we have determined that adverse inferences are warranted in determining through FA the dumping margin for this company.

We have examined Caicedo's arguments with respect to applying Cauca's rate to the Caicedo Group as a whole and agree that we should only look back to rates that have been applied to the Caicedo Group in the past or the rates that would have been applied had current members of the Caicedo Group been analyzed as part of the group in the earlier reviews. The highest rate calculated in this manner is the average of the rates received by the individual companies currently comprising the Caicedo Group in the third administrative review (see Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review and Revocation in Part of the Antidumping Duty Order, 56 FR 50554, (October 7, 1991) (Flowers (89–90)), which is 6.46 percent.

However, we have further determined that it would not be appropriate to apply this rate to Caicedo in the circumstances presented by this review. Of the companies that were individually examined in this review, the highest rate is 8.36 percent for Floraterra. Since Floraterra cooperated fully in the review and its responses were verified, we have determined that Caicedo should not receive a lower rate than Floraterra. Therefore, we have assigned the Caicedo Group a dumping margin of 8.36 percent. Because it is higher than any historical rate for the Caicedo Group as a whole, it provides substantial incentive for Caicedo to do a better job of responding to our inquires in future reviews.

With respect to the FTC's argument that we cannot calculate a weighted-average rate from a prior review of the individual members of the Caicedo Group because we lack verified 1995–96 sales figures, we disagree. The weight-average rate that would have been applied to the Caicedo group in Flowers (89–90) would have been calculated using sales figures from that review period, not 1995–96. Therefore, although we have not used the historical rate, we computed it using the ranged sales figures in the public versions of the responses filed in Flowers (89–90).

Regarding Caicedo's argument that one of our bases for AFA was unsupported, we disagree. In the questionnaire, companies were allowed to include amortized amounts of preproduction expenses in material and labor costs but, for the companies that did so, they were directed to ''identify which expenses contain pre-production expenses and fully describe your amortization methodology.'' (See page D19 and D24 of the Department's questionnaire.) Caicedo did not identify where it had included amortized expenses, nor did it provide a description of its amortization methodology. Without this information, the Department was unable to identify any problems to be addressed in its supplemental questionnaires because it was not aware that amortized amounts had even been included. Also, the questionnaire was clear that reported depreciation expenses should be adjusted for inflation, and Caicedo failed to make this type of adjustment. (See page D32 of the Department's questionnaire.)

Finally, with respect to the CAFC's decision in D&L Supply, we note that it concerned a segment of a proceeding under the Act prior to imposition of URAA-related amendments and the facts before the court in that case differed from the facts here. D&L Supply involved the Department's use, as best information available (BIA), of information which had conclusively been determined in the course of litigation to be inaccurate. In D&L Supply, the court decided that we could not use a judicially invalidated rate as a BIA rate in subsequent reviews. The 25.88 percent rate we used in our preliminary results has not been invalidated by subsequent court decisions. Nevertheless, the rate we have assigned Caicedo in these final results does not conflict with the CAFC's philosophy in D&L Supply, because it is clearly consistent with commercial practice in this industry as it was the calculated rate of another company.

Comment 6: Because all loan documentation was not available at verification, the FTC requests that the Department apply AFA in calculating Tuchany's U.S. credit costs. Specifically, the FTC suggests that the U.S. credit costs for Tuchany should be calculated using the highest rate for any loan for which documentation was available. Asocolflores argues that the Department should continue to use the FA rate of LIBOR plus six percent.

DOC Position: Because certain information concerning Tuchany's credit costs could not be verified, the Department used an FA rate of LIBOR plus six percent to calculate Tuchany's U.S. credit costs in the preliminary results of this review. This represents the average of the interest rates on the loans for which documentation was available at verification. We did not apply AFA in selecting this interest rate because we have not concluded that Tuchany failed to cooperate by not acting to the best of its ability. (See Section 776(b) of the Act.) Tuchany complied with all of our requests for information in this review and, with this one exception, we were able to verify the information provided. Therefore, for these final results, the Department has continued to use the non-adverse rate employed in the preliminary results to calculate U.S. credit costs for Tuchany.

Comment 7: Flores El Lobo requests that the Department reconsider its preliminary decision to apply AFA to the company and instead to apply the non-selected company rate to it. The company was not originally represented by counsel. When the company received the Department's questionnaire, reports Flores el Lobo, a company official signed for the questionnaire. However, according to the company, because the company was in liquidation and had ceased operations, it did not file a timely response. According to the company, in September 1996, Eden Floral Farms, one of Flores El Lobo's unaffiliated importers, decided to prepare a response. On behalf of Eden Floral Farms, Asocolflores contacted the Department and was advised that Eden should file a response for Flores El Lobo on October 9, 1996. Because the company was instructed by the Department to file a response and did so, Asocolflores asserts that Flores El Lobo should not be penalized with an AFA rate.

The FTC supports the Department's decision to treat Flores El Lobo as a non-respondent and assign an AFA margin to the company. If, as the company claims, it was in the process of liquidation at the time it received the questionnaire, asserts the FTC, it should have at least reported its status to the Department. Further, argues the FTC, the Department should not accept the company's untimely response provided by Flores El Lobo's importer as evidence

that the company was cooperative or acting to the best of its ability. According to the petitioner, without the AFA provision of the law, there would be no incentives for timely, complete reporting in response to the Department's questionnaire.

DOC Position: We have reconsidered our treatment of Flores El Lobo. At the time of the preliminary results, we overlooked the fact that Eden Farms had been advised by the Department to file a late response on behalf of Flores El Lobo. Given the fact that its importer attempted to cooperate with the Department by requesting that it respond late on behalf of its exporter, for these final results, we have not found that Flores el Lobo failed to act to the best of its ability in responding to the Department's inquiries. *See* Section 776(b) of the Act. Accordingly, it is inappropriate to assign Flores El Lobo an AFA rate. Furthermore, like other companies in this review, because Flores El Lobo was not a selected company, its response had no impact on our analysis. For purposes of the final results of review, we have assigned Flores El Lobo the non-selected companies' rate, 2.26 percent.

Export Price or Constructed Export Price

Comment 8: Asocolflores maintains that the Department should compare the annual average CV with the annual average CEP or EP in light of the extreme seasonality of U.S. demand of the subject merchandise. The FTC argues that the use of an annual average U.S. price is unnecessary and will not produce a more representative U.S. price. Instead, FTC contends, such averaging on the U.S. side will mask dumping.

DOC Position: As we have stated in prior reviews and the investigations of Colombian flowers, (see, e.g., Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, (August 19, 1996) (Flowers (91–94))), we have exercised our authority under section 777A of the Act to use averaging techniques and have computed monthly average U.S. prices. Our use of monthly averages for the U.S. price has been upheld by the CIT. See, *e.g., Floral Trade Council* v. *United States*, 775 F. Supp. 1492, 1499–1501 (CIT 1991).

For the current review, we have continued to use monthly average U.S. prices. By relying on monthly averages, we are able to use the exporters' actual price information, which is often available only on a monthly basis. As in prior reviews, we have not adopted Asocolflores' suggestion that we move to annual averages. In our view, use of an annual average would allow respondents to dump during periods of low demand, a result that is not consistent with the statute.

Comment 9: Queen's argues that the Department's logic of treating the affiliated flowers producers as a single entity for AD duty calculation purposes should also apply to affiliated importers. Queen's asserts that the Department collapses companies that are affiliated when there is a significant potential for price manipulation. Queen's claims that to the extent there is any potential for price manipulation, it exists at the importer level rather than the producer level since the importers generally sell the flowers on a consignment basis.

The FTC responds that the effect of Queen's proposal would be the same as averaging sales over a longer period or greater number of companies, allowing low-priced sales by one importer to offset higher prices obtained by another. The FTC maintains that such a methodology would only serve to mask dumping.

DOC Position: In response to Queen's comment, we are combining the operations of the affiliated importers for purposes of our final results in this review. For Queen's sales through affiliated importers, we calculated a single CEP for each flower type based on the sales data from the affiliated importers. These affiliated resellers would be treated as a single entity if we were not using monthly average prices. Thus, notwithstanding the FTC's concerns about the effects of further averaging, we see no reason to disaggregate these companies' sales.

Comment 10: The Flores Colon Group (Flores Colon) contends that the Department incorrectly included both the costs incurred by Flores Colon's affiliated cargo agent and payment from the cargo agent to Flores Colon in direct selling expenses. In Flores Colon's view, this amounts to double-counting because certain ''expenses'' incurred by the cargo agent were payments to Flores Colon. Hence, Flores Colon argues, these payments are intra-company transfers and should not be deducted as costs.

DOC Position: We disagree with Flores Colon's claim that we included the cargo agent's expenses arising from intra-company transfers in the preliminary results calculations. The only amounts deducted were payments to outside, *i.e.,* non-affiliated, suppliers of the cargo agent and the costs incurred by Flores Colon in supporting the operations of the cargo agent, *e.g.,* wages paid to Flores Colon workers that staffed the cargo agent's operation.

Comment 11: Maxima argues that so-called ''AD reserve surcharges'' added by an unaffiliated consignment seller to the price charged to the first unrelated seller in the United States should be included in CEP. Furthermore, Maxima argues that there is no statutory basis under 19 U.S.C. 1677a(c)(2) and (d) for later deducting these ''AD reserve surcharges'' from CEP since these surcharges are neither movement expenses, export taxes, commissions or selling expenses.

DOC Position: We disagree with Maxima. In the situation discussed by Maxima, the unaffiliated consignment seller is receiving revenue from two sources—from Maxima in the form of a commission and from the purchaser in the form of an AD reserve surcharge. Since Maxima and the consignment seller in this situation are not affiliated, the payment to the consignment reseller for AD reserve surcharges does not accrue to Maxima. Therefore, we have taken as our starting price the price charged by the unaffiliated consignment seller net of the AD reserve surcharge. This differs from our treatment of AD surcharges paid to affiliated consignment sellers, where the AD surcharge can be said to accrue to the affiliated producer/exporter.

Comment 12: Asocolflores asserts that for CEP sales, the Department incorrectly deducted direct and indirect selling expenses incurred in Colombia from CEP. Asocolflores cites the Statement of Administrative Action (SAA) which states that, under section 772(d) of the Act, CEP should be reduced only by those expenses and profit associated with economic activity in the United States. Additionally, Asocolflores cites section 351.402(b) of the recently enacted regulations which directs the Department to ''make adjustments {to CEP} for expenses associated with commercial activities that relate to the sale to an unaffiliated purchaser, no matter where or when paid.'' Citing to Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, 62 11825, 11833–34 (March 13, 1997), and Gray Portland Cement and Clinker from Mexico, 62 FR 17148, 17167 (April 9, 1997) (Cement from Mexico), Asocolflores contends that the Department has interpreted section 772(d) to preclude the deduction of selling expenses incurred in the exporting country from the U.S. price in other administrative reviews and should apply the same interpretation in these final results of review.

For companies that sell outright to their affiliated importers, Asocolflores contends that the expenses are incurred

in completing the sale to the importer and, therefore, are not associated with economic activity in the United States. For the companies that make consignment sales, all such expenses are incurred prior to U.S. economic activity and are not assumptions of the importer's selling costs. Furthermore, asserts Asocolflores, since, for EP sales, neither the producer nor affiliated importer engages in any U.S. economic activity and the expenses in question are incurred equally for both CEP and EP sales, they should not be deducted from CEP.

Asocolflores further contends that the Department should not apply its CEP profit ratio to selling expenses incurred in Colombia because the SAA provides for a deduction from CEP for profit allocable to selling activities in the United States and, for the reasons cited above, the export-related activities in Colombia are not selling activities in the United States.

The FTC states that Asocolflores' arguments overlook the fact that flowers are grown commercially in Colombia specifically for U.S. customers and, therefore, all such expenses are associated with economic activity in export markets, principally the United States. Citing the Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30352 (June 14, 1996), the FTC claims that the Department allows selling expenses incurred in the exporting country to be deducted from CEP when ''virtually all'' of the product is sold in the United States. The FTC asserts that ''virtually all'' of the subject flowers are sold in the United States and that the Colombian producers target the subject flowers to the U.S. market. In the alternative, the FTC states that, if such costs are not deducted from CEP, they should be included in selling, general and administrative (SG&A) expenses and added to CV.

DOC Position: We agree with Asocolflores that selling expenses incurred in the home market that are not associated with U.S. economic activity should neither be deducted from CEP nor included in the basis for calculating CEP profit. We closely analyzed the expenses reported by each respondent and have continued to deduct from and include in the basis for profit certain expenses (e.g., association dues and advertising expenses) that are associated with U.S. economic activity. We do not agree with the FTC that respondents sold ''virtually all'' of the subject flowers in the United States, as many of the respondents have substantial third country (TC) sales of such flowers.

In addition, we disagree with petitioner that the expenses not deducted from CEP should be included in CV. In accordance with section 773(e)(2)(B) of the Act, the amount to be included for CV should reflect SG&A incurred for sales in the exporting country.

Comment 13: Asocolflores states that the Department instructed respondents not to offset interest expenses with interest income when calculating indirect selling expenses in the United States. Asserting that it is the Department's standard practice to allow this offset, Asocolflores requests that the Department calculate selling expenses, inclusive of an offset for interest income. If the Department does not have sufficient data to do so, Asocolflores contends that it should provide an opportunity for respondents to submit such information

The FTC contends that the Department does not have a standard practice of allowing interest income to offset U.S. selling expenses and instructed respondents correctly not to report such income. The FTC states that any interest income earned with respect to U.S. sales is either due to intra-company payment terms or earned after the sale by the importer. The FTC argues that any interest income earned after the sale is not related to the production or sale of flowers but rather is income from monetary transactions. Furthermore, the FTC states that section 772 of the Act provides only for adjustments to CEP for ''expenses,'' and does not allow an offset for interest income earned on the sale.

DOC Position: In the context of a sales calculation, it is the Department's standard practice to require respondents to demonstrate a direct relationship between the interest income and the sales under review to qualify for an adjustment. See Certain Cold-Rolled Carbon Steel Flat Products from Germany, 60 FR 65281, Comment 29 (December 19, 1995) (Carbon Steel from Germany). Further, in Carbon Steel from Germany, the Department denied a request for a similar adjustment because the respondent did not claim the adjustment until verification, thus limiting the ability of the Department to investigate the basis of the claim.

We acknowledge that the questionnaire did not clearly reflect the Department's practice of allowing interest income offsets in limited circumstances. However, with the exception of Queen's, none of the respondents raised this issue with the Department in a timely manner or provided the information necessary to evaluate and make the claimed adjustment. Because those respondents did not raise this issue until their case briefs, we had no opportunity to obtain information and evaluate their claims. Thus, we have made no adjustment. In contrast, Queen's did raise the issue in a timely manner, which enabled the Department to ask supplemental questions and verify the basis for the claim. Therefore, we have taken Queen's request into consideration, and have reduced interest expense for Queen's affiliated CEP resellers by the amount of interest income.

Comment 14: The FTC argues that the Department should not treat commissions paid to affiliated importers differently than it treats commissions to unaffiliated importers if it can be shown that the commissions to affiliated importers are at arm's length. The FTC claims that section 772(d)(1) of the Act explicitly requires the Department to first deduct commissions and then any indirect selling expenses in calculating CEP, without distinguishing between affiliated and unaffiliated parties. Furthermore, the FTC contends that the statute recognizes that a CEP reseller, whether or not affiliated, should be treated as a separate entity according to the FTC. Consequently, since both transactions are at the same level of trade, the FTC argues that commissions should be treated the same whether the CEP sale is made through an affiliated reseller or through an unaffiliated reseller.

Asocolflores claims that by deducting the commission paid by the exporter to an affiliated importer and then deducting the importer's selling expenses, the Department would be double-counting selling expenses. In addition, Asocolflores argues that the deduction of the commissions may result in a double deduction of profit in calculating CEP, because section 772(e) of the Act specifically requires a deduction of CEP profit. Asocolflores asserts that to the extent that profit is included in the commission, a double deduction would occur.

DOC Position: We agree with Asocolflores that deducting the commission paid to an affiliated importer and indirect selling expenses would lead to double-counting. To avoid this, we have deducted actual selling expenses rather than the commission paid to the affiliated exporter by the importer. See Flowers (91–94) at 42838. See also, the newly enacted regulations at 19 CFR 351.402 (a) and (e).

Comment 15: Tuchany and Miramonte allege that the Department erred when it subtracted CEP profit not only with respect to affiliated importers

but also with respect to unaffiliated consignment importers. The FTC argues that profits should be deducted from all CEP transactions, whether or not the merchandise is sold on a consignment basis. Under the FTC's interpretation of affiliation, any consignment sale implies an affiliation. Therefore, there should be a deduction of CEP profit from all consignment sales.

DOC Position: We disagree with the FTC that any consignment sale implies affiliation between the exporter and the consignment importer. The consignment importer negotiates the price with the U.S. customer without the involvement of the exporter and the amount of the commission paid to the consignment importer is negotiated at arm's length between the exporter and the consignment importer. Therefore, for sales made through unaffiliated consignment importers we have deducted the commission paid to those importers. Further, because the deduction of these commissions results in a price corresponding as closely as possible to an export price between the unaffiliated exporter and importer, we have not made an additional deduction of CEP profit.

Comment 16: Asocolflores argues that the Department erred in its calculation of CEP profit for respondent companies by including EP and consignment sales in the calculation. Asocolflores contends that section 772(f)(2)(C) of the Act indicates that CEP sales to affiliated parties should be the only U.S. sales included in the calculation of CEP profit. In further support of this position, Asocolflores cites to the SAA at 155 which states that ''[i]f there is no profit to be allocated (because the affiliated entity is operating at a loss in the United States and foreign markets), [the Department] will make no adjustment under section 772(d)(3).'' Asocolflores argues that if sales to unaffiliated importers were profitable, there could still be a profit to allocate, while the SAA expressly does not consider such a situation.

The FTC argues that section 772(f)(2)(C) of the Act does not limit the sales to be considered for purposes of computing CEP profit to sales through affiliated importers. The FTC argues that the limitations in sections 772(f)(2)(C)(i), (ii) and (iii) are primarily concerned with the merchandise included in the calculation, not the category of the customer. The FTC additionally argues that consignment agents are affiliated as there exists a control relationship between the consignment agent and the producer of the subject merchandise.

DOC Position: We disagree with Asocolflores. In Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18478 (April 15, 1997), the Department addressed the issue of whether EP sales should be included in calculating a CEP profit rate:

> The calculation of total actual profit under section 772(f)(2)(D) includes all revenues and expenses resulting from the respondent's EP sales, as well as from its CEP and home market sales. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C). The first alternative under this section states that for purposes of determining profit, the term ''total expenses'' refers to all expenses incurred with respect to the subject merchandise, as well as home market expenses. Where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions.

Further, section 772(f)(2)(B) of the Act defines ''total United States expenses'' as the total expenses described in subsections (d)(1) and (2). Section 772(d)(1) encompasses ''the amount of * * * expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States * * *'' Clearly this would include all consignment and EP sales to unaffiliated parties as well as sales through affiliated resellers. Accordingly, we have continued to include all U.S. sales transactions and associated expenses in our calculation of CEP profit.

Comment 17: Asocolflores argues that, due to the seasonal nature of the demand for fresh cut flowers in the United States, the Department should calculate CEP profit on a monthly rather than an annual basis. Asocolflores argues that the use of an annual profit rate in light of the highly variable monthly profit rates which result from the seasonality of demand for fresh cut flowers distorts the Department's AD calculations. Asocolflores points out that the Act does not specify the time period over which profits should be calculated, thereby affording the Department the discretion to use a monthly calculation. Asocolflores contends that profit rates on sales to EP customers also vary due to seasonality. In support of its argument, Asocolflores cites to the SAA at 153 which states, ''The deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which reflects 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.''

The FTC responds that sections 772(f)(2)(B) and (C) refer to total expenses without indication that such expenses are to be compared over some period that is a subset of the POR.

Accordingly, the FTC argues, the term ''total'' should mean total for the POR. In support of its position, the FTC cites to 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, 62 FR 2081, 2125 (January 15, 1997), where the Department indicated a preference for a single rate for CEP profit:

> 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.

The FTC argues that, while prices may vary, the rate of profit expected by the importer is best reflected by the use of an annual rate. The FTC notes that the use of an annual *rate* still results in a variation in the amount of profit when prices vary. Use of an annual rate, the FTC argues, ensures that some profit is assigned to all months, reflecting the expectations of arm's-length importers.

DOC Position: We have continued to use an annual CEP profit rate for purposes of these final results. As the FTC has noted, the Department's historical practice has been to apply a single rate for CEP profit. Although Asocolflores has argued that profit rates may vary due to changes in demand conditions, this is true, to some extent, for many products. Moreover, the CEP profit calculation is not intended to be based on the profit of particular U.S. sales. Rather, it is normally based on the overall profit of home market and U.S. sales. Although a respondent may have few or no home market sales, we nonetheless use an average profit rate for those U.S. and home market sales that were made. We have determined that the circumstances surrounding this case do not compel a departure from our usual practice of using a single rate for CEP profit.

Normal Value

Comment 18: The FTC disagrees with the Department's decision to base normal value (NV) on constructed value (CV), arguing instead that the prices of exports to the United Kingdom (UK) should be used. In support of its argument, the FTC asserts that data submitted to the Department show that

the UK was the largest TC market for Colombian flowers in 1995–96. However, rather than focusing on prices to the UK, the analysis relied upon by the Department in rejecting TC prices (the Botero Study) analyzes Aalsmeer (Holland) auction prices. The FTC further argues that the quantity variance in the UK was similar to the variance in the U.S. market, rising and falling in slightly different months. Moreover, the U.S. and UK markets have very similar holidays and holiday demand patterns and all flower-buying holidays except Mother's Day occur in both markets in the same months. Regarding volatility in the markets, the FTC contends that the Department should reconsider its finding that differences in volatility are largely attributable to differences in demand patterns. Volatility can also result anytime there is targeted or sporadic dumping in one of the two markets. Therefore, according to the FTC, the Department should look at whether there is a different demand pattern rather than at volatility.

The FTC comments that the Department has a longstanding preference for basing NV on prices rather than costs. Moreover, the FTC asserts, the statute provides a clear preference for using TC prices over CV, and the regulations state that the Department will normally use TC sales rather than CV if adequate information is available and can be verified. Based on this, the FTC contends that there must be substantial evidence on the record to support the rejection of TC prices.

In light of this preference, the FTC states that if the Department continues to find that U.S. and UK prices are not sufficiently correlated to permit a proper comparison, then the Department should use annual average prices in the two markets. By using an annual average, suggests the FTC, peak pricing that occurs periodically in holiday seasons will be accounted for. The FTC comments that a comparison of annual averages will capture the complete demand cycle in both markets.

Asocolflores disputes the FTC's claim that NV should be based on TC prices. In support of its argument, Asocolflores points out that many of the companies being reviewed had viable home markets. Although the Department would not have used these home market sales because it limited its analysis to export-quality flowers sold, Asocolflores argues that the statute requires the Department to use CV as the basis for NV when home market sales are not made above cost or are not in the ordinary course of trade. Therefore, Asocolflores concludes, for these companies with viable home markets, there is no basis for the Department to rely on TC prices.

Asocolflores also contends that, by allowing the Department to reject home market or TC prices if the ''particular market situation'' in the other country prevents a proper comparison with U.S. prices, the URAA codified the Department's approach to this case. Asocolflores points out that, as of the date of the SAA, this case was the only one in which the Department had rejected TC prices due to demand differences resulting from holidays. Asocolflores further argues that the Department has consistently relied on CV rather than TC prices since the second review of this order, and has been upheld by the CIT in doing so (*Floral Trade Council* v. *United States,* 775 F. Supp. 1492, 1496–98 (1991)) and the CAFC (*Floral Trade Council* v. *United States,* 74 F.3d 1200)(1995). Furthermore, Asocolflores asserts, the same market conditions exist in both the U.S. and UK markets and U.S. and European markets that existed in the second review. According to Asocolflores, the seasonal demand and pricing cycles in the U.S. and TC markets remain fundamentally different, *i.e.*, the U.S. market is much more volatile than TC markets and flower-giving holidays are still different. Asocolflores comments that, if the volatility in U.S. prices compared to TC prices was due to targeted or sporadic dumping, as the FTC asserts, one would expect low prices and high volumes. However, Asocolflores emphasizes, U.S. market prices and volumes are positively correlated.

Regarding the use of Aalsmeer prices, Asocolflores points out that in both prior reviews and the present one, the FTC has relied on the Aalsmeer auction data. According to Asocolflores, the only information the FTC has provided in this review regarding TC prices has been Aalsmeer data. Asocolflores explains that flowers sold through the Aalsmeer are sold throughout Europe and, therefore, serve as a surrogate for European prices generally.

Finally, Asocolflores rejects the FTC's argument that the Department should have compared annual average U.S. prices to annual average TC prices. Even in investigations, where the statute directs the Department to use annual average prices, claims Asocolflores, the statute still provides that home market and TC prices can be rejected due to particular market situations. Asocolflores asserts that when prices in individual months are not comparable because of market conditions, *i.e.*, demand, seasonality, and volatility, annual averaging does not eliminate or adjust for these differences. Rather, it states, averaging masks the differences through the use of a single price. In addition, Asocolflores asserts that if volumes of peak and off-peak sales differed in U.S. and TC markets, dumping margins could be found for reasons having nothing to do with price differences.

DOC Position: Consistent with the approach adopted in prior reviews, we have continued to base NV on CV rather than home market or TC prices. We have disregarded home market prices in accordance with section 773(a)(1)(C)(ii) of the Act because we determined that, although some companies in this review have viable home markets, the home market sales of export-quality flowers are not within the ordinary course of trade. For a further discussion, see Memorandum from Team to Barbara Stafford, Deputy Assistant Secretary, Import Administration, dated January 13, 1997. We have also disregarded TC prices in accordance with section 773(a)(1)(B)(ii) of the Act because we determined that the particular market situation prevents a proper comparison between TC and U.S. prices.

The particular market situation that exists here is: (1) prices in TC markets are not comparable to prices in the U.S. because of the volatility of prices in the United States and the differing peak price periods (holidays) in the U.S. and TC markets; and (2) demand patterns are different between the two markets. These are the types of conditions identified in the SAA that would lead the Department to reject TC prices. Specifically, the SAA states ''[i]t also may be the case that a particular market situation could arise from differing patterns of demand in the United States and in the foreign market. For example, if significant price changes are closely correlated with holidays which occur at different times of the year in the two markets, the prices in the foreign market may not be suitable for comparison to prices to the United States.'' *See* SAA at 152.

We examined the possible use of TC prices in depth in Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491 (May 17, 1990) (Flowers (88–89)), and in Flowers (91–94). A significant factor in our analysis in *Flowers (91–94)* was the Botero Study. In this review, respondents have provided an updated Botero Study that with one exception shows that the conditions that existed during that review period continue to exist during the ninth review period. The one change is that the European Union eliminated

flower tariffs for Colombia in 1990, which has made it possible for more companies to sell in Europe. Despite this, we continue to believe that the volatility of prices, differing peak pricing periods and the differing demand patterns warrant rejection of TC prices.

We further disagree with the FTC's characterization of the demand patterns in the U.S. and UK markets. For instance, the FTC states that it provided information in Flowers (91–94)which proves that holidays in the United Kingdom and the United States are comparable. However, as we stated in Flowers (91–94), we are not convinced by this information, as it compares non-flower-giving holidays which happen to coincide, *e.g.*, All Souls' Day and Halloween. Also, as the Botero Study points out, there are flower-giving holidays such as All Saints Day (celebrated in Catholic countries) and Mother's Day (celebrated in the United Kingdom), but these holidays fall at different times of the year than the major U.S. holidays.

Furthermore, we disagree with the FTC's assertion that we incorrectly relied on Aalsmeer auction prices for our determination of the proper basis for NV. We have consistently based our determination of NV on both the Botero Study and other market-wide studies, which have shown that the Aalsmeer data is representative of European prices. We acknowledge that normally the decision to use TC prices or CV is based on company-specific information. However, in the course of this proceeding, we have consistently determined, and have been upheld by both the CIT and CAFC, that information regarding TC markets in general was adequate evidence for a determination of this issue. Further, with respect to the FTC's February 10, 1997 submission, we acknowledge that the submission indicates that the volume of UK imports of Colombian flowers in 1995–96 is approximately equal to the amount imported by the rest of the EU during this period. However, we note that the FTC did not file its data concerning UK prices until February 10, 1997, ten days after our preliminary results of review were completed and nearly four months after our determination was made to use CV rather than TC prices. Despite the assertions to the contrary made by the FTC, given the timing of the submission, it was not possible to determine whether a single TC market is a more appropriate basis for comparison than TC markets in general.

With regard to the Aalsmeer data submitted by the FTC, the usefulness of this data is unclear. The information provided by the FTC includes the weekly volume and prices for various flower types (including pompons, mini carnations, and chrysanthemums) for 1995 of the Aalsmeer and Bloemisterij. This data provides no reason for us to depart from our prior determinations that the Aalsmeer is representative of European prices.

With respect to the FTC's assertion that the volatility of U.S. prices may be due to targeted or sporadic dumping, we find that the FTC has not demonstrated this to be true. The pricing patterns in the U.S. can be ascribed to periods of peak and slack demand, whereas the relative flatness of prices in European markets is explained by the fact that Europeans purchase flowers year round.

Finally, we have not adopted the FTC's suggestion to use yearly averages in our comparisons for the same reasons we rejected Asocolflores' argument that we should use an average annual U.S. price. (See DOC Position to Comment 8.) Further, as Asocolflores has pointed out, if the volumes of peak and off-peak sales differed in U.S. and TC markets, the use of an annual average might not adjust for these differences.

Comment 19: Asocolflores and HOSA disagree with the methodology used by the Department in the Preliminary Results to calculate an annualized CV. In the Preliminary Results, the Department calculated an average per-stem CV in pesos, with the result that the CV expressed in pesos was constant throughout the POR. The Department then converted to a per-stem CV in dollars using each month's average exchange rate. This NV was compared to the monthly average CEP or EP. The Department's methodology, according to Asocolflores, is an unreasonable departure from the practice that it followed in every prior administrative review of the present case. In the Certain Fresh Cut Flowers from Colombia; Final Results of Administrative Review, 56 FR 32169 (July 15, 1991) (Flowers (87–88)), the first administrative review, the Department aggregated total costs in pesos over the POR and divided by the period average exchange rate and net units sold to calculate the per-stem CV in dollars. In later reviews, the Department totaled peso costs on a monthly basis, converted to dollars using the monthly exchange rate, added these dollar costs over the POR and divided by the net units sold to yield the per-stem CV in dollars.

Asocolflores claims that the methodology used in the Preliminary Results is inappropriate because it creates a mismatch between the exchange rate used and the costs at issue. Asocolflores argues that, due to factors such as the fluctuations in the exchange rates, the inclusion of monthly inflation adjustments and the devaluation of the Colombian peso against the U.S. dollar over the POR, the Department's methodology erroneously results in a declining CV in dollar terms throughout the POR. Asocolflores contends that no basis for the changed methodology has been disclosed and ''[f]undamental principles of fairness require the Department to abide by its prior decisions in this case,'' given that the facts upon which the Department predicated the previous methodology have not changed in the present review.

The FTC counters that the Department's underlying rationale for the methodology used in the past reviews no longer applies in this review. First, according to the FTC, inflation is not at the same high rate encountered during Flowers (87–88). Second, the FTC points out that the Department's new exchange-rate methodology of using a lagged rate where a sustained change in rates exists over a period of at least eight weeks automatically accounts for any distortive effects due to fluctuations in exchange rates. The FTC further argues that the rates during the POR in any case should be considered ''relatively stable.'' The FTC also notes that, because EP and CEP are averaged monthly, applying monthly exchange rates to the NV for purposes of comparison is also appropriate pursuant to section 773A of the Act.

DOC Position: We agree, in part, with respondents. In Flowers (87–88), we revised our methodology for converting respondents' CV from pesos to dollars. The revision was deemed appropriate in light of a combination of factors affecting this case including the high rate of inflation in Colombia, consequent devaluation of the Colombian currency, and the nature of calculating the costs to produce agricultural products. See Flowers (87–88). In *Flowers (87–88)*, we converted the POR average peso CV to dollars using the corresponding period-average exchange rate but expressed a preference for the alternative methodology of converting each month's peso costs into dollars using that month's exchange rate. *See Id.* at 32169 (''while we agree with the respondent that the monthly conversion to dollars of peso costs is the preferable methodology, in this review we have converted our period-average peso constructed value to dollars using the corresponding period average exchange rate''). In subsequent reviews, we adhered to

the revised methodology used in Flowers (87–88) until Flowers (91–94), where we used the preferred alternative methodology of monthly dollar conversions.

In the present review, we have examined Asocolflores' argument and have reassessed the methodology we used in the preliminary results. We determine that the underlying factors that formed the basis of our rationale for revising the conversion methodology in Flowers (87–88)(and subsequent reviews) remain largely unchanged. We also recognize that flower production, like other agricultural production, necessitates the use of a period-average CV in order to capture the complete costs, which vary month to month, due to the production cycle of the product. *See* Flowers (87–88) at 32169.

In light of the foregoing, for these final results, we have departed from the methodology we employed in the preliminary results for converting CV in the present review. Specifically, we converted each month's cumulated costs in pesos to dollars using the corresponding month's exchange rate. Next, the monthly costs in dollars were totaled over the POR and divided by the net units sold to calculate the per-stem CV in U.S. dollars which was then converted to pesos using the period-end exchange rate. Furthermore, to correct for the distortive effects of devaluation of the Colombian peso, we used a monthly deflator (which was calculated by dividing the period-end exchange rate over each month's exchange rate) to deflate the per-stem CV in pesos for each month. The corrected peso CV was then converted to dollars using each month's exchange rate pursuant to section 773A(a) of the Act, which requires that foreign currencies be converted into U.S. dollars using the exchange rate in effect on the date of sale of the subject merchandise. The effect of this methodology is to create a CV which, when denominated in pesos, increases over the POR. This result is consistent with an economy that is experiencing high levels of inflation.

With respect to the FTC's arguments, we disagree that inflation was low enough or the exchange rate stable enough that we should continue with the methodology we followed in the Preliminary Results. Regarding the use of lagged exchange rates when there is a sustained movement in the currency, the provision for sustained changes applies only to investigations and not to reviews.

Comment 20: HOSA and Asocolflores argue that the Department is statutorily required to allocate costs across all subject flowers, including ''national quality'' flowers, when calculating CV. Their argument is largely based on the 1992 opinion of the CAFC in *IPSCO, Inc.* v. *United States,* 965 F.2d 1056 (*IPSCO*), and on recent Department case history. First, HOSA and Asocolflores claim that *IPSCO* is definitive on how costs are to be allocated: costs must be allocated across all goods produced, regardless of their respective values. They interpret *IPSCO* to mean that no matter how the Department categorizes a ''secondary'' product (*i.e.,* as a co-product or a by-product), if the production of that product expended the same materials, capital, labor, and overhead as the production of the ''primary'' product, then both the primary and secondary products must share the costs equally. Furthermore, respondents argue that any value-based allocation violates the AD statute as interpreted by *IPSCO.* Even if the Department finds non-export quality flowers to have little, or no, commercial value, these culls must still carry costs. Second, although respondents argue that *IPSCO* has made by-product and co-product distinctions irrelevant, they say that if the Department insists upon using such classifications, then second-quality flowers should be co-products to which costs of production should be allocated. They state that non-export-quality flowers must be considered co-products because they are very similar to the primary product, their production expends the same material, capital, labor, and overhead, and they are produced in the same manufacturing lot as export-quality flowers.

The FTC states that respondents' arguments regarding national quality flowers have been raised before and rejected by the Department. Referring to Fresh Cut Roses from Colombia, 60 FR 6980 (February 6, 1995) (Roses from Colombia) and Flowers (91–94), the FTC says that the Department should adhere to its precedent of treating national quality flowers as by-products.

DOC Position: We have continued to treat culls and national quality flowers as by-products in this review. This practice, at least with respect to culls, has been followed since Flowers (LTFV) and was upheld by the CIT in *Asociacion Colombiana de Exportadores* v. *United States,* 704 F. Supp. 1114, 1125–26 (CIT 1989). In Flowers (91–94), we examined HOSA's claim that ''national'' or ''second quality'' flowers should not be treated as by products. We disagreed with HOSA and treated national quality flowers as culls.

As explained in Flowers (91–94) (at 42850), our general practice in cases involving agricultural goods has been to treat ''reject'' products as by-products and to offset the total cost of production with revenues earned from the sale of any such ''reject'' products. We continue to believe that this general practice does not conflict with CAFC's ruling in *IPSCO.* Clearly, culls are reject products. Moreover, as the Department stated in Flowers (LTFV), due to the perishability of agricultural products, the sellers of such merchandise ''may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.'' Similarly, when the product is not of a high enough quality to be exported, it is a cull that immediately faces whatever price can be obtained in the home market, or destruction. This situation does not resemble that in *IPSCO.*

Comment 21: Asocolflores asserts that, if the Department does not allocate costs across all export-quality flowers and culls, the Department should at least offset the cost of production by the revenue earned on the sale of culls. In particular, Asocolflores wants the Department to include off-book revenue when making this deduction, not just the revenue recorded in the books.

The FTC disagrees with Asocolflores because off book revenue is unproven and inherently suspect. Since off-book revenue can not be corroborated by an audited financial statement or tax return, the FTC contends that the Department should not accept this type of information.

DOC Position: We agree with the FTC. We do not take account of off-book revenue because it is not reflected in the company's audited financial statements, our primary tool for determining the accuracy and completeness of respondents' submitted data. (See Roses from Colombia.) Absent specific evidence to the contrary, the Department considers a company's financial statements to reflect the actual expenses/revenues of its operations. (See Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan, 55 FR 34585 (August 23, 1990).)

Comment 22: Tuchany notes that the Department discovered at verification that the company had incorrectly reported depreciation expense by making the inflation adjustment to the accumulated depreciation balance instead of the depreciation expense during the POR. Tuchany argues that this error substantially overstated costs because the reported amount

encompasses all historical inflation adjustments to depreciation, not simply those associated with the POR. Tuchany asks the Department to rely upon worksheets submitted at verification which, it contends, can be used to derive the inflation adjustment to depreciation expense.

The FTC contends that the Department should not allow Tuchany to submit new factual information during verification.

DOC Position: At verification, we discovered that Tuchany had incorrectly calculated its depreciation expense in its response. Company officials prepared a worksheet in an effort to provide the Department with the information necessary to correct this error. This information had not been reviewed prior to verification and, while we were able to trace certain information to source documents, we were unable to thoroughly review the validity of the calculations during verification due to time constraints. We indicated to company officials that we would take the information but that we would need to review it and would not necessarily take it into consideration for purposes of our final calculations. Upon review of the data in the worksheets, we discovered that the information was not adequate to correct Tuchany's reported depreciation expense. See Tuchany Group Verification Report, May 6, 1997, p. 14. Thus, we were unable to determine the correct figure although we did conclude that the reported figure for depreciation expense was in error. Because we were unable to verify the data in the worksheets we have resorted to FA in accordance with section 776(a) of the Act. We have continued to use the reported figure in our final calculations as we consider it the best estimate available to us of the correct amount for depreciation expense.

Comment 23: Asocolflores and HOSA contend that the Department erred in not making an adjustment to financial expenses for net ''monetary correction'' while adjusting respondents' depreciation and amortization costs to account for the effects of inflation. Asocolflores states that the adjustment for ''monetary correction,'' which represents the net gain or loss to the company caused by inflation on its net exposed monetary assets and liabilities, is required by Colombian law and generally accepted accounting principles (GAAP) as part of the inflation adjustment. Moreover, the Department's failure to consider the adjustment for net monetary correction leads to significant distortions in the calculation of CV, according to Asocolflores.

Asocolflores argues that financial costs must be adjusted from nominal pesos to current value pesos because the costs incurred by a company in the current period but not payable until later periods, such as accounts payable and peso loan balances, will be paid in the future when the pesos will be cheaper in current value terms. Asocolflores claims that the Department's methodology results in a distorted cost calculation that mixes nominal pesos for some costs with inflation adjusted, current value pesos for other costs.

According to Asocolflores, section 773(f)(1)(A) of the Act ''requires the Department accept costs as recorded under Colombian GAAP unless it makes a specific finding that such costs are distortive.'' Asocolflores further refers to the CIT's holding in *Laclede Steel* v. *United States*, 18 CIT 965 (CIT, Oct. 12, 1994), where it was ruled that ''a respondent could not report costs such that one item of costs (depreciation expenses in that case) was subjected' to accounting principles different from those applied to other variables such as financing costs.'' Asocolflores contends that the Department's methodology violates the Act and the court's holding in that it subjects only *one* cost variable—depreciation and amortization expense—to adjustment for inflation. Asocolflores argues the Department must either disregard all inflation adjustments or include inflation adjustments for monetary correction.

Furthermore, Asocolflores argues that the exclusion of monetary correction is a departure from the Department's own precedents. Specifically, Asocolflores cites to *Cement from Mexico* and Porcelain-on-Steel Cookware from Mexico, 61 FR 54616 (1996), where, in accordance with Mexican GAAP principles, the Department allowed the monetary correction gain as an offset to financial expenses. Asocolflores also refers to two Brazilian cases, *Aimcor, Ala. Silicon, Inc.* v. *United States*, Slip Op. No. 95–130, 1995 WL 431186 (CIT, July 20, 1995) and Frozen Concentrated Orange Juice from Brazil, 52 FR 8324 (1987), where the monetary correction adjustments to financial expenses were made in accordance with the Department's own hyperinflationary-economy methodology.

The FTC counters that the Department's rejection of the monetary correction adjustments is in accordance with past precedents. The FTC refers to Roses from Colombia at 6993, where the Department specifically declined to include inflation adjustments resulting from the annual revaluation of non-monetary assets because the adjustment ''merely reflects an increase to respondent's financial statement equity due to the restatement of non-monetary assets to account for inflation.'' The FTC also contends that Cement from Mexico is distinguishable in that the Mexican inflation adjustment ''pertained solely to monetary assets and liabilities whereas the Colombian monetary correction is an adjustment to non-monetary assets.'' Furthermore, the FTC points out that the Mexican adjustment was the sum of all corrections to financial expenses made throughout the year. In contrast, the FTC argues, the Colombian monetary correction is simply a year-end adjustment, thus having no effect on the amounts borrowed or lending rates of the respondents.

DOC Position: We disagree with Asocolflores. Consistent with our practice in Flowers (91–94), we have included adjustments for the effects of inflation in respondents' depreciation and amortization expense figures in calculating CV. We have continued to exclude the amount of monetary correction income that respondents claimed as an offset to costs.

As discussed in the final results of Flowers (91–94), we adjusted respondents' depreciation expenses in order to permit a more appropriate matching of costs and prices based on equivalent currency units. The Department's practice in AD cases involving countries whose economies are marked by price level changes defined as ''hyperinflationary'' is to adjust *all* production costs for the effects of inflation. See, *e.g.*, Flowers (91–94) at 42845. In some instances, however, the level of inflation during the POR does not reach the Department's normal hyperinflation threshold. Nonetheless, where an economy has experienced the compound effects of significant inflation levels in periods prior to the POR, the costs associated with respondent's fixed assets, as well as other assets recorded at their historical purchase, may be materially misstated relative to the currency levels at which prices and costs are measured during the POR. In these instances, the Department may adjust the historical basis of fixed assets such that respondent's depreciation and amortization costs reflect the currency levels of the POR. See Roses from Colombia.

Unlike in hyperinflationary cases, however, the Department's practice with respect to inflation and its effects on historical costs does not specifically adjust for all of the inflationary effects that occur within the POR. Rather, these effects result from the inflation experienced within the twelve months

of the POR and, thus, are considered to have a minimal influence on the Department's antidumping analysis. To attempt to quantify the effects of inflation on each measure of cost and price would impose an unreasonable level of complexity to the Department's antidumping analysis.

Consequently, we have left financial expenses unadjusted because these expenses were contained largely within the POR. In contrast, the expenses for depreciation and amortization are based on the historical costs of assets which extend beyond each POR. Compounded annually, the effect of inflation results in a distortion of historical depreciation and in an understatement of costs.

As to Asocolflores' argument that the inclusion of net monetary correction is required under the Colombian GAAP and the Act, we note that there is no statutory requirement that the Department adjust for all effects of inflation in its analysis nor a requirement to use *all* aspects of a country's GAAP. Rather, the statute merely requires that the Department include in its calculation of CV the cost of manufacturing ''which would ordinarily permit the production of the merchandise in the ordinary course of business.'' See section 773(e)(1) of the Act. Moreover, the CIT has already held that full accounting for inflation is neither necessary nor possible. (See *Budd Co.* v. *United States*, 773 F. Supp. 1549, 1554 (CIT 1991) (''The glowing deficiency in Plaintiff's argument is the underlying premise that a full accounting for inflation is necessary or even possible.'')

We also find that Asocolflores' reliance on the two Mexican cases is misplaced. There is no evidence on the record indicating that inflationary accounting under Mexican GAAP is the same as inflationary accounting in Colombia. Similarly, the two Brazilian cases cited by Asocolflores are distinguishable in that inflation rates in Brazil during those periods were at hyperinflationary levels, as defined by the Department, and therefore the Department relied on a replacement cost methodology to adjust all costs for the effects of inflation.

Comment 24: Asocolflores contends that the Department erroneously attributed all net interest expense to production. Asocolflores argues that, in addition to financing the assets used in production, interest expense reported by respondent companies also relates to financing receivables for TC and U.S. sales. Asocolflores contends that the Department departed from past practice and effectively presumed that the totality of the producer's borrowing costs were attributable to production. Asocolflores urges the Department to revert to its prior practice and include in its calculation of CV only that portion of the net interest expense allocable to assets other than accounts receivable.

Asocolflores recognizes that the Department has changed its practice of adding imputed credit expense to CV to avoid double-counting. However, Asocolflores argues that interest expenses associated with sales should not be included in CV at all because such interest expenses do not relate to production as required by section 773(e)(1). Moreover, Asocolflores asserts, for the Colombian flower growers in the case the actual interest expense for home market sales is zero.

The FTC rebuts that section 773(e)(2) requires that SG&A be added to production expenses when computing CV, so the exercise of identifying which costs are production-related and which are sales-related is academic. The FTC further argues that, in calculating CV, the Department allocates interest expense to all export-quality stems sold, so any interest expense related to TC sales has effectively been allocated to such sales. Finally, the FTC argues that respondents have provided no evidence that some portion of their interest costs relate to markets other than the U.S. market and no evidence that any portion of their financing expenses relate to sales rather than to production. The FTC argues that there is no basis for assuming that the ratio of accounts receivable to total assets has any relationship to the ratio of selling interest costs to total interest costs. The FTC contends that accounts receivable are commonly financed out of cash-flow and payables rather than through borrowing.

DOC Position: In calculating CV, the Department considers net interest expense to be a part of SG&A and, in accordance with section 773(e), the Department's practice is to include the actual amount of net interest expense as part of the cost of the product. The amount of net interest expense for CV is calculated as a ratio. The numerator in this ratio is the total actual amount of net interest expense incurred by respondent and the denominator is the respondent's cost of sales. The result of this ratio calculation is then applied to the per-unit cost of manufacture for the merchandise in order to derive the allocated amount of interest expense associated with the product.

Contrary to respondent's claims in this case, the interest expense calculation described above does not attribute all net interest expense to production. Rather, it is the Department's long-standing method of calculating net interest expense on a per-unit basis for CV. Under the new statute, however, because interest expense for CV is to be based on actual and not imputed amounts, it is no longer appropriate to do as Asocolflores suggests and reduce actual interest expense in order to replace it with imputed amounts for credit. Any differences in credit expense between the U.S. and foreign market are taken into account as a circumstance of sale adjustment, but not as part of the actual calculation of net interest incurred for the product. See e.g., Notice of Final Results of Antidumping Duty Administrative Review; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 62 FR 18744, 18746 (April 17, 1997).

Comment 25: HOSA asserts that the Department used the wrong general and administrative expense (G&A) rate for flowers that a member of the HOSA Group purchased from other producers and used in its bouquet operation. HOSA argues that it did not incur any G&A expense associated with flowers it did not grow. HOSA further states that, if the Department insists upon calculating G&A for purchased flowers, it should use the G&A rate for the farm that purchased the flowers and used them in its bouquet operation. This G&A rate, asserts HOSA, should be taken from the farm's 1995 audited financial statements, as provided in the questionnaire response.

The FTC argues that HOSA must incur some G&A expenses in the areas of marketing and selling bouquets, not to mention the purchase of flowers and the assembly of bouquets. Moreover, in the FTC's view, there is no basis to limit the G&A expenses to one single farm. Thus, the FTC argues that the Department should continue to follow the approach used in the preliminary results.

DOC Position: We disagree with HOSA. As stated in the Suspension of Antidumping Duty Investigation: Sodium Azide from Japan, 62 FR 973, 977 (January 7, 1997), ''G&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product.'' The Department's practice is to calculate G&A expenses by finding the ratio of the company's total G&A expenses relative to the total cost of goods sold by the company. This ratio is then applied to the cost of manufacture of each product. Furthermore, this approach is consistent with our approach with respect to other collapsed companies for which we have

allocated G&A expenses. In this instance, the products in question are those flowers (subject merchandise) acquired and used in the production of bouquets. Although HOSA does not grow these flowers, it does use them in further processing. There is no evidence that HOSA would purchase and resell these flowers if they were not used in bouquet production. Because the production and selling of bouquets generates G&A expenses, the items making up the bouquets incur G&A expenses.

The HOSA Group's contention that the Department should use only the G&A expenses generated by the member of the group which purchased the subject merchandise is not reconcilable with the Department's practice concerning ''collapsed'' companies. Once the Department has determined to collapse affiliated producers (*i.e.*, to assign a single AD rate to the producers because of, *inter alia*, close interrelationships between them) the group is treated as one single company with respect to reporting obligations. We do not allow companies to pick and choose which G&A expenses and which divisions of the company will be used in accounting for this expense. The same holds true for the HOSA Group and, thus, every product produced by HOSA, regardless of which farm produced it, incurs allocated G&A expenses generated by the entire group.

Comment 26: The Tinzuque Group (Tinzuque) argues that the Department erred in disregarding all reported offsets to SG&A. Tinzuque concedes that certain reported offsets were derived from non-operating income accounts and are, therefore, not appropriate offsets to cost. Tinzuque contends, however, that among the reported offsets are commercial discounts obtained on material purchases, which are appropriate offsets to cost. Tinzuque points out that sample invoices and accounting slips submitted in its February 21, 1997 supplemental response demonstrate the nature of these discounts.

The FTC argues that there is no evidence on the record to demonstrate that the amount reported for commercial discounts is related exclusively to material purchases related to subject merchandise. The FTC further contends that discounts on material inputs would not normally be accounted for in SG&A accounts, thereby casting additional doubt on the nature of these discounts.

DOC Position: We agree with Tinzuque. The sample accounting slips submitted by Tinzuque demonstrate that the commercial discounts in question were obtained on material purchases. Moreover, there is no indication that the materials were used as inputs for other than subject merchandise. Therefore, we have accepted Tinzuque's claim and have offset its costs accordingly.

Comment 27: Asocolflores argues that the Department's use of the profit rate of Compania Nacional de Chocolates S.A. (CNC), a Colombian producer of chocolate and other processed agricultural products, as FA in the calculation of CV is inconsistent with the Act. Asocolflores argues that the ''profit cap'' described in section 773(e)(2)(B)(iii) of the Act contains no exceptions or conditions and its application is mandatory. Specifically, Asocolflores contends that the Department should use a profit rate of zero since none of the responding companies had profits on sales of flowers in the home market. Asocolflores argues that there is no requirement that only sales made in the ordinary course of trade or above cost are to be considered when calculating the profit cap.

Asocolflores contends that the Department misinterpreted language in the SAA that allows exceptions to the application of the profit cap ''due to the absence of data.'' Here, Asocolflores argues, there is no absence of data; the data merely indicates that the profit rate is zero. Asocolflores argues that, in Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review, 61 FR 55957 (October 30, 1996) (Shop Towels), the Department included zero profit for the two textile companies that had shown losses in deriving an average of three profit rates to be used in calculating CV.

Asocolflores further argues that the use of CNC's profit rate is inconsistent with the purpose of the statute and due process. Asocolflores argues that the rate used by the Department in its preliminary results was arbitrary, unpredictable and random. Asocolflores argues that there is not even a pretense of foreseeability or predictability, and, accordingly, under such a system, respondents have no basis on which to price their product to avoid dumping.

The FTC responds that the Department properly concluded that there was insufficient basis for computing a profit cap in accordance with section 773(e)(2)(B)(iii). The FTC argues that sales in the home market of merchandise in the same general category as flowers would necessarily include sales of culls. Since culls are treated as byproducts in the Department's calculations and are assigned a cost basis of zero, the FTC argues that the profit rate on such sales would be infinite.

The FTC further argues that the Department correctly interpreted the statute and SAA in determining that profit must be a positive amount. The FTC agrees with the Department's interpretation of the wording in the SAA at 169 that CV ''must include an amount * * * for profit'' as meaning that there must be a positive number. The FTC cites to the passage in the SAA at 170 indicating that the administration does not believe the elimination of statutory minimums will diminish the ability of domestic industries to obtain relief under the AD law.

DOC Position: Contrary to Asocolflores' assertion, we are required to add a positive amount for profit when calculating CV. Although the URAA eliminated the use of a minimum profit rate, the presumption of a profit element in the calculation of CV was not eliminated. The SAA (at page 169) states: ''Because constructed value serves as a proxy for a sales price, and because a fair sales price would recover SG&A expenses and would include an element of profit, constructed value must include an amount for SG&A expenses and for profit.''

With respect to Asocolflores' argument that a zero rate of profit would be consistent with Shop Towels, we disagree. An average that includes some zeroes but still yields a positive number, as was the case in Shop Towels, is different from using a profit rate of zero.

By providing three alternative methodologies for calculating CV profit in section 773(e)(2)(b), the statute enables the Department to use an overall positive profit rate whenever the calculation of CV profit under 773(e)(2)(A) is not appropriate. In Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review 62 FR 37869, 37877 (July 15, 1997), the Department stated, ''if a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit.''

Since there is no information on the record that would enable us to calculate a home market profit rate on the same general category of merchandise as flowers, we have continued to use CNC's profit rate, for reasons detailed in a memorandum from team to Richard Moreland, Acting Deputy Assistant Secretary, AD–CVD Enforcement 1, dated March 31, 1997 (on file in room B–099 in the Central Records Unit of the Department of Commerce). We disagree with Asocolflores' assertion that we

have information on the record to calculate a profit cap. As Asocolflores has stated, the only information on the record indicates that sales of flowers in Colombia are not profitable. As discussed above, a profit rate of zero is not appropriate for use in calculating CV; therefore, we do not have appropriate information to use as the basis for a profit cap. Accordingly, we have applied alternative (iii) on the basis of ''the facts available,'' as instructed by the SAA at 171.

We further disagree with Asocolflores' contention that the application of a profit rate based on non-adverse FA is contrary to the intent of the statute and violates respondents' due process. As detailed above, the application of a zero profit rate would have been contrary to the intent of the statute. In carrying out the intent of the statute in a reasonable manner, respondents' due process is being served. Asocolflores has had the opportunity to comment on the Department's methodology.

Comment 28: The FTC argues that the Department's use of CNC's profit rate in the preliminary results was not the best choice among the alternatives available to the Department. The FTC argues that CNC is in the processed agricultural goods industry and, as such, does not face the same perishability risks as a flower producer. The FTC admits to the paucity of financial information available regarding Colombian companies but suggests that the Department use the rate of return on equity of Banco Ganadero, a Colombian bank that makes approximately one quarter of its loans to the agricultural sector. The FTC suggests that, while this financial information would be derivative since it is based on return on equity of a financial institution, it is a better gauge of Colombian agriculture than a chocolate producer.

Asocolflores responds that the rate of return on equity for a Colombian bank is not at all analogous to the profit rate of a Colombian flower exporter. Asocolflores contends that a rate of return on equity is not a profit margin and that the statute requires the use of profit, not return on equity. Additionally, Asocolflores argues that a bank's products are financial instruments, not agricultural products.

DOC Position: We agree with Asocolflores that the rate of return on equity of a financial institution is not appropriate for this case. While we were unable to locate a profit rate on home-market sales for a Colombian producer of merchandise in the general category as flowers, we determine that the use of the profit rate of CNC, a Colombian producer of processed agricultural goods is more appropriate than the rate of return on equity of a Colombian bank. Accordingly, we have continued to use CNC's profit rate as FA in calculating CV profit.

Comment 29: Asocolflores claims that, where appropriate, the adjustment from gross units sold to net units sold to account for returns should be made on an annual basis over all importers purchasing from the same exporter rather than on a monthly basis by importer.

DOC Position: We agree in part. Returns from a given month often are not reported and claimed by the importer until the following month. If a large number of returns from the prior month happened to be reported and claimed in the current month, the NV for the current month after adjustment for returns would be overstated. Therefore, for the final results, we took the total number of returns made during the POR by a particular importer and allocated this total to each month of the POR based on the gross number of stems sold in each month.

We disagree, however, with averaging returns over importers. In calculating net units sold, we have not averaged returns over all the importers purchasing from a particular exporter. Returns are dependent on a number of factors including the handling and warehousing practices of the importer and the distance from the grower to the importer. These factors are directly related to the particular importer under consideration and directly affect the returns from that importer. For this reason, the margin calculations should reflect the actual number of returns from that importer rather than the average number of returns over all importers. Thus, for the final results, we used the actual number of returns by each importer in calculating an adjustment to the NV for each importer because returns clearly and directly relate to the operating practices of individual importers.

Assessment

Comment 30: Asocolflores contends that the Department incorrectly calculated the amount of AD duties to be assessed on individually reviewed (or ''selected'') companies. In particular, Asocolflores objects to the Department's reliance on U.S. Customs' posted prices for the calculation of entered value for carnations. Ascolflores contends that use of the posted prices will result in a potential overassessment of AD duties. Asocolflores suggests that the Department recalculate entered value using the data provided by respondents and, where necessary, obtain further information from respondents. Alternatively, Asocolflores suggests calculating specific duties based on the quantity of flowers shipped during the POR.

The FTC states that the Department properly relied upon Customs' posted values to calculate AD duty assessments. The FTC argues that, because Customs will liquidate entries using posted values as the entered values, the use of entered values reported by respondents would be incorrect. The FTC further questions the reliability and correctness of the entered value data supplied by respondents.

DOC Position: For these final results, we have calculated the amount of duties to be assessed on a per-stem basis. We were unable to use entered values because respondents reported average monthly prices and, moreover, the entered values were not associated with particular importers. Since assessments are made on an importer specific basis, aggregate entered values could not be used. Although we have calculated a per-stem rate for assessment purposes, we will apply an *ad valorem* rate for duty deposit purposes.

Comment 31: Asocolflores states that the Department incorrectly used the average cash deposit rate for selected respondents as the assessment rate for those companies that responded but were not selected for review (''non-selected respondents''). Asocolflores contends that the Department should use the weighted-average assessment rate rather than the average cash deposit rate and that any difference in methodology between selected and non-selected respondents violates the equal protection clause of the United States Constitution.

The FTC argues that the Department properly based assessment rates for non-selected companies on the duty deposit rates. In the FTC's view, the Department's approach to assessment was reasonable and there is no reason to prefer the weighted-average assessment rate of selected respondents to their duty deposit rate.

DOC Position: For these final results, we have calculated an average per-stem rate to apply to non-selected respondents for assessment purposes. We have calculated this rate by summing the AD duties owed by the selected companies and dividing that amount by the number of stems entered by the selected companies. (As explained below, in connection with the assessment instructions, we have used stems entered during the POR rather than stems sold, because of the perishable nature of the subject merchandise.) Although we disagree

with Asocolflores that the methodologies for the two groups of companies must be the same in all respects, for assessment purposes we believe that this approach yields the most accurate results.

Other

Comment 32: The FTC argues in its rebuttal brief that Tuchany should not be allowed to rewrite its response during verification.

DOC Position: In the course of verification, certain minor errors in Tuchany's questionnaire response were discovered. Generally, the company was able to correct these errors and the Department requested that these corrections be submitted for the record. The errors were also identified in our verification report. The errors made by Tuchany were not of such a magnitude as to warrant the conclusion that Tuchany had failed verification.

Comment 33: Flores el Talle argues that it is part of the Flores Colombianas Group, a group for which the AD order has already been revoked. Therefore, Flores el Talle claims, it should not be subject to either the assessment or cash deposit rate determined for non-selected respondents. Instead, asserts Flores el Talle, the Department should determine that it is part of the Flores Colombianas Group and is covered by the Flores Colombians Group's revocation.

DOC Position: We have determined that there were no entries of subject merchandise under the name Flores el Talle during the POR. Therefore, we have rescinded the review with respect this company (*see* the ''Rescission'' section of this notice). In addition, we will initiate a changed circumstances review in order to determine whether Flores el Talle is covered under the revocation granted to Flores Colombianas.

Final Results of Review

Selected Respondents

As a result of our review, we determine the following percentage weighted-average margins to exist for the March 1, 1995 through February 29, 1996:

	Percent
Agrodex Group	1.30
Agricola de las Mercedes	
Agricola el Retiro Ltda.	
Agrodex Ltda.	
Degaflores Ltda.	
Flores Camino Real Ltda.	
Flores Cuatro Esquinas Ltda.	
Flores de la Comuna Ltda.	
Flores de las Mercedes	
Flores de Los Amigos Ltda.	
Flores de los Arrayanes Ltda.	
Flores De Mayo Ltda.	
Flores del Gallinero Ltda.	
Flores del Potrero Ltda.	
Flores dos Hectareas Ltda.	
Flores de Pueblo Viejo Ltda.	
Flores el Trentino Ltda.	
Flores la Conejera Ltda.	
Flores Manare Ltda.	
Florlinda Ltda.	
Horticola el Triunfo	
Horticola Montecarlo Ltda.	
Caicedo Group	8.36
Agro Bosque S.A.	
Andalucia S.A.	
Aranjuez S.A.	
Columbiano S.A. ''CAICO''	
Caico	
Exportaciones Bochica S.A.	
Floral Ltda.	
Flores del Cauca	
Inversiones Targa Ltda.	
Productos el Zorro	
Via el Rosal	
Claveles Colombianos Group	0.39
Claveles Colombianos Ltda.	
Elegant Flowers Ltda.	
Fantasia Flowers Ltda.	
Splendid Flowers Ltda.	
Sun Flowers Ltda.	
Cultivos Miramonte Group	1.05
Cultivos Miramonte S.A.	
Flores Mocari S.A.	
Floraterra Group	8.36
Exporosas	
Floraterra S.A.	
Flores Casablanca S.A.	
Flores San Mateo S.A.	
Siete Flores S.A.	
Flores Colon Ltda.	2.84
Florex Group	0.73
Agricola Guacari S.A.	
Agricola el Castillo	
Flores San Joaquin	
Flores Altamira S.A.	
Flores de Exportacion S.A.	
Guacatay Group	1.53
Agricola Cunday	
Agricola Guacatay S.A.	
Jardines Bacata Ltda.	
Hosa Group	2.07
Horticultura de la Sabana S.A.	
HOSA Ltda.	
Innovacion Andina S.A.	
Minispray S.A.	
Prohosa Ltda.	
Maxima Farms Group	3.25
Agricola los Arboles S.A.	
Colombian D.C. Flowers	
Polo Flowers	
Rainbow Flowers	
Maxima Farms Inc.	
Queens Flowers Group	1.13
Agroindustrial del Rio Frio	
Cultivos General Ltda.	
Flora Nova	
Flora Atlas Ltda.	
Flores Calima S.A.	
Flores Canelon Ltda.	
Flores de Bojaca	
Flores del Cacique	
Flores del Hato	
Flores el Aljibe Ltda	
Flores el Cipres	
Flores El Pino Ltda.	
Flores El Roble S.A.	
Flores el Tandil	
Flores la Mana	
Flores las Acacias Ltda	
Flores la Valvanera Ltda.	
Flores Jayvana	
Flores Ubate Ltda	
Jardines de Chia Ltda.	
Jardines Fredonia Ltda.	
Jardines Piracanta	
M.G. Consultores Ltda.	
Mountain Roses	
Queens Flowers de Colombia Ltda.	
Quality Flowers S.A.	
Florval S.A. (Floval)	
Jardines des Rosal	
Tinzuque Group	1.05
Tinzuque Ltda.	
Catu S.A.	
Tuchany Group	5.73
Tuchany S.A.	
Flores Sibate	
Flores Tikaya	
Flores Munya	

Non-Selected Respondents

The following 147 companies (including 23 groups of companies) were not selected as respondents and will receive a rate of 2.26 percent:

Aga Group
- Agricola la Celestina
- Agricola la Maria
- Agricola Benilda Ltda.

Agricola Acevedo Ltda.
Agricola Arenales Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola el Cactus S.A.
Agricola el Mortino Ltda.
Agricola el Redil Ltda.
Agricola la Corsaria Ltda.
Agricola Las Cuadras Group
- Agricola las Cuadras Ltda.
- Flores de Hacaritama

Agricola Megaflor Ltda.
Agroindustrial Don Eusebio Ltda. Group
- Agroindustrial Don Eusebio Ltda.
- Celia Flowers
- Passion Flowers
- Primo Flowers
- Temptation Flowers

Andes Group
- Cultivos Buenavista Ltda.
- Flores de los Andes Ltda.
- Flores Horizonte Ltda.
- Inversiones Penas Blancas Ltda.

Aspen Gardens Ltda.
Astro Ltda.
Cantarrana Group
- Cantarrana Ltda.
- Agricola los Venados Ltda.

Cigarral Group
- Flores Cigarral

Flores Tayrona
Claveles de los Alpes Ltda.
Colibri Flowers Ltda.
Combiflor
Cultiflores Ltda.
Cultivos Medellin Ltda.

Cultivos Tahami Ltda.
Daflor Ltda.
El Antelio S.A.
Envy Farms Group
  Envy Farms
  Flores Marandua Ltda.
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
  Agricola de la Fontana
  Flores de Hunza
  Flores Tibati
  Inversiones Cubivan
Floralex Group
  Floralex Ltda
  Flores el Puente Ltda.
  Agricola Los Gaques Ltda
Floreales Group
  Floreales Ltda.
  Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Agromonte
Flores Ainsuca Ltda.
Flores Aurora Ltda.
Flores Carmel S.A.
Flores Comercial Bellavista Ltda.
Flores de Aposentos Ltda.
Flores de la Hacienda
Flores de la Montana
Flores de la Vega Ltda.
Flores de la Vereda
Flores de Serrezuela S.A.
Flores de Suba Ltda.
Flores del Lago Ltda.
Flores del Rio Group
  Agricola Cardenal S.A.
  Flores del Rio S.A.
  Indigo S.A.
Flores del Salitre Ltda.
Flores de Oriente
Flores el Lobo
Flores el Molino S.A.
Flores el Zorro Ltda.
Flores Fusu
Flores Gioconda
Flores Juanambu Ltda.
Flores la Fragrancia
Flores las Caicas
Flores los Sauces
Flores la Union/Gomez Arango & Cia.
Flores Monserrate Ltda.
Flores Sagaro
Flores San Andres
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Silvestres
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
  Flores Tropicales Ltda.
  Happy Candy Ltda.
  Mercedes Ltda.
  Rosas Colombianos Ltda.
Floricola la Gaitana S.A.
Fresh Flowers
Funza Group
  Flores Alborada
  Flores de Funza S.A.
  Flores del Bosque Ltda.
  Flexport de Colombia
Grupo el Jardin
  Agricola el Jardin Ltda.
  La Marotte S.A.
  Orquideas Acatayma Ltda.
Industrial Agricola
Ingro Ltda.
Inverpalmas
Inversiones Flores del Alto
Inversiones Morrosquillo
Inversiones Santa Rita Ltda.
Inversiones Santa Rosa ARW Ltda.
Inversiones Supala S.A.
La Plazoleta Ltda.
Las Amalias Group
  Las Amalias S.A.
  Pompones Ltda.
  La Fleurette de Colombia Ltda.
  Ramiflora Ltda.
Linda Colombiana Ltda.
Los Geranios Ltda.
Manjui Ltda.
Monteverde Ltda.
Natuflora Ltda./San Martin Bloque B
Papagayo Group
  Agricola Papagayo Ltda.
  Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pisochago Ltda.
Rosas Sabanilla Group
  Flores la Colmena Ltda.
  Rosas Sabanilla Ltda.
  Inversiones la Serena
  Agricola la Capilla
Sabana Group
  Flores de la Sabana S.A.
  Roselandia S.A.
Santana Flowers Group
  Santana Flowers Ltda.
  Hacienda Curibital Ltda.
  Inversiones Istra Ltda.
Santa Rosa Group
  Flores Santa Rosa Ltda.
  Floricola la Ramada Ltda.
  Agropecuaria Sierra Loma
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Soagro Group
  Flores Aguaclara Ltda.
  Flores del Monte Ltda.
  Flores la Estancia
  Jaramillo y Daza
Toto Flowers Group
  Flores de Suesca S.A.
  Toto Flowers
Uniflor Ltda.
Velez de Monchaux Group
  Velez De Monchaux e Hijos y Cia S. en C.
  Agroteusa
  Flores Suasuque
Victoria Flowers
Vuelven Ltda.

No Shipments

The following 62 companies did not ship subject merchandise during the POR. Therefore, as described in the ''Rescission'' section above, we are rescinding the review with respect to the following firms:

Abaco Tulipanex de Colombia
Agrex de Oriente
Agricola Guali S.A.
Agricola Yuldama
Agroindustrial Madonna S.A.
Agrorosas
Agropecuria Cuernavaca Ltda.
Bojaca Group
  Agricola Bojaca
  Universal Flowers
  Flores y Plantas Tropicales
  Flores del Neusa Nove Ltda.
  Tropiflora
Cienfuegos Group
  Cienfuegos Ltda.
  Flores la Conchita
De La Pava Guevara E Hijos Ltda.
Disagro
Elite Flowers (The Elite Flower/Rosen Tantau)
Expoflora Ltda.
Flor y Color
Flora Intercontinental
Florandia Herrera Camacho & Cia.
Flores Acuarela S.A.
Flores Aguila
Flores Andinas Ltda.
Flores de Tenjo Ltda.
Flores del Campo Ltda.
Flores el Rosal Ltda.
Flores el Talle Ltda.
Flores Galia Ltda.
Flores Gloria
Flores Juncalito Ltda.
Flores la Lucerna
Flores la Macarena
Flores Ramo Ltda.
Flores Sairam Ltda.
Flores San Carlos
Flores Selectas
Flores Violette
Florexpo
Florimex Colombia Ltda.
Green Flowers
Horticultura el Molino
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Morcote
Inversiones y Producciones Tecnicas
Iturrama S.A.
Las Flores
Luisa Flowers
Otono (Agroindustrial Otono)
Planatas S.A.
Plantaciones Delta Ltda.
Propagar Plantas S.A.
Rosaflor
Rosex Ltda.
Sansa Flowers
Santa Helena S.A.
S.B. Talee de Colombia
Siempreviva
Tag Ltda

Unlocatable

The following 115 companies (including 2 groups) were unlocatable. For those unlocatable companies that were examined in a previous review, we will assess duties based on their company-specific rate from the most recent review. If we have not previously conducted a review of an unlocatable company, duties equal to the ''all others'' rate of 3.1 percent from the LTFV investigation will be assessed.

Achalay
Agricola Altiplano
Agricola del Monte
Agricola la Siberia
Agrocaribu Ltda.
Agro de Narino
Agroindustrias de Narino Ltda.
Agropecuaria la Marcela

Agropecuria Mauricio
Agrotabio Kent
Aguacarga
Alcala
Amoret
A.Q.
Carcol Ltda.
Classic
Coexflor
Color Explosion
Cota
Crest D'or
Crop S.A.
Cypress Valley
Degaflor
Del Monte
Del Tropico Ltda.
Diveragricola
El Milaro
El Timbul Ltda.
Exotic Flowers
Exotico
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flores Ainsus
Flores Alcala Ltda.
Flores Calichana
Flores Corola
Flores de Iztari
Flores de Memecon/Corinto
Flores del Cielo Ltda.
Flores del Cortijo
Flores Gicro Group
  Flores Gicro Ltda.
  Flores de Colombia
Flores Hacienda Bejucol
Flores la Cabanuela
Flores la Pampa
Flores las Mesitas
Flores Montecarlo
Flores Palimana
Flores S.A.
Flores Saint Valentine
Flores Santana
Flores Sausalito
Flores Sindamanoi
Flores Tenerife Ltda
Floricola
Florisol
Florpacifico
Four Seasons
Fracolsa
F. Salazar
Garden and Flowers Ltda.
German Ocampo
Granja
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Horticultura de la Sasan
Industrial Terwengel Ltda.
Inversiones Maya, Ltda.
Inversiones Silma
Inversiones Sima
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines Natalia Ltda.
Jardines Tocarema
J.M. Torres
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
L.H.
Loma Linda
Loreana Flowers
Luisiana Farms
M. Alejandra
Mauricio Uribe
Merastec
Morcoto
Nasino
Olga Rincon
Piracania
Prismaflor
Reme Salamanca
Rosa Bella
Rosas y Jardines
Rose
San Valentine
Sarena
Select Pro
Shila
Solor Flores Ltda.

Starlight

Susca
Sweet Farms
The Beall Company
The Rose
Tomino
Villa Diana
Zipa Flowers

Non-Respondents

The following 42 companies (including 2 groups of companies) did not respond to our questionnaire or responded after the deadline date without explanation. We will assess duties based on the highest rate for any company from this or any prior segment of this proceeding. This rate is 76.60 percent and was determined in Flowers (91–94).

Agricola de Occident
Alstroflores Ltda.
Ancas Ltda.
Arboles Azules Ltda.
Becerra Castellanos y Cia.
Clavelez
Consorcio Agroindustrial
Cultivos Guameru
Dianticola Colombiana Ltda.
Dynasty Roses Ltda.
El Tambo
Euroflora
Exoticas
Exportadora
Flores Abaco S.A.
Flores Bachue Ltda.
Flores Cerezangos
Flores Depina S.A.
Flores de Guasca
Flores de la Cuesta
Flores de la Maria
Flores del Tambo
Flores de la Parcelita
Flores Flamingo Ltda.
Flores Monteverde
Flores Urimaco
Flowers of the World/Rosa
Illusion Flowers
Industria Santa Clara
Inversiones Playa
Inversiones Valley Flowers Ltda.
Jardines de America
Jardines de Timana
Karla Flowers
Laura Flowers
Pinar Guameru
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
San Ernesto
Superflora Ltda.
Tropical Garden
Villa Cultivos Ltda.

Bankrupt Companies

The following group of companies is determined to be bankrupt and will be assessed at a rate of 8.36 percent.

Oro Verde Group
Inversiones Miraflores S.A.
Inversiones Oro Verde S.A.

Confirmed Shipper

The following company responded that it had no shipments of subject merchandise during the period of review, although U.S. Customs data later proved that this company did, in fact, ship subject merchandise during the POR. This confirmed shipper will be assessed at a rate of 2.26 percent.

Flores Tiba S.A.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific per-stem duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total quantity of subject merchandise entered during the POR. We have used the number of stems entered during the POR, rather than the number of stems sold during the POR, because of the perishable nature of the merchandise. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Act, on or after the publication date of these final results of review: (1) The cash deposit rate for the individually examined companies will be the most recent rates as listed 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) the cash deposit rate for non-selected companies will be the weighted-average of the cash deposit rates for the individually examined companies; (3) 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; (4) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will be the ''all other'' rate of 3.10 percent. This is the rate established during the LTFV investigation, as amended in litigation.

These deposit requirements 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 351.402 (f)(2) to file a certificate regarding the reimbursement of AD 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 AD duties occurred and the subsequent assessment of double AD duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: October 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27141 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Gray Portland Cement from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 14, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review for the antidumping order on Gray Portland Cement from Mexico, pursuant to the Tariff Act of 1930, as amended by the Urguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: Kristen Smith, Kristen Stevens, or Steven Presing, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit.

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Act, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim publication date	Final due date*
Gray Portland Cement (A–201–802)	Mexico	8/1/95–7/31/96	9/17/96	9/10/97	3/09/98

*The Department shall issue the final determination 180 days after the publication of the preliminary determination.

Dated: October 6, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, for Enforcement III.

[FR Doc. 97–27140 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–811]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products (lead bar) from the United Kingdom for the period January 1, 1995 through December 31, 1995 (62 FR 16555). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the Final Results of Review section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Final Results of Review section of this notice.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Suzanne King, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers British Steel Engineering Steels Limited (BSES) (formerly United

Engineering Steels Limited (UES)), and British Steel plc (BS plc). This review also covers the period January 1, 1995 through December 31, 1995.

Since the publication of the preliminary results on April 7, 1997 (62 FR 16555), the following events have occurred. We invited interested parties to comment on the preliminary results. On May 7, 1997, case briefs were submitted by BSES, which exported lead bar to the United States during the review period (respondent), and Inland Steel Bar Company (petitioner). On May 14, 1997, rebuttal briefs were submitted by petitioner and respondent. Pursuant to section 751(a)(3) of the Tariff Act of 1930, we extended the due date for the final results to no later than 180 days after the publication of the preliminary results. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Extension of Time Limit for Countervailing Duty Administrative Review, 62 FR 39824 (July 24, 1997).

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR 355.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the European Commission, the Government of the United Kingdom, British Steel plc, and British Steel Engineering Steels. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports (on file in the Central Records Unit, Room B–099 of the Department of Commerce).

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if ''an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title.'' The facts on the record show that British Steel plc received assistance during the period of review (POR) under the European Union BRITE/EuRAM program. The facts also show that this assistance was unreported in the questionnaire response, notwithstanding a specific question on this program in the Department's questionnaire. See the March 31, 1997, Memorandum for Acting Assistant Secretary, Re: Facts Available for New Subsidies Discovered at Verification (1995) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce).

Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because respondents were aware of the requested information but did not comply with the Department's request for such information, we find that respondents failed to cooperate by not acting to the best of their ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference is a finding that the BRITE/EuRAM program is specific under section 771(5A) of the Act, and that the amount of each grant received by BS plc constitutes a financial contribution which benefits the recipient. As such, these grants are countervailable. This finding conforms with the Department's facts available determination in the Final Affirmative Countervailing Duty Determination; Certain Pasta From Turkey, 61 FR 30366, 30367 (June 14, 1996).

Change in Ownership

I. Background and Analysis

On March 21, 1995, British Steel plc (BS plc) acquired all of Guest, Keen & Nettlefolds' (GKN) shares in United Engineering Steels (UES), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, during the POR, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels (BSES).

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation (BSC), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of untied subsidies prior to the 1986 transfer of the Special Steels Business to UES. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, 58 FR 6237, 6243 (January 27, 1993) (Lead Bar). Further, the Department determined that the sale to UES did not alter these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. Lead Bar at 6240.

In this review, we determine that BS plc's acquisition of GKN's shares in UES does not affect the countervailability of previously bestowed subsidies which were assigned to UES. However, we also determine that a portion of the purchase price paid by BS plc for UES is attributable to its prior subsidies. Therefore, we are reducing the amount of the subsidies that ''travel'' with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 16555, 16556 (April 7, 1997) (Preliminary Results).

To calculate the amount of UES's subsidies that travel to BS plc as a result of the March 21, 1995, acquisition, we are applying the methodology described in the ''Restructuring'' section of the *General Issues Appendix* (*GIA*) appended to Final Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37268–37269 (July 9, 1993) (*Austrian Steel*). This determination is in accordance with our change-in-ownership findings in Final Affirmative Countervailing Duty Determination; Certain Pasta From Italy, 61 FR 30288, 30289–30290 (June 14, 1996) (*Certain Pasta From Italy*), and with our finding in the 1994 administrative review of this case, in which we determined that ''[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix methodology or its findings in the Lead Bar Remand Determination.'' Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377, 58379 (November 14, 1996) (1994 UK Bar Final).

We further determine in this review that it is appropriate to attribute the current benefit from BS plc's untied, nonrecurring subsidies to BS plc's consolidated sales of domestically produced merchandise, including the sales of BSES, for purposes of calculating the countervailing duty rate for the subject merchandise. As a consolidated, wholly-owned subsidiary of BS plc, BSES now benefits from the remaining benefit stream of BS plc's untied nonrecurring subsidies. See Preliminary Results, 62 FR at 16556.

II. Assignment of Countervailing Duty Rates

As noted above, the acquisition of UES did not take place until March 21, 1995. Thus, until March 21, 1995, the subject merchandise was produced and exported by the independent joint-venture company, UES. Therefore, as discussed in the *Department's Position* under *Comment 6*, below, we are assigning a separate countervailing duty assessment rate for exports by UES for the period prior to BS plc's acquisition of GKN's shares in UES. This period is January 1, 1995 through March 20, 1995. For the period March 21, 1995 through December 31, 1995, after UES became a wholly-owned subsidiary of BS plc, we are assigning a countervailing duty assessment rate for BS plc/BSES/UES that reflects the attribution of BS plc's untied subsidies to its consolidated sales, including sales by BSES (formerly UES). (See the *Calculation Methodology* and *Final Results of Review* sections below.)

III. Calculation Methodology

As fully explained in the *Preliminary Results,* we have found it appropriate to make two changes to the methodology used to calculate the benefit from the nonrecurring subsidies. These changes involve (1) the calculation of the net present value used in calculating the subsidies which remain in subsequent periods after a change in ownership and (2) the period of allocation for nonrecurring subsidies. See *Preliminary Results,* 62 FR at 16557.

To determine the countervailing duty rate for the subject merchandise for the period January 1, 1995 through March 20, 1995, we used the methodology followed in prior segments of this proceeding with the modifications identified above. Further, in calculating the countervailing duty rate for the subject merchandise after March 21, 1995, we first determined BS plc's benefits in 1995, taking into account all spin-offs of productive units (including the Special Steels Business) and BSC's privatization in 1988. See Final Affirmative Countervailing Duty Determination; Certain Steels Products from the United Kingdom, 58 FR 37393 (July 9, 1993) (UK Steel). We then calculated the amount of UES's subsidies that ''rejoined'' BS plc after the March 21, 1995 acquisition, taking into account the reallocation of subsidies to GKN. As indicated above, in determining both these amounts, we followed the methodology outlined in the GIA. After adding BS plc's and UES's benefits for each program, we then divided that amount by BS plc's total consolidated sales of domestically produced merchandise in 1995.

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

The following programs were previously determined to bestow subsidies upon BSC/BS plc and UES:

1. Equity Infusions
2. Regional Development Grant Program
3. National Loan Fund (NLF) Loan Cancellation
4. European Loan and Steel Community (ECSC) Article 54 Loans and Interest Rebates

Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the total net subsidy for all of these programs for BS plc/BSES/UES is 7.35 percent *ad valorem* for the period March 21, 1995 to December 31, 1995. The total net subsidy for all of these programs for UES is 2.40 percent *ad valorem* for the period January 1, 1995 through March 20, 1995.

B. New Programs Determined To Confer Subsidies

In the preliminary results, we found that the following new program conferred countervailable benefits on the subject merchandise:

BRITE/EuRAM

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. UES did not benefit from this program. Accordingly, the net subsidies for this program for the period March 21, 1995 to December 31, 1995 are less than 0.005 percent *ad valorem*.

II. Programs Determined To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise subject to this review did not apply for or receive benefits under the following programs during the POR:

A. New Community Instrument Loans
B. ECSC Article 54 Loan Guarantees
C. NLF Loans
D. ECSC Conversion Loans
E. European Regional Development Fund Aid
F. Article 56 Rebates
G. Regional Selective Assistance
H. ECSC Article 56(b)(2) Redeployment Aid
I. Inner Urban Areas Act of 1978
J. LINK Initiative

K. Transportation Assistance

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

III. Programs Determined To Be Terminated

In the preliminary results, we found the following program to be terminated and that no residual benefits were being provided:

Transportation Assistance

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Petitioner maintains that the Department's subsidy repayment methodology is inconsistent with the countervailing duty statute, which requires that duties be imposed upon all subsidies paid with respect to the production, manufacture or export of subject merchandise. Petitioner asserts that the change in ownership of a company conducted at fair market value does not offset the distortion caused by the government's bestowal of the subsidy, and the production of the merchandise continues to benefit from the subsidies. Therefore, according to petitioner, there can be no repayment.

Petitioner further contends that the statute and the SAA require the Department to determine the effect of a change in ownership on previously conferred subsidies on a case-by-case basis after careful consideration of the facts of each case. Petitioner interprets the SAA as meaning that absent affirmative evidence of repayment, the change in ownership of a company should not affect the benefit from prior subsidies. Therefore, because the Department has not factually shown that there was any repayment of subsidies to GKN as a result of BS plc's acquisition of UES, petitioner argues that the repayment methodology should not be applied in this case.

Moreover, petitioner argues that BS plc's purchase of GKN's shares in UES was not a privatization, and therefore the repayment methodology does not apply. This transaction, petitioner states, does not materially differ from the sales of shares traded daily on the stock market. Because the Department has never argued that repayment should be calculated for such transactions, petitioner contends that repayment should likewise not apply to the transaction between BS plc and GKN.

Petitioner claims that BSES is now in the same position as its precursor, the Special Steels Business, although BSES is now an incorporated subsidiary of BS plc instead of an unincorporated division. Therefore, petitioner argues that the allocation of subsidies should be the same as it was before the spin-off in 1985 and that all of UES's subsidies should travel back to BS plc. According to petitioner, the Department's recent Certain Pasta from Italy determination does not affect this result, because the facts in that case were significantly different. The pasta case involved several producers that received subsidies prior to being purchased by other producers, while the initial transaction is this case involved the formation of a joint-venture company (UES) with a partner (GKN) which had received no prior subsidies. Thus, the Department's repayment methodology has not yet been applied in a situation where a spun-off company is reacquired by its former parent.

Finally, petitioner asserts that the *GIA* methodology is not appropriate in this situation. Although the *GIA* addresses corporate restructuring, such as mergers, spin-offs, and acquisitions, it does not address the reacquisition of a spun-off entity. Accordingly, all of UES's subsidies should travel back to BS plc.

Respondent states that the Department's allocation of a portion of UES's subsidies to GKN does not conflict with the countervailing duty statute. With respect to the pre-URAA statute, respondent notes that the U.S. Court of Appeals of the Federal Circuit found the Department's credit methodology to be reasonable in *Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl*). Respondent further argues that this methodology is also consistent with the ''Changes in Ownership'' provision of the URAA-amended statute, because this provision does not preclude the Department from finding that changes in ownership have particular effects, such as the repayment of subsidies. According to respondent, the SAA provides the Department with further authority to apply a general methodology to the specific facts of cases involving changes in ownership.

Respondent also asserts that petitioner's argument that the record must show evidence of repayment misses the point of the Department's methodology, namely that ''the company's new owners are virtually certain to repay at least a portion of the subsidy as part of the purchase price.'' *GIA*, 58 FR at 37263.

With respect to petitioner's claim that the repayment methodology does not apply to transactions between private shareholders, respondent states that this is inconsistent with the Department's finding in Certain Pasta From Italy, where the methodology was applied to such transactions. According to respondent, the relevant fact here is not whether the government received any repayment, but, rather, whether the purchaser paid a price that reflected any past subsidies to the company being acquired. Respondent further notes that petitioner's argument that BSES is now in the same position as the Special Steels Business is inconsistent with the Department's determination in the investigation that UES and the Special Steels Business were separate entities. Finally, respondent states that it is immaterial whether GKN received any subsidies prior to the formation of UES, because the application of the reallocation/repayment methodology does not depend on whether the owner of a company has received any subsidies.

Department's Position: We disagree with petitioner. As we explained in 1994 UK Bar Final, the language of section 771(5)(F) of the Act gives the Department discretion to consider, on a case-by-case basis, the impact of a change in ownership on the countervailability of past subsidies. Rather than mandating that a subsidy automatically transfer with a change-in-ownership transaction, as petitioner argues, the language in the statute gives the Department flexibility in this area. See 1994 UK Bar Final, 61 FR at 58380.

In this case, in accordance with the SAA, we have examined the facts of BS plc's acquisition of UES, and we determine that the March 21, 1995, change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable based on the methodology explained in the ''Privatization'' section of the *GIA*. *See GIA* 58 FR at 37262–37263. We also determine that a portion of the purchase price paid for UES may be reflective of its prior subsidies. Therefore, we have reduced the amount of the subsidies that ''travel'' with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See the March 31, 1997 Memorandum for Acting Assistant Secretary, Re: BS plc's March 1995 Acquisition of UES (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce) (Acquisition Memo).

As for petitioner's argument that the repayment methodology should not be applied because the Department has not factually shown that subsidies have

been repaid to GKN, we agree with respondent that petitioner misses the point of the Department's methodology. The Department has never required factual proof of repayment. Rather, as we stated in the GIA, ''to the extent that a portion of the price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.'' GIA, 58 FR at 37262–37263. Furthermore, the Department has already examined the question of whether the Department's change-in-ownership methodology can be applied to a transaction between private parties. In the *GIA*, the Department stated that the privatization methodology applies also to transactions between private parties. The Department explained that ''[u]nder these circumstances, the issue is not the repayment of subsidies, but rather their allocation.'' GIA, 58 FR at 37264. Thus, the Department properly applied the change-in-ownership methodology in this review.

Petitioner elevates form over substance by arguing that the GIA methodology does not apply to BS plc's acquisition of GKN's shares in UES because that acquisition somehow differs from the transactions discussed in the GIA. The mere fact that the Department did not elaborate on every type of potential change-in-ownership transaction in the ''Privatization'' and ''Restructuring'' sections of the GIA does not invalidate the application of these methodologies to transactions such as the reacquisition of formerly-owned companies or productive units. Furthermore, the fact that the unit producing the subject merchandise has now returned to its former owner also does not affect our determination that a portion of the purchase price paid by BS plc for GKN's shares of UES reflects past subsidies.

Petitioner claims that BSES is now in the same position as the Special Steels Business, and therefore, there is no reason to reallocate subsidies to GKN. We disagree. In the original investigation, we determined that the creation of UES was not simply a corporate restructuring; rather, UES was a joint-venture company that was a separate corporate entity independent from its parent companies. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Remand Determination (October 12, 1993) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce). Contrary to petitioner's assertion, the Special Steels Business and BSES are distinguishable, because they are distinct entities with different ownership structures. Therefore, our finding in this review that a portion of the purchase price paid for GKN's shares in UES is reallocated to the seller because it reflects past subsidies is not in conflict with our change-in-ownership methodology explained in the GIA or with our determination in Certain Pasta from Italy.

Comment 2: According to petitioner, the Department correctly made the adverse inference that the BRITE/EuRAM program is specific and that the benefits received during the instant review are countervailable, because the Department discovered at verification that assistance under the BRITE/EuRAM program was provided to BS plc in 1995 and this assistance was not reported by BS plc or the European Commission in their questionnaire responses. However, petitioner contends that the Department should not have accepted information at verification that BS plc retained only a small portion of the BRITE/EuRAM assistance and disbursed most of it to third parties involved in the research project. Rather, the Department should have countervailed the full amount received by BS plc.

Respondent asserts that the Department has discretion to determine an appropriate adverse inference in response to an interested party's oversight. Respondent also points out that information regarding payments to third parties allowed BS plc to demonstrate the amount of assistance which BS plc actually received.

Department's Position: After discovering at verification that BS plc had received assistance under the BRITE/EuRAM program during the POR, we informed the company that they could provide information concerning the grant amounts and demonstrate whether the assistance was tied to production of non-subject merchandise. See the October 21, 1996 Memorandum To Barbara E. Tillman, Re: Verification of the British Steel plc Questionnaire Responses at 12 (public version on file in the Central Records Unit, Room B–099 of the Department of Commerce). We learned that BS plc received assistance under one BRITE/EuRAM contract during the POR; BS plc was not able to establish that the assistance under that program was tied to non-subject merchandise. We reviewed program documents indicating that as the project coordinator for the BRITE/EuRAM project in question, BS plc was required to provide most of the BRITE/EuRAM money to third parties also involved in the research project. Therefore, we appropriately countervailed only the amount of funding actually received by BS plc for its portion of the project.

Comment 3: According to respondent, the Department incorrectly determined in the *Preliminary Results* that BSES benefits from the subsidies given to BS plc. Respondent asserts that the Department's determination was based solely on the corporate relationship between the parent company (BS plc) and its subsidiary (BSES). Respondent claims to have reviewed the Department's practice and found no administrative case precedents in which the Department has imposed countervailing duties on a subsidiary solely on the basis of its relationship to the parent company and certainly not when a subsidiary was acquired after the subsidies were received. Respondent cites two court decisions and a number of cases in support of its argument that we have uniformly required other factors in addition to the corporate relationship to support the attribution of subsidies from parent to subsidiary, namely, that, (1) corporate machinations were used to evade countervailing duties, (2) the parent received subsidies in order to create the subsidiary, or (3) the parent served as a conduit for the subsidies. These cases are discussed in the *Department's Position* on the comment.

Respondent also argues that the GIA and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany, 58 FR 37315 (July 9, 1993) (*German Steel*), both cited in the *Preliminary Results*, do not permit the automatic attribution of subsidies from a parent company to its newly acquired subsidiary. Respondent asserts that the GIA does not state that the Department automatically treats the parent and its subsidiaries as one for the purpose of attributing subsidies. Rather, respondent points out that ''the Department *often* treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy (emphasis added).'' See GIA, 58 FR at 37262. According to respondent, this is sometimes true because additional facts in those cases have permitted the Department to attribute a parent company's subsidies to its subsidiary. Respondent contends that German Steel and the cases cited in the GIA, e.g., Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France, 52 FR 1218 (Brass Sheet and Strip from France); Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden, 52 FR 5794 (February 26, 1987) (*SSHP from Sweden); Armco, Inc.* v. *U.S.*, 733 F. Supp. 1514 (CIT 1990)

(*Armco*); do not support the attribution of subsidies from a parent to a subsidiary based only on the corporate relationship because each of these cases involved additional factors.

Furthermore, respondent argues that the automatic attribution of subsidies between a parent and a subsidiary would not be permitted under the Department's proposed regulations. See Notice of Proposed Rulemaking and Request for Public Comment, 62 FR 8817, 8845, 8855 (February 26, 1997) (*Proposed Regulations*). Respondent asserts that under the proposed regulations, subsidies given to a parent company will be allocated to the subsidiary's production only if they produce the same product or if subsidies have been transferred from parent to subsidiary. Therefore, because neither of these conditions exists, according to respondent, the *Preliminary Results* are not consistent with the *Proposed Regulations*.

Respondent concedes that the Department may attribute subsidies to the production of a subsidiary which was part of the corporation when subsidies were received because the parent's use of subsidy funds benefits all operations. However, respondent argues that this reasoning does not apply to BSES, because BSES was not a subsidiary of BS plc at the time when BSC received subsidies. Therefore, respondent argues that BS plc's acquisition of GKN's shares of UES should not cause the Department to alter the way in which it determines the portion of BSC's subsidies which benefit the production of leaded bar by BSES.

According to petitioner, Department practice and the facts of this review support the attribution of BS plc's subsidies to BSES. Petitioner argues that judicial decisions and administrative practice give the Department great latitude to allocate a parent company's subsidies to a subsidiary. Petitioner argues that over the past 15 years, the Department has always permitted the attribution of subsidies from parent to subsidiaries, and actually has done so more and more frequently, especially where a substantial degree of control is present and business lines are related. According to petitioner, the Department now presumes that in most cases ''subsidies to one corporation may also benefit another corporation.'' *Proposed Regulations*, 62 FR at 8845. Therefore, petitioner contends, respondent's examples of the Department's refusal to allocate subsidies across corporate lines reflect the Department's previous but not its current practice. Petitioner cites *Brass Sheet and Strip from France* as an example of when the parent's ownership and control of its subsidiary were just as relevant to the Department's decision to attribute subsidies from parent to subsidiary as the fact that the parent served as a conduit for government funding. See Brass Sheet and Strip from France, 52 FR at 1218. Petitioner also cites SSHP from Sweden, where the parent's ownership and control of the subsidiary, in addition to the strong identity of interests between parent and subsidiary, led the Department to conclude that the subsidiary benefitted from the parent's subsidies and attribute those subsidies to the subsidiary. See SSHP from Sweden, 52 FR at 5798, 5800.

Petitioner further contends that three of the cases cited by respondent, Final Affirmative Countervailing Duty Determination: Operators for Jalousie and Awning Windows from El Salvador, 51 FR 41516 (November 17, 1986) (Operators for Jalousie and Awning Windows from El Salvador); Final Negative Countervailing Duty Determination: Low-Fuming Brazing Copper Rod and Wire from South Africa, 50 FR 31642 (August 5, 1985) (Copper Rod and Wire from South Africa); and Final Affirmative Countervailing Duty Determination: Carbon Steel Structural Shapes from Luxembourg, 47 FR 39364 (September 7, 1982) (Carbon Steel Structural Shapes from Luxembourg), do not support respondent's position. Petitioner points out that the Armco court noted that these cases did not involve situations where the parent had exercised substantial control over the operations of its wholly-owned subsidiary, and the court distinguished these three cases from situations involving parent companies and their wholly-owned subsidiaries. According to petitioner, since BSES is a wholly-owned subsidiary of BS plc, cases involving companies with different corporate relationships do not support respondent's position.

Petitioner also argues that the three conditions underlying Armco are relevant to the present case: the subsidiary is wholly-owned, the parent has total control of the subsidiary, and the threat of circumvention of countervailing duties exists. Therefore, Armco supports the Department's determination to attribute untied subsidies from BS plc to BSES.

Petitioner argues that subsequent decisions are consistent with Armco in that the Department has attributed the parent's subsidies to the subsidiary where there has been a strong identity of interests between parent and subsidiary. By contrast, the Department has been less likely to attribute parent company subsidies to the subsidiary where the subsidiary is not wholly owned by the parent or where the interests of parent and subsidiary diverge. Petitioner argues that in Ferrosilicon from Venezuela, the Department did not attribute the parent's subsidies to the subsidiary because the parent was a holding company and its interests were different from those of its subsidiary. See Final Affirmative Countervailing Duty Determination: Ferrosilicon from Venezuela, 58 FR 27539, 27541 (May 10, 1993) (Ferrosilicon from Venezuela). According to petitioners, in Certain Pasta from Italy, the Department attributed subsidies to affiliates in cases where both companies produced the subject merchandise, or where the affiliate played ''an integral role'' in the production process, but did not attribute subsidies when the affiliate did not produce the subject merchandise. See 61 FR at 30308. According to petitioner, because BSES is wholly owned and substantially controlled by BS plc and is engaged in a similar line of business, BSES benefits from the remaining benefit stream of BS plc's subsidies. Therefore, the Department has correctly attributed BS plc's subsidies to BSES.

Petitioner further argues that respondent elevates form over substance by arguing that BS plc's newly acquired subsidiary does not benefit from BS plc's subsidies. Even though BSES is now an incorporated subsidiary of BS plc, rather than the unincorporated division it was in 1985, the situation in 1995 is not materially different from the situation in 1985. Moreover, petitioner contends that if the Department did not allocate BS plc's subsidies to its newly acquired subsidiary even though it would have allocated them to the subsidiary's predecessor, the Special Steels Business, an unincorporated division, this would establish that corporate manipulations can determine countervailing duty rates, which is counter to the court's determination in Armco. According to petitioner, BC plc's subsidies should be attributed to BSES because BS plc and UES were closely associated prior to 1995 and are in the same line of business, and BS plc has substantial control over BSES today.

According to petitioner, respondent's argument regarding the Department's proposed countervailing duty regulations is based upon a highly selective reading of the proposed rules. Petitioner points out that the *Proposed Regulations* set forth general rules for the attribution of subsidies and do not illustrate every possible scenario.

Department's Position: In the *Preliminary Results*, the Department

appropriately attributed the benefits from nonrecurring untied subsidies received by BS plc that are allocable to the POR to that company's domestically produced, consolidated sales, including the sales of consolidated subsidiaries, such as BSES. This conforms with our past practice and judicial precedent. Where the Department finds that a company has received untied countervailable domestic subsidies, the Department follows a general attribution principle: if a benefit is not ''tied'' to specific merchandise produced by a company (or corporation), then the benefit is attributed to that company's total sales. The total sales that are reported on a company's financial statements normally include its own sales plus the sales of its consolidated subsidiaries. Thus, when a company is the parent of a consolidated group, untied domestic subsidies are normally attributed to the sales of the consolidated group of companies. This attribution is appropriate because a parent company exercises control over the capital structure and commercial activities of its consolidated subsidiaries. Moreover, when providing loans and equity, it is reasonable and prudent for lenders and investors to examine the financial condition of not only the parent company but also its significant subsidiaries because the subsidiaries are incorporated into the balance sheet and income statement of the consolidated group. We noted this general approach to attributing untied subsidies in the GIA, where we stated that we ''generally allocate subsidies received by parents over sales of their entire group of companies.'' 58 FR at 37262.

Contrary to respondent's assertion, the presence of additional factors is not required for the Department to attribute untied parent-company subsidies according to this general principle. For example, in Belgian Steel, untied subsidies to Sidmar, the parent company, were attributed to the ''total 1991 sales of the Sidmar Group.'' Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, 58 FR 37293, 37282 (July 9, 1993) (Belgian Steel). In Italian Steel, a subsidy determined to benefit all production activities was ''allocated over Falck's total consolidated sales.'' GIA, 58 FR at 37235. See also, Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221, 6223 (January 27, 1993) (France Bismuth); Final Affirmative Countervailing Duty Determination: Certain Steel Products from France, 58 FR 37304 (July 9, 1993) (French Steel); Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy, 58 FR 37327 (July 9, 1993) (Italian Steel); and UK Steel. As these cases illustrate, respondent's claim that the Department has never attributed untied parent-company subsidies to its consolidated subsidiaries solely on the basis of the corporate relationship is incorrect.

Respondent concedes that attributing parent-company subsidies to wholly-owned subsidiaries is appropriate in certain circumstances, stating that under ''the Department's well-established practice of not tracing the use of subsidy funds, the Department may presume that a parent company uses subsidy funds to benefit its overall operations, including its subsidiary operations.'' Respondent's May 7, 1997, Case Brief at 18. However, respondent argues that this policy is apropos only when the subsidiary ''is part of the corporation at the time the subsidies are received * * * and continues to be a subsidiary through the POI.'' *See* Respondent's May 7, 1997 Case Brief at 18. Therefore, respondent claims that the Department should not attribute the current benefit from BS plc's untied subsidies to BSES because BSES did not become an incorporated subsidiary of BS plc until 1995, subsequent to BS plc's receipt of the untied subsidies at issue. This argument contradicts the very principle of not tracing the use of subsidy funds beyond the point of bestowal with which respondent agrees.

The Department has never made a distinction between subsidiaries acquired at the time when subsidies are bestowed and subsidiaries acquired after subsidization, and respondent has not cited any administrative or court precedent in support of this contention. In cases where the Department found that untied domestic subsidies were bestowed upon parent companies, prior to or during the period under examination, the Department has attributed these untied subsidies to the group's consolidated sales, without analyzing whether any of the subsidiaries had been acquired after subsidization had occurred. See, e.g., Belgian Steel, French Steel, Italian Steel, and UK Steel. In UK Steel, BS plc did not argue that the Department should analyze whether BS plc had acquired subsidiaries subsequent to receiving subsidies to determine whether the sales of those newly acquired subsidiaries should have been excluded from the denominator in calculating the subsidy rate. On the contrary, BS plc claimed at the time that ''untied equity infusions must be allocated to a company's total corporate output [including foreign operations] and not just to specific products or operations.'' GIA, 58 FR at 37236. BS plc further argued that this ''*longstanding Departmental precedent* applies to national and multinational corporations alike.'' *Id.* (emphasis added).

If the Department were to make a distinction between subsidiaries acquired at the time when subsidies are bestowed and subsidiaries acquired after subsidization, the Department would be required to abandon its ''well-established practice of not tracing the use of subsidy funds'' and to determine whether and to what extent subsidies ''passed through'' to newly-acquired companies. Such an analysis would also require a detailed examination of all changes in the structure of the company or group of companies over the entire allocation period. Further, the analysis required by respondent's distinction would assume that ''untied'' subsidies become ''tied'' to only the assets of the corporate group as it existed when the subsidy was bestowed. The Department has never advocated nor pursued such a policy. As stated in the *GIA*, ''nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance * * * nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.'' 58 FR at 37260; see also *British Steel* v. *United States*, 879 F. Supp. 1254, 1298 (CIT 1995) (*British Steel*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996); *British Steel Corp* v. *United States*, 9 CIT 85, 95–96, 605 F. Supp. 286, 294–95 (1985) (''[I]t is unnecessary to trace the use'' of funds), citing *Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982), vacated on agreed statement of facts, 9 CIT 38 (1985).

The Department also does not agree that the cases cited in the Preliminary Results do not support the attribution of BS plc's subsidies to consolidated sales of domestically produced merchandise. As stated in the GIA, ''[w]e also generally allocate subsidies received by parents over sales of their entire group of companies.'' GIA, 58 FR at 37262. The cases cited in the GIA as examples of the Department's past attribution practices do not represent an exhaustive list of all of the different scenarios under which the Department has dealt with the issue of attribution. Moreover, nothing in the GIA indicates that the Department is required to determine

that there are factors in addition to the corporate relationship, such as the pass-through of subsidies, in order for the Department to attribute a parent company's untied subsidies to the parent company's total consolidated domestically produced sales.

According to respondent, the CIT's determinations in Armco and *Aimcor, Alabama Silicon, Inc.* v. *United States* 871 F. Supp. 447 (CIT 1994) (*Aimcor*) make clear the court's view that the Department should not attribute subsidies from a parent company to the production of a newly acquired subsidiary based solely on the corporate relationship. Respondent's reliance on these cases is misplaced. Contrary to respondent's views, we find that these cases do not undermine the Department's general principle of attributing untied parent-company subsidies to the parent company's consolidated sales.

As respondent correctly notes, the Armco court overturned the Department's determination in Carbon Steel Wire Rod from Malaysia and held that the parent company benefitted from the subsidies provided to its wholly-owned subsidiary. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia, 53 FR 13303 (April 22, 1988) (Carbon Steel Wire Rod from Malaysia). The Armco decision was based on several factors including the court's concern that the parent and subsidiary could potentially evade countervailing duties through intra-corporate machinations, the relationship between the parent and subsidiary, and the parent's extensive control over the subsidiary. See Armco, 733 F. Supp. at 1526. We agree with the court and the respondent that the possibility of circumvention can be a factor in the Department's attribution decisions. We further note that according to BS plc's questionnaire response in this review, BS plc did produce and sell the subject merchandise during the period of review. See the June 11, 1996, BS plc questionnaire response (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). Therefore, the possibility of circumvention would exist if the Department did not attribute BS plc's untied subsidies to BS plc's total sales.

Nevertheless, respondent's reliance on Armco for the proposition that the Department must always find factors in addition to the corporate relationship in order to attribute a parent company's untied subsidies to the parent company's domestically produced, consolidated sales is not supportable. Respondent emphasizes that the Armco court supported the proposition that the bestowal of the subsidy on one company does not automatically benefit another company merely because the two are related. See *Armco,* 733 F. Supp. at 1521–1522. However, this general proposition merely recognized the possibility that different conclusions may be drawn from different scenarios involving various kinds of subsidies, tied and untied, and companies of varying degrees of relatedness. This proposition does not stand for respondent's argument that the Department must always find factors in addition to the corporate relationship in order to attribute a parent company's untied subsidies to the parent company's domestically produced, consolidated sales, and it does not undermine the Department's attribution of BS plc's untied subsidies in this review.

Respondent also claims that the *Armco* court rejected the notion that ''a subsidy, by its mere bestowal, necessarily affects every corner of the corporate relationship.'' *See Armco,* 733 F. Supp. at 1525. However, in referring to this proposition, the Armco court clarified that the scope of its holding was limited to the facts of the case. We do not interpret Armco as stating that the Department is required in all cases to find factors in addition to the corporate relationship in order to attribute subsidies from one company to another.

Respondent's reliance on *Aimcor* for the proposition that the Department may not impose duties on a company solely because it has been acquired by a company that has received subsidies is also misplaced. The facts in *Aimcor* are substantially different from those in the instant review. In Aimcor, the plaintiff alleged that a government-owned financial institution sold shares in Fesilven, the producer of the subject merchandise, to Corporacion Venezolana Guayana (CVG), a government-owned holding company, at less than eight percent of their par value. According to the plaintiff, because of the relationship between CVG and Fesilven, this transaction was a de facto share redemption which resulted in a subsidy to Fesilven. However, the court upheld the Department's determination that CVG and Fesilven could not be considered one entity and therefore the transaction was not a share redemption by Fesilven. Thus, the relationship between CVG and Fesilven was the critical factor in determining whether CVG's purchase of Fesilven's shares from a third party was a *de facto* share redemption by Fesilven which could have resulted in the bestowal of a subsidy on Fesilven. It is clear, therefore, that the issue in *Aimcor* was whether a subsidy had been bestowed at all. The issue was not whether countervailable subsidies that had been bestowed on a parent company were attributable to a wholly-owned subsidiary.

Respondent mistakenly cites the *Aimcor* court for support without first considering the particular facts at issue. For example, respondent points out that in *Aimcor,* plaintiffs argued that Brass Sheet and Strip from France required an automatic attribution of subsidies, but the *Aimcor* court stated that ''Commerce does more than simply look at the relationship between the parties. Instead, Brass Sheet and Strip from France demonstrates Commerce's consistent, statutorily mandated policy of tracing a bounty or grant to determine whether it reached the merchandise before Commerce imposes a duty.'' *Aimcor,* 871 F. Supp. at 452. However, the issue in Brass Sheet and Strip from France was whether a government-owned holding company had bestowed a subsidy on a subsidiary, and the *Aimcor* court's statement must therefore be interpreted in that context, because as indicated above, the statute does not require the Department to trace the uses or the effects of subsidies. Respondent also points to the court's statement that a benefit to the parent corporation ''does not necessarily make one of its assets, such as its subsidiary, more valuable.'' *Aimcor,* 871 F. Supp. at 452. However, the court went on to say that ''[a]bsent a showing that the subsidy reached the exported merchandise, this court will not disturb Commerce's determination.'' *Id.* Thus, as reflected by the court's opinion, our determination in Ferrosilicon from Venezuela dealt with the issue of whether a subsidy had been conferred on Fesilven through a transaction involving the government-owned holding company, which owned shares in Fesilven, and a government-owned financial institution. It did not deal with the attribution of previously bestowed untied parent company subsidies to a wholly-owned subsidiary.

In addition to *Armco* and *Aimcor,* respondent identified a number of other cases to support the proposition that the Department has uniformly required factors in addition to the corporate relationship in attributing a parent company's subsidies to a newly acquired subsidiary. According to respondent, the Department has only attributed a parent company's subsidies to a subsidiary when (1) corporate machinations could be used to evade countervailing duties, (2) the subsidies were provided to the parent to facilitate

the subsidiary's creation, or (3) the parent served as a conduit for subsidies to the subsidiary. We have examined the cases cited by respondent with respect to each factor, and we disagree with respondent's overall interpretation of the Department's past practice.

With respect to the first and second factors, we agree with respondent that in certain instances the Department's attribution decisions were influenced by (1) the possibility that intra-corporate machinations would be used to evade countervailing duties, or (2) the fact that subsidies were provided by the parent to facilitate the creation of a subsidiary. See *e.g.*, Final Affirmative Countervailing Duty Determinations: Carbon Steel Structural Shapes, Hot-Rolled Carbon Steel Plate, and Hot-Rolled Carbon Steel Bar from the United Kingdom; and Final Negative Countervailing Duty Determination: Cold-Formed Carbon Steel Bar from the United Kingdom, 47 FR 39384 (September 7, 1982) (*1982 UK Steel*), Carbon Steel Wire Rod from Malaysia, Armco, Belgian Steel, and SSHP from Sweden. See SSHP from Sweden, 52 FR at 5796. Nevertheless, the mere fact that we examined these factors does not negate the Department's general attribution principle discussed above, or require that these factors be present in all cases. We fail to see how these cases establish that ''additional'' factors *must* always be present for the Department to attribute untied parent-company subsidies to the parent company's total sales, including the sales of its consolidated subsidiaries.

The majority of the cases cited by respondent are concerned with the third factor, *i.e.*, that the parent company served as a conduit for subsidies to the subsidiary. However, this argument implies that in order to attribute untied nonrecurring domestic subsidies received by a parent company to the parent company's consolidated sales of domestically produced merchandise, the Department is required to analyze whether subsidies have ''passed through'' the parent to its subsidiary. This would amount to tracing the uses and effects of untied subsidies, which respondent acknowledges the Department is not required to do. Therefore, the Department is not required to conduct a ''pass-through'' analysis. Moreover, as explained above, the Department's general attribution practice supports the attribution of BS plc's untied subsidies to BS plc's domestically produced, consolidated sales. As such, we find that the cases cited by respondent in support of its ''pass-through'' proposition either can be distinguished from the fact pattern in the instant review, or actually can be found to support the Department's attribution approach in this case.

For example, respondent cites Grain-Oriented Electrical Steel from Italy, in which the Department countervailed only the subsidies ''specifically provided to the producer of the subject merchandise.'' Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy, 59 FR 18357, 18365 (April 18, 1994) (Grain-Oriented Electrical Steel from Italy). Nevertheless, respondent fails to mention that the Department's approach was driven by the unique circumstances of the case, in which the parent company was a government-owned company which, prior to the period of investigation, underwent a series of intricate restructurings during which debt was forgiven by the Italian Government. In fact, the Department acknowledged that there were two alternative approaches to addressing the debt forgiveness associated with the restructurings: (1) ''To analyze the restructuring of the entire Finsider group into ILVA and to examine all subsidies provided to Finsider by IRI and the government of Italy,'' or (2) ''measure the subsidies provided to the producer of the subject merchandise.'' See Grain-Oriented Electrical Steel from Italy, 59 FR at 18366. The Department chose the second approach, given ''the extremely complex restructuring which occurred at the Finsider group level'' because it would allow the Department to ''more accurately measure the benefits attributable to the producer of the subject merchandise''. See *Id*.

Thus, Grain-Oriented Electrical Steel from Italy does not support respondent's proposition that the Department always examines facts in addition to the corporate relationship when attributing untied parent-company subsidies to the parent company's total consolidated sales, including sales of consolidated subsidiaries. Rather, in Grain-Oriented Electrical Steel from Italy, the Department acknowledged the validity of analyzing subsidies at the parent company level in order to attribute them to the sales of the consolidated subsidiaries (59 FR at 18366), which supports the approach taken in the instant review.

In further support of its argument that in prior cases involving subsidy attribution, parent companies have served as conduits for subsidies to their subsidiaries, respondent cites a number of cases that involve parent companies which were government-owned holding companies. See, *e.g.*, Final Affirmative Countervailing Duty Determinations; Certain Steel Products from the Federal Republic of Germany, 47 FR 39345 (September 7, 1982) (1982 German Steel); Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations, 49 FR 17988 (April 26, 1984) (Certain Carbon Steel Products from Brazil); Brass Sheet and Strip from France, and Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain, 58 FR 37374 (July 9, 1993) (Spanish Steel). In these cases, the Department considered whether the government-owned holding company acted as the government in bestowing subsidies to the affiliated companies, *i.e.*, the subsidiaries. For example, in Brass Sheet and Strip from France, the parent company was an unequityworthy government-owned holding company which received equity infusions from the government and, in turn, provided equity infusions and other financial assistance to its unequityworthy subsidiary, the producer of the subject merchandise. The Department noted that since the parent was merely a holding company, the funds which were provided to it by the government benefitted its subsidiaries. *See* Brass Sheet and Strip from France, 52 FR at 1220. Thus, the Department considered that the holding company acted essentially as the government in bestowing the equity infusions to the subsidiary. Therefore, in that case the Department countervailed the benefit on the basis of the subsidiary's total sales.

Brass Sheet and Strip from France does not support respondent's argument that the Department is required to analyze whether subsidies provided to private or government-owned parent companies have ''passed through'' to their subsidiaries. As demonstrated above, even in cases involving government-owned companies, *e.g.*, the 1993 steel investigations, the Department's practice has been to attribute the benefit from untied domestic subsidies provided to a parent company based on its consolidated sales of domestically produced merchandise. See, *e.g.*, Belgian Steel, French Steel, Italian Steel, and UK Steel.

Respondent also cited Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea, 49 FR 35836 (September 12, 1984); Bicycle Tires and Tubes from Korea; Final Results of Administrative Review of Countervailing Duty Order, 48 FR 32205 (July 14, 1983); and Copper Rod and Wire from South Africa as cases in which the Department analyzed subsidy ''pass through.'' Nevertheless, these cases can be distinguished from the instant review because subsidy

bestowal, rather than subsidy attribution, was the key issue. Moreover, Bicycle Tires and Copper Rod from South Africa dealt with the issue of whether a privately-owned company had provided a subsidy to one of its related companies. In those cases, we stated that absent evidence of government involvement we would not examine whether a transaction between related private parties constituted a subsidy. In the instant case, we have already determined that the government of the United Kingdom bestowed untied nonrecurring subsidies on BSC/BS plc. The matter at issue here is whether the current benefit from those previously bestowed subsidies which have been allocated over time is attributable to only BS plc's operations or to its consolidated operations. As such, Bicycle Tires and Copper Rod from South Africa do not support respondent's contention.

In another example, respondent asserts that in Austrian Steel, the Department found that VAAG, a government-owned company, provided a subsidy to its new subsidiaries by not requiring them to assume a portion of its prior losses. However, Austrian Steel is distinguishable from the instant review. As part of a restructuring of a production company into a holding company, the newly-created holding company carried forward losses on its balance sheet, but did not assign a proportionate share of those losses to its newly-created subsidiaries. The Department determined that the holding company provided a subsidy to its subsidiaries by assuming losses that should have been assigned to the subsidiaries. See Austrian Steel, 58 FR at 37221. Thus, this aspect of Austrian Steel concerned the government-owned holding company's bestowal of a subsidy on its subsidiaries. This was not an issue of whether untied nonrecurring subsidies to a parent company benefit its consolidated sales.

Several of the cases cited by respondent in support of its pass-through argument can be distinguished from UK Lead Bar due to the nature of the corporate relationships and the fact that attribution of untied parent-company subsidies was not an issue. Operators for Jalousie and Awning Windows from El Salvador involved two private companies which had the same parent company. The subsidy in question was an income tax exemption from export earnings, and the law did not permit any transfer of these exemptions from the recipient to the other company, which had a different status under the Export Promotion Law. See Operators for Jalousie and Awning Windows from El Salvador, 51 FR at 41519 (1986). Thus, this was not a parent/subsidiary issue. The subsidies received by one company were not attributed to the other company, because the companies operated as distinct entities and had different status under the tax law. Respondent's example from Certain Pasta From Italy also involves two private companies with a common parent. Furthermore, the subsidies in that case were either subsidies to a privately-owned affiliated supplier or the subsidies were otherwise tied. Accordingly, the subsidies and the relationships in these cases are distinguishable from the instant review.

Respondent also cites Carbon Steel Structural Shapes from Luxembourg where the Department treated the parent company and its subsidiary separately because benefits were provided separately and ''are not allowed to pass through.'' Carbon Steel Structural Shapes from Luxembourg, 47 FR at 39365 (1982). Nevertheless, a key distinguishing factor is that Carbon Steel Structural Shapes from Luxembourg involved a parent company and a 40 percent-owned subsidiary, and the two companies had separate financial structures, *i.e.*, the subsidiary was not consolidated with the parent company. *See* Carbon Steel Structural Shapes from Luxembourg, 47 FR at 39365 (1982).

Even, assuming arguendo, that the Department were required to make a finding that the allocated benefit from untied subsidies to a parent company ''pass through'' to a subsidiary, the information on the record of this review would be sufficient to warrant the inclusion of BSES's sales in calculating the subsidy benefit from BS plc's untied subsidies. The Department's verification established that BS plc exercises considerable control over its consolidated subsidiary BSES. As the sole owner of BSES, BS plc has the authority to make all major decisions for BSES, including any decision to invest in BSES, change its operations, or close it down. Furthermore, BS plc performs a number of services, and even acts as a banker, for BSES and its other consolidated subsidiaries. See the October 21, 1996, Memorandum to Barbara E. Tillman, Re: Verification of the BS plc Questionnaire Responses in the 1995 Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom at 3–5 (public version on file in the Central Records Unit, Room B–099 of the Department of Commerce.)

With respect to respondent's and petitioner's comments on the proposed countervailing duty regulations, we note that these have not yet been finalized, and thus, are not controlling in this review.

Comment 4: Respondent states that the Department will over-countervail BS plc's subsidies in the 1995 and subsequent reviews as a result of changing the allocation period for nonrecurring subsidies from 15 to 18 years. Respondent points out that the Department has recognized that double-counting subsidy benefits is ''inconsistent with both the statute and the subsidies code.'' See, *e.g.*, Certain Castor Oil Products from Brazil; Final Results of Review of Countervailing Duty Order, 49 FR 9921 (1984), Unprocessed Float Glass from Mexico; Suspension of Countervailing Duty Investigation, 49 FR 7264 (1984), and General Agreement on Tariffs and Trade 1994, Art. VI(3). In recognition of the problem of over-or-under-countervailing subsidy benefits when transitioning to company-specific allocation periods, the Department adopted a policy of using the allocation period first assigned to a subsidy countervailed in earlier proceedings. According to respondent, because the mandate against over-countervailing subsidies is a statutory matter and not one of administrative discretion, as the Department has recognized, the Department must adhere to the 15-year amortization methodology which it previously adopted in countervailing subsidies received by UES.

According to petitioner, the 18-year allocation period is consistent with BS plc's corporate practice and all determinations involving BS plc. Changing the allocation period from 15 to 18 years enables the Department to countervail at the proper rate. Petitioner points out that the Department does not have the option of acceding to respondent's request to continue with a 15-year allocation period for BSES, because the CIT decided that the statute requires company-specific allocation periods based on the average useful life of assets and approved an 18 year allocation period for British Steel. See *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*). Petitioner points out that British Steel's successful appeal of the Department's 15-year allocation period led to the establishment of an 18-year allocation period in the first place.

According to petitioner, respondent's allegation that the Department's methodology results in ''double-counting'' of subsidies is misleading because only a minor amount of double-counting occurs when the allocation period is lengthened after the subsidies

have already been calculated in previous reviews. Overall, BS plc is charged more over the longer allocation period mainly due to an increase in interest charges. Petitioner suggests that the minor amount of double-counting can be corrected if the Department requests a remand of its original determination and adopts an 18-year allocation period for the entire period of the investigation and all administrative reviews, *i.e.*, from 1992 forward.

Department's Position: The position adopted by the Department on the allocation period for BS plc's/BSES's subsidies is discussed in detail in the *Preliminary Results* and the March 31, 1997 Memorandum for Acting Assistant Secretary, Re: Allocation Period for Nonrecurring Subsidies (Allocation Memorandum) (public document on file in the Central Records Unit, Room B–099 of the Department of Commerce). In this review, we are determining that it is appropriate, due to the unique circumstances of this case, to change the allocation period for the subsidies which were previously bestowed on BSC/BS plc and which were attributable to UES/BSES, even though all of these subsidies were bestowed prior to the period of review and had established allocation periods in prior proceedings. See UK Steel, 58 FR 37396. The Department's acquiescence to the CIT's decision in *British Steel* resulted in different allocation periods between the *UK Steel* and *UK Lead Bar* proceedings (18 years versus 15 years). Significant inconsistencies would result from different allocation periods for the same subsidies in two proceedings involving the same company. Therefore, in this review, we have applied the company-specific 18-year allocation period to all nonrecurring subsidies in order to maintain a consistent allocation period across the *UK Steel* and *UK Lead Bar* proceedings, as well as the different segments of *UK Lead Bar.*

Since the countervailing duty rate in earlier segments of the proceeding was based on a certain allocation period and resulting benefit stream, redefining the allocation period in this segment of the proceeding entails the creation of a new benefit stream for the original grant amount. The Department recognizes that this practice may lead to an increase (or decrease) in the subsidy rate calculated. Thus, applying an 18-year allocation period in this review to nonrecurring subsidies which had been calculated based on 15-year periods in prior segments of the proceeding could possibly lead to a larger total countervailable benefit for the subsidies spun off with the creation of UES and rejoining BS plc's subsidies with BS plc's acquisition of GKN's shares of UES. However, because the *UK Lead Bar* investigation and subsequent reviews of the order up to the instant review are currently subject to judicial review, no actual countervailing duties have been collected from any of the review periods in which the 15-year allocation period was applied. Thus, the issue of whether there would be an over-countervailing or double-counting of the subsidy is moot because the change to 18-years can be dealt with in the pending litigation.

Comment 5: Respondent contends that the Department's ''gamma methodology'' understates the portion of subsidies which should have been considered repaid to the government in connection with the privatization of BS plc in 1988 because of the assumption that a subsidy given in one year is considered non-subsidy capital in the following year. Respondent claims that according to the Department's methodology, only a portion of the capital of unprofitable, heavily subsidized companies would be attributed to subsidies. As an example, respondent states that even though BSC allegedly received subsidies from 1977/1978 to 1985/1986 of more than six times its total capital at fiscal year end 1978, the Department attributed only 46 percent of BSC's capital to subsidies at the end of 1987/1988.

Respondent proposes an alternative methodology for calculating the gamma based on the idea that a firm's capital is comprised of subsidy funds and non-subsidy funds at the time of sale. In the alternative methodology, the proportion of the firm's capital which would be attributable to subsidies at the time of the firm's sale is represented by the ratio of all subsidy capital to all capital from all sources during the time period in which subsidies were examined.

According to petitioner, the only appropriate change to the gamma would be its elimination, but if the Department continues to assume that a portion of the purchase price of a subsidized state-owned company represents the repayment of subsidies, the Department's existing gamma methodology is the most reasonable valuation of repayment.

According to petitioner, respondent's argument that the Department's methodology distorts the percentage of capital attributable to subsidies is misplaced, because the administrative practice of disregarding the effects of subsidies on financial performance in creditworthiness and equityworthiness analysis requires the assumption that a subsidy given in one year becomes non-subsidy capital in the following year. Petitioner cites *Saarstahl AG* v. *United States* 78 F.3d 1539, 1543 (Fed. Cir. 1996), North American Free Trade Agreement Implementation Act, S. Rep. No. 189, 103d Cong. 1st Sess. 4 (1993), and the *Proposed Regulations* to demonstrate that Congress and the courts have long discouraged the practice of determining the actual impact of subsidies on the company's capital structure.

Petitioner argues that even if the Department's methodology resulted in the respondent's alleged distortions, respondent's alternative methodology would result in greater errors, because it provides an inaccurate measure of how subsidies affect capital formation by ignoring the company's ability to fund improvements from positive cash flow or profitability. Finally, petitioner asserts that respondent's methodology does not account for inflation, which would cause early capital investments to be worth more than later ones in constant currency terms. According to petitioner, the Department's existing gamma methodology avoids the problem of inflation by comparing subsidies to capital only in the year of receipt.

Department's Position: We disagree with respondent's proposal, which would require the Department to analyze the effects of subsidies on a company's financial structure. Such an exercise is not only highly speculative, it is also inconsistent with the Department's statutory mandate. See GIA, 58 FR at 37260; see also *British Steel,* 879 F. Supp. at 1298. Respondent's assumption that the opening balance of capital represents unsubsidized capital would not be realistic for companies which have received subsidies from the time they were established. In addition, it is not clear what ''non-subsidy capital infusions'' represent, particularly with respect to unequityworthy government-owned companies. We also agree with petitioner that respondent's methodology is inaccurate to the extent that it does not appear to include profits as a significant non-subsidy source of funds.

Comment 6: Respondent notes that BS plc acquired GKN's shares of UES on March 21, 1995 and that the Department based the *Preliminary Results* on that event. Nevertheless, it is not apparent how entries involving merchandise exported from the United Kingdom prior to the March 21, 1995 acquisition could have been affected by the transaction, according to respondent.

Department's Position: We agree. Pursuant to the change in ownership section of the Act (771(5)(F)), we have taken the unique circumstances of the change in ownership of United

Engineering Steels into consideration for purposes of determining the net subsidies attributable to the merchandise subject to this review period. Accordingly, we are assigning two net subsidy rates for the POR: one for UES which will apply to exports prior to March 21, 1995, and one for BS plc/BSES/UES which will apply to exports on or after March 21, 1995.

Final Results of Review

In accordance with 19 CFR 355.22(c)(7)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As explained in the ''Change in Ownership'' section of the notice, above, we have calculated two net subsidy rates for the merchandise subject to this period of review: one for UES which will apply for that part of the review period prior to the change in ownership of UES, and one for BS plc/BSES/UES which will apply for that part of the review period on and after the change in ownership when UES became a consolidated subsidiary of BS plc. Thus, the net subsidy for UES is 2.40 percent *ad valorem* for the period January 1, 1995 through March 20, 1995, and the net subsidy for British Steel plc/British Steel Engineering Steels/United Engineering Steels (BS plc/BSES/UES) is 7.35 percent *ad valorem* for the period March 21, 1995 through December 31, 1995.

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentage detailed above (for BS plc/BSES/UES) of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377 (November 14, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice 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 19 CFR 355.34(d). Timely written notification of 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)).

Dated: October 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–27148 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397E]

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Advisory Panel and Standing and Special Mackerel Scientific and Statistical Committee (SSC).

DATES: The meetings are scheduled as follows: Mackerel Advisory Panel (AP) October 30, 1997, 8:00 a.m. - 12:00 noon; SSC October 29, 1997, 8:00 a.m. - 12:00 noon.

ADDRESSES: The meetings will be held at the at the Crowne Plaza Tampa Westshore, 700 North Westshore Boulevard, Tampa, Florida 33609; telephone 813–289–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815, extension 228.

SUPPLEMENTARY INFORMATION: The SSC and AP will be convened to review Draft Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic, Including Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis. Draft Amendment 9 includes:

1. Possible changes to the fishing year for Gulf group king mackerel - currently July 1.

2. Possible prohibitions of sale of mackerel caught under the recreational allocation.

3. Provisions for mandatory reporting requirements for commercial and for-hire vessels.

4. Reallocations of total allowable catch (TAC) for the commercial fishery for Gulf group king mackerel in the Eastern Zone (Florida east coast and Florida west coast) - currently 50/50 split.

5. Reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors - currently 68 percent and 32 percent, respectively.

6. Additional subdivisions of the commercial, hook-and-line allocation of TAC for Gulf group king mackerel by area and/or season for both the Florida west coast and the Western Zone (Alabama through Texas).

7. Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone.

8. Further restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast.

9. Possible changes to the minimum size limit for Gulf group king mackerel (currently 20–inches fork length) and establishment of a maximum size limit or both a minimum and maximum, i.e. a slot limit.

10. Consideration of re-establishing an annual allocation of Gulf group Spanish mackerel for the purse seine fishery.

A copy of the agenda can be obtained by calling 813–228–2815. Although other issues not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 20, 1997.

Dated: October 6, 1997.

Gary C. Matlock,

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

[FR Doc. 97–27044 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100397D]

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene a public meeting of the Red Snapper Advisory Panel (RSAP), Reef Fish Advisory Panel (RFAP), and Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meetings are scheduled as follows: RSAP October 27, 1997, 8:00 a.m. - 3:00 p.m.; SSC October 28, 1997, 9:00 a.m. - 5:00 p.m.; RFAP October 31, 1997, 8:00 a.m. - 4:00 p.m.

ADDRESSES: The meetings will be held at the at the Crowne Plaza Tampa Westshore, 700 North Westshore Boulevard, Tampa, Florida 33609; telephone 813–289–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida, 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815, extension 227.

SUPPLEMENTARY INFORMATION: The RSAP will review a 1997 NMFS stock assessment for red snapper and, optionally, a stock assessment for gag (grouper), and available biological information on gray triggerfish. The RFAP will also review reports on the above species from the Reef Fish Stock Assessment Panel (RFSAP), and the Socioeconomic Panel (SEP). Based on these reports, the RSAP will make recommendations for total allowable catch (TAC) of red snapper in 1998 and other management measures. The RSAP will also be asked to develop recommendations for controlling recreational harvest of red snapper in order to prevent a closure of the recreational fishery when the recreational quota is reached. The RSAP may also make recommendations for management measures for gag and gray triggerfish.

The RSAP may review Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. This amendment contains proposed management measures for fish traps, minor amberjack species (lesser amberjack, banded rudderfish, and Almaco jack), species listed as not in the management unit, compatible size and bag limits with Florida for several reef fish species, management measures for speckled hind and warsaw grouper in response to those species having been added to the candidate list of species for possible listing as threatened or endangered, and changes to the method of allocating TAC among user groups.

The SSC will review the stock assessments for red snapper and gag, available biological information on gray triggerfish, and the reports from the RFSAP and the SEP. The SSC will provide recommendations to the Council on the scientific merits of these reports; and it may recommend levels for TAC, bag limits, size limits, commercial quotas, and other measures for red snapper and gag for the 1998 season. The SSC could also recommend future management measures or research/data needs for gray triggerfish.

In addition, the SSC will review Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The SSC may provide recommendations to the Council on the scientific merits of the alternatives contained in this amendment as noted above.

The Reef Fish (RFAP) will review a 1997 NMFS stock assessment for gag, available biological information on gray triggerfish, and optionally, a 1997 stock assessment for red snapper. The RFAP will also review reports on the above species from the RFSAP, and the SEP. Based on these reports, the RFAP may make recommendations to the Council for a TAC of gag in 1998 and possibly other management measures. The RFAP may also recommend future management measures for gray triggerfish. The RFAP may also make recommendations for 1998 gag TAC and other management measures. Optionally, the RFAP may make recommendations for TAC of red snapper in 1998 and other management measures for red snapper. In addition, the RFAP will review the previously mentioned alternatives in Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.

Based on recommendations from the above meetings, the Council, at its November meeting in Longboat Key, Florida, will decide if changes are needed to the red snapper TAC and possibly other management measures for red snapper. The Council will also determine if a TAC or additional management measures are needed for gag, or if future management measures or additional research/data are needed for gray triggerfish. The Council will also review and modify Draft Amendment 16 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically

identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 20, 1997.

Dated: October 6, 1997.

Gary C. Matlock,

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

[FR Doc. 97–27045 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097C]

Endangered Species; Permits

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

ACTION: Receipt of applications for an enhancement permit (1094) and modification 3 to enhancement permit 895.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife at Olympia, WA (WDFW) has applied in due form for a permit and the U.S. Army Corps of Engineers at Walla Walla, WA (Corps) has applied in due form for a modification to a permit that would provide authorization for takes of an endangered anadromous fish species and a take of a threatened anadromous fish species for the purpose of enhancement.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before November 13, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division in Portland, OR.

SUPPLEMENTARY INFORMATION: WDFW requests a permit and the Corps requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

WDFW (1094) requests a 5-year permit for an annual direct take of adult and juvenile, endangered, upper Columbia River steelhead trout (*Oncorhynchus mykiss*) associated with hatchery supplementation programs in the mid and upper Columbia River Basin. WDFW operates three major hatchery complexes that carry out ESA-listed steelhead trout hatchery supplementation efforts: Wells, Eastbank, and Priest Rapids. The activities proposed are: (1) The capture and release of migrating adult steelhead trout at Priest Rapids Dam for stock status evaluation purposes, (2) the trapping and removal of ESA-listed adult steelhead trout for hatchery broodstock, (3) the holding and artificial spawning of ESA-listed adults, (4) the incubation of fertilized eggs and the rearing of ESA-listed juvenile fish, and (5) the transportation and releases of ESA-listed juvenile fish from the hatchery programs. WDFW believes that the artificial propagation of ESA-listed steelhead trout as proposed will benefit the species by enhancing the population, which currently is not replacing itself naturally.

Permit 895 authorizes the Corps annual direct and incidental takes of adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); adult and juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and adult and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with the operation of the Juvenile Fish Transportation Program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest (Lower Granite, Little Goose, Lower Monumental, and McNary Dams). The Corps requests modification 3 to enhancement permit 895 for an increase in the annual incidental take of adult, threatened, Snake River spring/summer chinook salmon associated with adult fallbacks through the juvenile fish bypass systems at the four dams. Each year, a percentage of adult salmon inadvertently move downstream after entering the juvenile fish bypass systems at the dams. These adult salmon are then directed back to the river to continue their upstream migration. An increase in the annual incidental take of ESA-listed adult salmon is requested because of the large number of migrating adults in 1997. Also, it is possible that this year's extremely high runoff is resulting in a higher rate of adult salmon fallbacks. A corresponding increase in ESA-listed adult salmon incidental mortalities are also requested. Modification 3 is requested to be valid for the duration of permit 895. Permit 895 expires on December 31, 1998.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: October 3, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–27134 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

October 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 15, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	489,098 dozen.
334	102,307 dozen.
335	193,477 dozen.
336/636	452,367 dozen.
338/339	1,485,225 dozen.
340/640	3,039,238 dozen.
341	1,614,918 dozen.
342/642	410,857 dozen.
351/651	691,834 dozen.
352/652	10,494,286 dozen.
363	25,787,547 numbers.
369–S [2]	1,728,558 kilograms.
634	575,879 dozen.
635	373,101 dozen.
638/639	1,639,853 dozen.
641	687,297 dozen.
645/646	438,934 dozen.
647/648	1,624,079 dozen.
847	306,733 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27088 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

October 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 64505, published on December 5, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 14, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	30,400,737 square meters.
351/651	531,420 dozen.
361	1,365,459 numbers.
445/446	61,952 dozen.
634/635	300,308 dozen.
638/639	1,494,968 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27087 Filed 10–10–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 7, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile export license/commercial invoice printed on purple guilloche pattern background paper.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 1998. The new license/invoice shall be printed on purple guilloche patterned background paper with the map of the People's Republic of China in the middle. The new form has perforated tractor feeds on both sides, and the pattern of the paper has smaller intersecting waves. The purple form replaces the light grey export license/commercial invoice currently in use. The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 1998 through February 28, 1998 may be accompanied by a visa printed on either the light grey background paper or the purple background paper as described above. Both the light grey and the purple forms have a map of the People's Republic of China in the middle.

See 60 FR 22567, published on May 8, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 7, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 3, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 1998, you are directed to amend the May 3, 1995 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on purple guilloche patterned background paper with a map of the People's Republic of China in the middle. The new form has perforated tractor feeds on both sides, and the pattern of the paper has smaller intersecting waves. The purple form will replace the light grey form currently being used.

To facilitate implementation of this amendment to the export licensing system, I request that you permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 1998 through February 28, 1998, for which the Government of the People's Republic of China has issued an export license/commercial invoice printed on either the light grey background paper or the purple background paper as described above. Both the light grey and the purple forms have a map of the People's Republic of China in the middle.

Goods exported on and after March 1, 1998 must be accompanied by an export visa issued by the Government of the People's Republic of China only on the purple license/invoice form.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–27086 Filed 10–10–97 ; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Meeting Notice; Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., November 3, 1997.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–47999.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—August 4, 1997
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: October 9, 1997.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–27313 Filed 10–9–97; 3:27 pm]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy 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 December 15, 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 Deputy Chief Information Officer, 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.

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: October 7, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.
Title: Case Studies of the Implementation of the Crossroads Cafe Project.
Frequency: Weekly.
Affected Public: Individuals or households; businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 316.
Burden Hours: 1,533.
Abstract: This study is designed to provide the U.S. Department of Education with information on the implementation of the Crossroads Cafe Project, a distance education model for delivering English-as-a-Second Language (ESL) services to adult ESL learners. The study will also provide a pilot test of a design for an impact evaluation of the Crossroads Cafe Project. Data will be gathered from approximately 200 adult ESL learners and teachers at three state sites, as well as state implementation team members and technical assistance providers.

[FR Doc. 97–27068 Filed 10–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Wetland Involvement for Installation of Air Monitoring Station No. 28 at the Fernald Environmental Management Project (FEMP)

AGENCY: Department of Energy (DOE), Fernald Environmental Management Project.

ACTION: Notice of wetland involvement.

SUMMARY: This is to give notice of DOE's proposal to install an air monitoring station along with construction of an access road, to comply with provisions of the Clean Air Act, at the Fernald Environmental Management Project (FEMP), located about 18 miles northwest of downtown Cincinnati, Ohio. This activity will involve a wetland in Butler County, Ohio. In accordance with 10 CFR 1022, DOE will prepare a Wetland Assessment and conduct the proposed action in such a manner to avoid or minimize potential harm to or within the affected wetland area.

DATES: Written comments must be received by the DOE at the following address on or before October 29, 1997.

ADDRESSES: For further information on this proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Mr. David R. Kozlowski, Associate Director, Office of Safety and Assessment, U.S. Department of Energy, Fernald Environmental Management Project Office, P.O. Box 538705, Cincinnati, Ohio 45253–8705; *Phone:* (513) 648–3187; *Facsimile:* (513) 648–3077.

FURTHER INFORMATION CONTACT: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed activity would be required to comply with the Clean Air Act provisions for ambient air monitoring. Included is the construction of an access road, installation of electrical power, and placement of a step unit to mount the air monitor. Approximately 0.3 acres of wetlands would be affected. Wetland impacts would occur from installation of the gravel access road over the existing wetland, resulting in physical disturbance and filling of wetland areas. Best management practices would be utilized to minimize the amount of wetland area impacted. For example, the access road would be routed to impose the least impact to the wetland, erosion controls such as silt fences would be utilized during construction of the access road in order to minimize sediment deposition into the wetland, and culverts would be placed beneath the access road to allow continued overland flow to the wetland.

Issued in Miamisburg, Ohio on September 26, 1997.

Susan L. Smiley,

NEPA Compliance Officer, Ohio Field Office.

[FR Doc. 97–27123 Filed 10–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4186–000]

Agway Energy Services, Inc.; Notice of Issuance of Order

October 8, 1997.

Agway Energy Services, Inc. (Agway) submitted for filing a rate schedule under which Agway will engage in wholesale electric power and energy

transactions as a marketer. Agway also requested waiver of various Commission regulations. In particular, Agway requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Agway.

On September 26, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Agway 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 385.214).

Absent a request for hearing within this period, Agway is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Agway's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27118 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4143–000]

American Electric Power Service Corporation; Notice of Filing

October 7, 1997.

Take notice that on September 4, 1997, American Electric Power Service Corporation tendered for filing an amendment in the above-referenced docket.

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 October 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27061 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4024–000 and EL95–62–000]

British Columbia Power Exchange Corporation; Notice of Issuance of Order

October 7, 1997.

British Columbia Power Exchange Corporation (Powerex) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Powerex requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Powerex. On September 24, 1997, the Commission issued an Order Accepting for Filing Market-Based Rates and Granting and Denying Waivers and Authorizations (Order), in the above-docketed processing.

The Commission's September 24, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Powerex 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Powerex is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Powerex, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Powerex's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 24, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27056 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3832–000, ER97–3834–000, and ER97–3835–000]

Detroit Edison Company, DTE Energy Trading, Inc., and DTE–CoEnergy L.L.C.; Notice of Issuance of Order

October 7, 1997.

DTE Energy Company, an exempt public utility holding company which owns Detroit Edison Company, has formed two new subsidiaries to engage in power marketing and related activities. DTE Energy Trading, Inc. (DTE Energy Trading) will engage in power marketing and brokering. DTE-CoEnergy L.L.C. (DTE-CoEnergy) will engage in power marketing. DTE Energy Trading and DTE-CoEnergy filed applications for authorization to engage in the wholesale sale of electric capacity and energy at market-based rates and for certain waivers and authorizations. In particular, DTE Energy Trading and DTE-CoEnergy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future

issuances of securities and assumptions of liabilities by DTE Energy Trading and DTE-CoEnergy. On September 24, 1997, the Commission issued an Order Accepting Proposed Market-Based Rates and Conditionally Accepting Proposed Cost-Based Rates for Filing (Order), in the above-docketed proceedings.

The Commission's September 24, 1997 Order granted the request for blanket approved under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by DTE Energy Trading or DTE-CoEnergy 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, DTE Energy Trading and DTE-CoEnergy are hereby authorized, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of DTE Energy Trading or DTE-CoEnergy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of DTE Energy Trading's and DTE-CoEnergy's issuances of securities or assumptions of liabilities * * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 24, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27055 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4240–000]

Granger Energy, L.L.C.; Notice of Issuance of Order

October 8, 1997.

Granger Energy, L.L.C. (Granger) submitted for filing a rate schedule under which Granger will engage in wholesale electric power and energy transactions as a marketer. Granger also requested waiver of various Commission regulations. In particular, Granger requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Granger.

On September 29, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Granger 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 385.214).

Absent a request for hearing within this period, Granger is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Granger's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 29, 1997. Copies of the text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27120 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4116–000]

Inventory Management and Distribution Company, Inc.; Notice of Issuance of Order

October 8, 1997.

Inventory Management and Distribution Company, Inc. (Inventory Management) filed an application for authorization to engaged in the wholesale sale and brokering of capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Inventory Management requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Inventory Management. On September 25, 1997, the Commission issued an Order Granting Late Intervention and Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 25, 1997 Order granted the request for blanked approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Inventory Management 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 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Inventory Management is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Inventory Management, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Inventory Management's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27117 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–775–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on September 26, 1997, and supplemented on September 30, and October 2, 1997, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas, 77251, filed in Docket No. CP97–775–000, a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations, under the Natural gas Act (18 CFR 157.205, 157.211, and 157.216), for authorization to (1) plug and abandon 37 delivery taps on its Index 276 [1] and (2) establish new delivery points, both in Hancock, Harrison, and Jackson Counties, Mississippi, under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway says that the certificate authorization for the construction and operation of the taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway says that these taps are used for delivery of natural gas to Entex, Inc. (Entex), a local distribution company in Hancock, Harrison, and Jackson Counties, Mississippi. Koch Gateway asserts that Entex concurs with the proposed abandonment and tie-over measures.

Koch Gateway also states that Entex's affected farm tap customers will either be converted to propane service or tied-over to another natural gas source. Koch Gateway relates that such decision will be at the discretion of the end-user. Koch Gateway explains that the other natural gas source will be either Koch Gateway's adjacent pipeline designated as Index 300 or to an Entex distribution system. Koch Gateway also seeks permission to install taps and minor piping to tie-over those end-users who elect to continue natural gas service. Koch Gateway states that the approximate cost of tying-over all taps is $337,000, and the approximate cost of converting all end-users to propane is $128,000. Koch Gateway explains that the purchaser of Index 276 will reimburse Koch Gateway for all such costs, which is consistent with the sale of the asset as approved in Docket No. CP94–75–000.

Koch Gateway indicates that the Mississippi Public Service Commission has been notified of this filing.

Koch Gateway asserts that the service to end-users who elect to continue natural gas service will be unaffected; that Entex will continue to receive natural gas service pursuant to Koch Gateway's No-Notice, Firm Transportation and Interruptible Rate Schedules; and the proposed abandonments and/or tie-overs will not have a significant impact on Koch Gateway's peak day or average day volumes.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27057 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Koch Gateway was granted authorization to abandon by sale its transmission line designated Index 276 in Docket No. CP94–75–000. 67 FERC ¶ 61,362 (1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–777–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on September 26, 1997, and supplemented on September 30, and October 2, 1997, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas 77251, filed in Docket No. CP97–777–000, a request, pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216), for authorization to (1) plug and abandon 56 delivery taps on its Index 276 [1] and (2) establish new delivery points, both in Hancock, Harrison, and Jackson Counties, Mississippi, under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of these taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway says that these taps are used for delivery of natural gas to Entex, Inc. (Entex), a local distribution Company, in Hancock, Harrison, and Jackson Counties, Mississippi. Koch Gateway asserts that Entex concurs with the proposed abandonment and tie-over measures.

In addition to requesting authorization to abandon 56 farm taps, Koch Gateway is also requesting authorization to install taps and minor pipeline to tie-over certain taps to its adjacent pipeline facilities or to the facilities of a local distribution company, Entex. Koch Gateway states that the approximate cost of the proposed abandonment and construction activities is $326,550. Koch Gateway explains that the purchaser of Index 276 will reimburse Koch Gateway for all such costs, which is consistent with the sale of the asset as approved in Docket No. CP94–75–000.

[1] Koch Gateway was granted authorization to abandon by sale its transmission line designated Index 276 in Docket No. CP94–75–000. 67 FERC ¶ 61,362 (1994).

Koch Gateway indicates that it notified the Mississippi Public Service Commission of this filing.

Koch Gateway asserts that natural gas service will be continued to all but one end-user whose service will be converted to propane; that Entex will continue to receive natural gas service pursuant to Koch Gateway's No-Notice, Firm Transportation, and Interruptible Rate Schedules; and the proposed activities will not have a significant impact on Koch Gateway's peak day or average day volumes.

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 therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27058 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–785–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on September 29, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas, 77251–1478, filed in Docket No. CP97–785–000, a request pursuant to Sections 157.205 and 157.216(b) and 157.211 of the Commission's Regulations, for approval to abandon three farm taps on its Index 276 in LaFourch Parish, Louisiana, and establish three new delivery taps, under its blanket certificate issued in Docket Nos. CP82–430–000, 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.

Koch Gateway states that the certificate authorization for the construction and operation of the taps which Koch Gateway now seeks abandonment authorization was issued in FPC Docket No. G–232. Koch Gateway states that these taps are used for delivery of natural gas to end-users on behalf of Louisiana Gas Service Company (LGS) a local distribution company in LaFourche Parish, Louisiana. Service will be continued to the affected end-users through new taps on an adjacent Koch Gateway pipeline. Koch Gateway asserts that LGS concurs with the proposed abandonment and tie-over measures.

Koch Gateway indicates that the approximate cost of the proposed abandonment and construction activities is $31,500. The purchaser of Index 276 will reimburse Koch Gateway for all such costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27059 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–4–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

October 7, 1997.

Take notice that on October 1, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–4–000 a request pursuant to §§ 157.205 and 157.211 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new residential sales tap under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a sales tap for delivery of approximately 150 Mcf of natural gas annually to National Fuel Gas Distribution Corporation (Distribution) at an estimated cost of $1,500 for which Distribution would reimburse to National. National further states that the proposed sales tap would be located on its Line Q–18 in Erie County, Pennsylvania.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27060 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184, California]

Pacific Gas and Electric Company; Notice Accepting Withdrawal of Existing Licensee's Notice of Intent To File a New License Application and Notice Soliciting Applications

October 7, 1997.

On July 10, 1997, Pacific Gas and Electric Company (PG&E), licensee for the El Dorado Hydroelectric Project No. 184, withdrew its February 24, 1997, notice of intent (NOI) to file an application for a new license.[1] The

[1] On July 25, 1997, the El Dorado Irrigation District filed a motion in opposition to PG&E's withdrawal of the NOI. Because PG&E is not required to file a relicense application, we deny El Dorado's motion.

Commission accepts the withdrawal of the NOI.

The original license for Project No. 184 was issued effective December 1, 1980, and expired February 23, 2002. The project is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The principal project works consist of: (a) Lake Aloha and dam; (b) Echo Lake, dam, and conduit; (c) Caples Lake and the main and auxiliary dams; (d) Silver Lake and dam; (e) El Dorado Diversion dam and fish ladder; (f) El Dorado Canal; (g) El Dorado Forebay and dam; (h) El Dorado penstock and powerhouse with an installed capacity of 21 megawatts; and (i) appurtenant facilities.

Because PG&E has withdrawn the NOI, the Commission hereby solicits license applications for the El Dorado Project. Pursuant to section 16.9 of the Commission's regulations, applications for a license (except from the existing licensee which is prohibited from filing) [2] must be filed with the Commission at least 24 months before the existing license expires. Thus, applications for license for the El Dorado Project must be filed by February 23, 2000.

Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available certain information described in Section 16.7 of the regulations. Such information is available from the licensee at 245 Market Street, San Francisco, California 94105.

Questions concerning this notice should be directed to Surender Yepuri at (202) 219–2847.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27062 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4202–000]

Total Energy, Inc.; Notice of Issuance of Order

October 8, 1997.

Total Energy, Inc. (Total) submitted for filing a rate schedule under which Total will engage in wholesale electric power and energy transactions as a marketer. Total also requested Waiver of various Commission regulations. In particular, Total requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Total.

On September 26, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Total 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 385.214).

Absent a request for hearing within this period, Total is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Total's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27119 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–3663–000 and ER97–3664–000]

Union Electric Development Corporation and Union Electric Company; Notice of Issuance of Order

October 7, 1997.

Union Electric Development Corporation (Union Electric Development) is a subsidiary and power marketing affiliate of Union Electric Company. Union Electric Development filed an application for authorization to engage in the sale of capacity and energy for resale at market-based rates, and for certain waivers and authorizations. In particular, Union Electric Development requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Union Electric Development. On September 25, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 25, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's liabilities by Union Electric Development 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Union Electric Development is hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purpose of Union Electric Development, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Union Electric Development's issuances

[2] Pursuant to section 16.24(a) of the Commission's regulations, an existing licensee for a water power project that informs the Commission that it does not intend to file an application for a new license, may not file an application for a new license.

of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 27, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary,

[FR Doc. 97–27054 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–2460–000, ER97–2462–000, and ER97–2463–000]

Unitil Power Corporation, Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company; Notice of Issuance of Order

October 7, 1997.

Unitil Resources, Inc. (URI) is a power marketing affiliate of Unitil Power Corporation, Fitchburg Gas & Electric Light Company, Concord Electric Company, and Exeter & Hampton Electric Company. URI is a wholly-owned subsidiary of Unitil Corporation, a registered public utility holding company. URI filed an application for authorization to engage in the sale of capacity and energy for resale at market-based rates, and for certain waivers and authorizations. In particular, URI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by URI. On September 25, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 25, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by URI 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, URI is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of URI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of URI's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is October 27, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27053 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2609]

International Paper Company and Curtis/Palmer Hydroelectric Company, L.P.; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

October 7, 1997.

International Paper Company and Curtis/Palmer Hydroelectric Company L.P. are currently engaged in the process of obtaining from the Federal Energy Regulatory Commission (the Commission) a new operating license for the Curtis/Palmer Falls Hydroelectric Project (FERC No. 2609. The project is located on the Hudson River in the Village of Corinth and the Towns of Corinth, Lake Luzerne and Hadley, in Saratoga and Warren Counties, New York. The current license for the project expires on April 30, 2000. Under the Commission's regulations, an application for license for the project must be filed by April 30, 1998. International Paper Company is managing relicensing activities on behalf of both applicants in cooperation with a team of state and federal resource agencies, conservation groups and local governments (the Cooperative Team).

Pursuant to the Commission's regulations and the Energy Policy Act of 1992, Curtis/Palmer Hydroelectric Company L.P. and International Paper Company have prepared a Draft Application for a new license, and a preliminary Draft Environmental Assessment (DEA) to be included as part of the license application to be filed with the Commission for the project. The Draft Application and preliminary DEA are available for public review in the Public Reference Room at the Commission's offices at 888 First Street NE, Washington, DC 20426 and at the Town Office, 600 Palmer Avenue, Corinth, NY. A copy may also be requested from the applicants.

In accordance with Section 16.8(c)(5) of the Commission's regulations and the February 6, 1997 letter from the Director of the Commission's Office of Hydropower Licensing, any resource agency, Indian tribe, or persons are requested to provide comments on the Draft Application and the preliminary DEA, and any preliminary recommendations, terms and conditions or prescriptions by January 2, 1998. Comments, preliminary recommendation, terms and conditions, or prescriptions must be filed with Mr. Robert McK. Hunziker, International Paper Company, Two Manhattanville Road, Purchase, NY 10577, with copies to Mr. Richard Takacs, Rm 6H–06, Mailstop HL–11, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, and Mr. Andrew Sims, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967.

Also available for public review at the same locations are three supplemental study reports prepared in 1997 in response to a request for additional information made by the United States Fish and Wildlife Service.

Any questions regarding this notice or the availability of documents should be directed to Mr. Takacs at (202) 219–2840, Mr. Hunziker at (914) 397–1540, or Mr. Sims at (207) 487–3328.

Lois D. Cashell,

Secretary.

[FR Doc. 97–27063 Filed 10–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 8, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: OCTOBER 15, 1997. 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA.

*** NOTE**—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

Consent Agenda—HYDRO, 683RD Meeting—October 15, 1997, Regular Meeting, (10:00 a.m.)

CAH–1.
PROJECT NO. 1986–006, DOUGLAS W. PEGAR
CAH–2.
PROJECT NO. 2113–076, WISCONSIN VALLEY IMPROVEMENT COMPANY
CAH–3.
OMITTED
CAH–4.
PROJECT NO. 2311–016, CROWN VANTAGE-NEW HAMPSHIRE ELECTRIC, INC.
CAH–5.
DOCKET NO. UL96–7–003 AND PROJECT NO. 2555–006, KENNEBEC WATER DISTRICT
DOCKET NO. UL96–8–003 AND PROJECT NO. 2556–011, CENTRAL MAINE POWER COMPANY
DOCKET NO. UL96–9–003 AND PROJECT NO. 2557–008, CENTRAL MAINE POWER COMPANY
DOCKET NO. UL96–10–003 AND PROJECT NO. 2559–009, CENTRAL MAINE POWER COMPANY
CAH–6.
PROJECT NO. 2613–011, CENTRAL MAINE POWER COMPANY, MADISON PAPER INDUSTRIES, UAH-HYDRO KENNEBEC L.P. AND KIMBERLY-CLARK TISSUE COMPANY, MERIMIL L.P. AND AUGUSTA DEVELOPMENT CORPORATION
CAH–7.
PROJECT NO. 3206–038, CITY OF NEW MARTINSVILLE, WEST VIRGINIA

Consent Agenda—Electric

CAE–1.
DOCKET NO. ER97–4345–000, OGE ENERGY RESOURCES, INC.
CAE–2.
DOCKET NO. ER97–3954–000, UNICOM POWER MARKETING, INC.
CAE–3.
DOCKET NO. ER97–4273–000, CARGILL-IEC, L.L.C.
CAE–4.
DOCKET NO. ER97–4335–000, GEN'SYS ENERGY
CAE–5.
DOCKET NO. ER97–4185–000, TEXAS-NEW MEXICO POWER COMPANY
CAE–6.
DOCKET NO. ER97–886–000, BROOKLYN NAVY YARD COGENERATION PARTNERS, L.P.
CAE–7.
DOCKET NO. ER97–3056–000, R. HADLER AND COMPANY, INC.
CAE–8.
DOCKET NO. ER96–1088–001, WISCONSIN PUBLIC SERVICE CORPORATION, WPS ENERGY SERVICES, INC. AND WPS POWER DEVELOPMENT, INC.
CAE–9.
DOCKET NO. ER97–2524–000, HOUSTON LIGHTING & POWER COMPANY
DOCKET NO. ER97–3113–000, TEXAS UTILITIES ELECTRIC COMPANY
CAE–10.
DOCKET NO. ER97–4314–000, OLD DOMINION ELECTRIC COOPERATIVE
CAE–11.
OMITTED
CAE–12.
DOCKET NO. EL94–34–001, WESTERN RESOURCES, INC.
CAE–13.
DOCKET NO. ER97–4222–000, IOWA POWER PARTNERS I, L.L.C.
CAE–14.
DOCKET NOS. ER96–447–000 AND OA96–188–000, NEVADA POWER COMPANY
CAE–15.
DOCKET NOS. OA96–197–000 AND ER97–1719–000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY
CAE–16.
DOCKET NO. ER96–2525–000, PLUM STREET ENERGY MARKETING, INC.
DOCKET NO. ER96–2585–000, NIAGARA MOHAWK POWER CORPORATION
CAE–17.
DOCKET NOS. ER95–1686–002, 003, ER96–496–004 AND 005, NORTHEAST UTILITIES SERVICE COMPANY
CAE–18.
DOCKET NO. ER97–3583–000, GS ELECTRIC GENERATING COOPERATIVE, INC.
DOCKET NO. ER97–4084–000, DENVER CITY ENERGY ASSOCIATES
CAE–19.
DOCKET NO. ER97–2499–001, FLORIDA POWER CORPORATION
CAE–20.
DOCKET NO. EL95–38–001, SITHE/INDEPENDENCE POWER PARTNERS, L.P. V. NIAGARA MOHAWK POWER CORPORATION
CAE–21.
DOCKET NO. EL95–3–001, MIDAMERICAN ENERGY COMPANY
CAE–22.
DOCKET NOS. TX93–4–004, 005 AND EL93–51–003, FLORIDA POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
CAE–23.
DOCKET NO. EL97–39–000, SCHUYLKILL ENERGY RESOURCES, NC. V. PENNSYLVANIA POWER & LIGHT COMPANY
CAE–24.
DOCKET NO. ER95–181–003, FLORIDA POWER & LIGHT COMPANY
CAE–25.
DOCKET NO. NJ97–2–000, OMAHA PUBLIC POWER DISTRICT

Consent Agenda—GAS AND OIL

CAG–1.
DOCKET NOS. RP97–161–009, 010 AND RP97–329–005, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–2.
DOCKET NOS. RP97–343–000 AND 001, SEA ROBIN PIPELINE COMPANY
CAG–3.

DOCKET NO. RP96–190–010, COLORADO INTERSTATE GAS COMPANY
CAG–4.
OMITTED
CAG–5.
DOCKET NOS. RP97–272–002 AND TM97–2–59–000, NORTHERN NATURAL GAS COMPANY
CAG–6.
OMITTED
CAG–7.
DOCKET NOS. PR96–9–000 AND 001, LOUISIANA STATE GAS CORPORATION
CAG–8.
DOCKET NO. PR96–11–000, LEE 8 STORAGE PARTNERSHIP
CAG–9.
DOCKET NOS. PR97–2–000 AND 001, TECO PIPELINE COMPANY
CAG–10.
DOCKET NO. PR97–13–000, TEJAS GAS PIPELINE COMPANY
CAG–11.
DOCKET NOS. RP97–1–008, RP97–201–006 AND 007, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–12.
DOCKET NO. RP97–8–005, GRANITE STATE GAS TRANSMISSION, INC.
CAG–13.
OMITTED
CAG–14.
DOCKET NO. RP95–136–007, WILLIAMS NATURAL GAS COMPANY
CAG–15.
DOCKET NO. RP96–190–009, COLORADO INTERSTATE GAS COMPANY
CAG–16.
DOCKET NO. RP96–199–006, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–17.
DOCKET NO. RP96–306–002, PAIUTE PIPELINE COMPANY
CAG–18.
DOCKET NO. RP96–347–006, NORTHERN NATURAL GAS COMPANY
CAG–19.
DOCKET NO. RP97–291–004, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–20.
OMITTED
CAG–21.
DOCKET NO. GT97–45–000, NORTHWEST PIPELINE CORPORATION
CAG–22.
DOCKET NOS. RP94–150–000, RP94–266–000, RP94–347–000 AND RP94–384–000, ANR PIPELINE COMPANY
CAG–23.
DOCKET NO. RP92–132–052, TENNESSEE GAS PIPELINE COMPANY
CAG–24.
DOCKET NOS. RP95–64–003 AND RP96–292–002, TENNESSEE GAS PIPELINE COMPANY
CAG–25.
DOCKET NO. RP96–387–002, WILLIAMS NATURAL GAS COMPANY
CAG–26.
OMITTED
CAG–27.
DOCKET NO. RP97–418–001, PACIFIC GAS TRANSMISSION COMPANY
CAG–28.
DOCKET NO. OR97–12–000, LAKEHEAD PIPE LINE COMPANY, LIMITED PARTNERSHIP
CAG–29.
DOCKET NOS. MG97–10–001 AND 002, PACIFIC INTERSTATE TRANSMISSION COMPANY
CAG–30.
DOCKET NO. MG97–15–001, KERN RIVER GAS TRANSMISSION COMPANY
CAG–31.
DOCKET NO. MG97–14–001, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–32.
DOCKET NO. CP97–3–001, NORTHERN STATES POWER COMPANY (WISCONSIN) AND WISCONSIN ELECTRIC POWER COMPANY
CAG–33.
DOCKET NO. CP97–4–001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN POWER WISCONSIN CORPORATION
CAG–34.
DOCKET NO. CP96–647–000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–35.
DOCKET NO. CP96–596–000, EL PASO NATURAL GAS COMPANY
CAG–36.
DOCKET NOS. CP96–128–000, 001, 003, RP97–32–000, 001, 004, RP97–231–000, 001, 002, TA98–1–23–000 AND TM98–3–23–000, EASTERN SHORE NATURAL GAS COMPANY
CAG–37.
DOCKET NO. CP97–126–000, SOUTHERN NATURAL GAS COMPANY
CAG–38.
DOCKET NO. CP97–8–000, WISCONSIN ELECTRIC POWER COMPANY
DOCKET NO. CP97–659–000, WISCONSIN PUBLIC SERVICE CORPORATION
CAG–39.
DOCKET NO. CP97–192–000, NEW YORK STATE ELECTRIC & GAS CORPORATION
CAG–40.
DOCKET NO. CP97–318–000, ALGONQUIN GAS TRANSMISSION cOMPANY
CAG–41.
DOCKET NO. CP97–596–000, ANR PIPELINE COMPANY
CAG–42.
DOCKET NOS. CP97–603–000 AND 001, EGAN HUB PARTNERS, L.P.
CAG–43.
DOCKET NOS. CP97–92–000 AND 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–44.
OMITTED
CAG–45.
DOCKET NOS. IS92–3–000, IS93–6–000, IS94–10–000, IS97–2–004 AND IS97–15–000, AMERADA HESS PIPELINE CORPORATION
DOCKET NOS. IS92–4–000, IS93–7–000, IS94–11–000, IS97–3–004, OR92–2–000, ARCO TRANSPORTATION ALASKA, INC.
DOCKET NOS. IS92–5–000, IS93–8–000, IS94–12–000 AND IS97–4–004, BP PIPELINES (ALASKA) INC.
DOCKET NOS. IS92–6–000, IS93–9–000, IS94–14–000 AND IS97–5–004, EXXON PIPELINE COMPANY
DOCKET NOS. IS92–7–000, IS93–10–000, IS93–38–000, IS94–3–000, IS94–13–000, IS94–15–000, IS97–6–004 AND IS97–16–000, MOBIL ALASKA PIPELINE COMPANY
DOCKET NOS. IS92–8–000, IS93–11–000, IS94–16–000, IS97–7–004 AND IS97–10–000, PHILLIPS ALASKA PIPELINE CORPORATION
DOCKET NOS. IS92–9–000, IS93–12–000, IS94–17–000, IS94–31–000 AND IS97–8–004, UNOCAL PIPELINE COMPANY
DOCKET NO. OR92–5–000, CONOCO, INC.

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
DOCKET NOS. EC96–7–000, 001, ER96–677–000, 001, ER96–679–000 AND 001, UNION ELECTRIC COMPANY AND CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.
DOCKET NO. EL98–1–000, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, CONSIDERATION OF INITIAL DECISION ON PROPOSED

MERGER.
E–2.
OMITTED

Oil and Gas Agenda

I. PIPELINE RATE MATTERS
PR–1(A).
DOCKET NOS. RP93–5–027 AND RP93–96–007, NORTHWEST PIPELINE COMPANY, ORDER ON REHEARING
PR–1(B).
DOCKET NOS. RP92–163–008, RP92–170–008 AND RP92–236–008, WILLISTON BASIN INTERSTATE PIPELINE COMPANY, ORDER ON REHEARING
PR–1(C).
DOCKET NO. RP97–408–002, TRAILBLAZER PIPELINE COMPANY, ORDER ON REHEARING
PR–1(D).
DOCKET NOS. RP97–406–001 AND RP96–144–001, NG TRANSMISSION CORPORATION, ORDER ON REHEARING
PR–1(E).
DOCKET NOS. RP97–346–003 AND TM97–3–24–001, EQUITRANS, L.P., ORDER ON REHEARING
PR–1(F).
DOCKET NO. RP97–373–001, KOCH GATEWAY PIPELINE COMPANY, ORDER ON REHEARING
PR–1(G).
DOCKET NO. RP97–375–001, WYOMING INTERSTATE COMPANY, LTD., ORDER ON REHEARING
PR–2(A).
DOCKET NOS. RP97–331–001 AND 002, DECATUR UTILITIES, CITY OF DECATUR, ALABAMA, AND HUNTSVILLE UTILITIES, CITY OF HUNTSVILLE, ALABAMA V. MIDCOAST INTERSTATE TRANSMISSION, NC. (FORMERLY ALABAMA-TENNESSEE NATURAL GAS COMPANY)
DOCKET NO. RP97–514–000, HUNTSVILLE UTILITIES, CITY OF HUNTSVILLE, ALABAMA V. MIDCOAST INTERSTATE TRANSMISSION, INC., ORDER ON COMPLAINT AND REHEARING
PR–2(B).
DOCKET NOS. RP97–88–006 AND RP97–89–003, MIDCOAST INTERSTATE TRANSMISSION, INC., ORDER ON REHEARING
II. PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–27246 Filed 10–9–97; 11:40 am]

BILLING CODE 6717–01–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5908–8]

McAdoo Associates Site-Blaine Street Location CERCLA Section 122(h) Administrative Settlement; Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the McAdoo Associates Site-Blaine Street Location in Schuylkill County, Pennsylvania, which was signed by the EPA Regional Administrator, Region III. The proposed settlement is intended to resolve an EPA claim under section 107(a) of CERCLA against Advanced Environmental Technology Corporation, Air Products & Chemicals, Inc., Crane Co., International Flavors & Fragrances, Inc., and TRW Inc. The settlement requires the settling parties to pay $220,833 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. The agreement has been approved by the Attorney General, United States Department of Justice, or her designee.

DATES: Comments must be submitted on or before November 13, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed settlement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2476. Comments should reference the McAdoo Associates Site-Blaine Street Location and EPA Docket No. III–93–49–DC and should be forwarded to Ms. Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Lydia Isales (3RC20), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2648.

Dated: September 30, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–27125 Filed 10–10–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 91–281]

Calling Number Identification Service; Caller ID

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (Commission) issued two Public Notices concerning Petitions for Reconsideration filed by Siemens Business Communications, Inc. (Siemens) and US West Communications, Inc. (USW). The petitions address various aspects of a Commission order released on March 25, 1997.

DATES: Effective October 9, 1997. Interested parties may file comments regarding these petitions on or before October 29, 1997. Reply comments may be filed by November 10, 1997.

ADDRESSES: Comments should be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Copies of documents filed with the Commission may be obtained from the International Transcription Service (ITS), 1231 20th Street NW., Washington, DC 20036, (202) 857–3800. Documents are also available for review and copying at the Federal Communication Commission Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., Monday, from 9:45 a.m. to 4:30 p.m., and Tuesday through Thursday, from 9:00 a.m. to 4:30 p.m., (202) 418–0029.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Debra Harper, 202–418–1574.

Legal Information: Alan Thomas, 202–418–2338.

SUPPLEMENTARY INFORMATION: On July 23, 1997, Siemens Business Communication Systems, Inc. (Siemens) filed a petition requesting that the Commission reconsider certain of its rules issued in *Rules and Policies Regarding Calling Number Identification Service—Caller ID,* Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, CC Docket No. 91–281, FCC 97–103 (62 FR 34015 June 24, 1997). Specifically, Siemens states that: the Commission's rules are unenforceable against private branch exchange (PBX) owners/operators because the language of the adopted regulations applies only to carriers; actual notice of the Commission's rules has not been provided to PBX owners/operators and will result in widespread non-compliance; manufacturers have only eight months, as opposed to the needed twenty-four months, to incorporate the required upgrades; the Commission failed to conduct a cost-benefit analysis before requiring upgrades of currently installed PBX systems; and that PBX systems should enjoy the same exemptions as granted to Centrex systems that currently use * 6 or * 8 for dialing functions other than calling party number (CPN) blocking or unblocking. Siemens recommends that the Commission take the following action: suspend the March 25, 1998 compliance deadline; grandfather all in-place PBX equipment; allow PBX manufacturers at least two years or until January 1, 2000 to incorporate CPN blocking and unblocking signaling in new PBX equipment; allow PBX systems the same dialing exemptions allowed Centrex systems; and clarify which PBX signaling methods are acceptable for passing CPN blocking and unblocking information.

On July 24, 1997, US West Communications, Inc. (USW) Ohio filed a petition requesting that the Commission reconsider certain of its rules established in *Rules and Policies Regarding Calling Number Identification Service—Caller ID*, Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, CC Docket No. 91–281, FCC 97–103 (62 FR 34015 June 24, 1997). USW states that Nortel DMS–100 switches are not capable of providing * 82 blocking mechanisms and, thus, requests a reconsideration of blocking code requirements with respect to party lines. Alternatively, USW requests a waiver with respect to customers served by Nortel DMS–100 switches.

Comments for both petitions may be filed on or before October 29, 1997. Reply comments may be filed by November 10, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–27070 Filed 10–10–97; 8:45 am]

BILLING CODE 6712–01–M

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.: 224–201034

Title: Broward County/Discovery Cruise Terminal Agreement

Parties:

Broward County, Florida (Port Everglades)

Discovery Cruise Services, Inc. (Discovery)

Synopsis: The proposed Agreement authorizes Broward County to provide berthing and related terminal facilities, and passenger wharfage at a reduced rate, to Discovery in exchange for its agreement to provide daily passenger cruise service from Port Everglades.

Agreement No.: 224–201035

Title: Port of Galveston/Del Monte Fresh Produce N.S., Inc.

Parties:

Board of Trustees of the Galveston Wharves

Del Monte Fresh Produce N.A., Inc.

Synopsis: The proposed Agreement permits the Port of Galveston to lease to Del Monte property located at Pier 18 for the purpose of handling fresh fruit and other produce, and all general cargo transported by Del Monte's chartered, owned or affreighted vessels. The term of the Agreement is for five years.

Dated: October 7, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–27064 Filed 10–10–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Voluntary Industry ''Partner'' Survey to Implement Executive Order 12862—The Department of Health and Human Services plans to conduct mail surveys of its contractors in each agency to obtain feedback for improving acquisition products and services—Respondents: Contractors of the Department; Annual Responses: 2400; Average Burden per Response: 12 minutes; Total Annual Burden: 480 hours. OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 1, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–27104 Filed 10–10–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Dental Products Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 3, 1997, 9 a.m. to 5:30 p.m.; November 4, 1997, 8:30 a.m. to 5:30 p.m.; and November 5, 1997, 8 a.m. to 12 m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12518. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 3, 1997, the committee will discuss the previously unclassified devices for use in the diagnosis and/or treatment of temporomandibular joint dysfunction and oral-facial pain (e.g., muscle monitor devices, jaw tracking devices, TENS (transcutaneous electrical nerve stimulation) devices, EMG (electromyographic) devices, and ultrasound devices). The committee will provide comments on the types of devices to be included within this category under these indications, which will assist FDA in developing a comprehensive strategy for subsequent classification efforts. This discussion will not include previously classified devices such as temporomandibular joint implants. The proposed listing of devices to be included within this category will be placed on CDRH's Internet website at http://www.fda.gov/cdrh. The topical index may be consulted for its specific location. On November 4, 1997, the committee will discuss and make recommendations to FDA regarding the reclassification of subgroups of endosseous dental implant devices. The following subgroups of endosseous implants will be included: Coated and uncoated hollow cylinder and solid cylinder implants, coated and uncoated screw type implants (other than the commercially pure titanium screw type implant previously proposed for reclassification), coated and uncoated blade type implants, implants with special enhanced retention mechanisms and transitional implants. The coated implants may be further divided into porous coatings (e.g., titanium bead coatings), nonporous coatings (e.g., titanium plasma spray coatings), metallic coatings and ceramic coatings (e.g., hydroxylapatite coatings). The committee will also discuss and make recommendations regarding the classification of oral appliances for the treatment of obstructive sleep apnea and snoring. On November 5, 1997, the committee will continue discussion of the classification of oral appliances for the treatment of obstructive sleep apnea and snoring if time does not permit this issue to be completed on November 4, 1997.

Procedure: On November 3, 1997, from 9 a.m. to 5:30 p.m.; November 4, 1997, from 8:30 a.m. to 4:30 p.m.; and on November 5, 1997, from 8 a.m. to 12 m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 27, 1997. Oral presentations from the public regarding devices with indications for use involving the diagnosis and/or treatment of temporomandibular joint dysfunction and oral-facial pain will be scheduled between approximately 9:30 a.m. and 10 a.m. on November 3, 1997. Oral presentations from the public regarding the reclassification of subgroups of endosseous dental implant devices will be scheduled between approximately 8:45 a.m. and 9:15 a.m. on November 4, 1997. Oral presentations from the public regarding the classification of oral appliances for the treatment of obstructive sleep apnea and snoring will be scheduled between approximately 3:15 p.m. and 3:45 p.m. on November 4, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 27, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the November 3, 4, and 5, 1997, Dental Products Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Dental Products Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Closed Committee Deliberations: On November 4, 1997, from 4:30 p.m. to 5:30 p.m., the meeting will be closed to permit discussion of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) regarding dental device issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 8, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–27233 Filed 10–9–97; 10:26 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: October 15–17, 1997.

Time: 8:00 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: November 17, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4202, Telephone Conference.

Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1221.

Name of SEP: Biological and Physiological Sciences.

Date: November 17–18, 1997.

Time: 8:30 a.m.

Place: George Washington University Inn, Washington, DC.

Contact Person: Dr. Richard Marcus, Scientific Review Administrator, 6701 Rockledge Drive, Room 5194, Bethesda, Maryland 20892, (301) 435–1256.

Name of SEP: Biological and Physiological Sciences.

Date: November 19, 1997.

Time: 10:15 a.m.

Place: NIH, Rockledge 2, Room 5200, Telephone Conference.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, Maryland 20892, (301) 435–1259.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: October 31, 1997.

Time: 9:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.

Date: November 18–19, 1997.

Time: 8:30 a.m.

Place: Wyndham Bristol Hotel, Washington, DC.

Contact Person: Dr. Camilla Day, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda, Maryland 20892, (301) 435–1037.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 19–20, 1997.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Timothy Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Behavioral and Neurosciences.

Date: November 21, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott, Bethesda, Maryland.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1236.

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 Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27092 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Transfusion-Associated Immunomodulation (TRIM) Telephone Conference Call.

Date: November 5, 1997.

Time: 1:30 p.m.

Place: Two Rockledge Center, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland 20892.

Contact Person: Louise Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Lipoprotein Metabolism in Atherosclerosis.

Date: December 8–9, 1997.

Time: 7:30 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Ivan Baines, Ph.D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

These 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 contract 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 Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27095 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 15, 1997.

Time: 11 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gavin T. Wilkom, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 30, 1997.

Time: 1 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Gavin T. Wilkom, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–27094 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth actions to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The ORDA web site is located at http://www.nih.gov/od/orda for further information about the office.

SUPPLEMENTARY INFORMATION: Today's action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed actions were published for comment in the **Federal Register** of February 14, 1997 (62 FR 7108), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 6, 1997.

I. Background Information and Decisions on Actions Under the NIH Guidelines

In a letter dated December 2, 1995, Dr. Kenneth I. Berns (President), Dr. Gail Cassel (Chair, Public and Scientific Affairs Board), and Dr. Diane O. Fleming (Chair, Subcommittee on Laboratory Safety) of the American Society for Microbiology (ASM) requested that Equine morbillivirus, Sabia, and Flexal be added to Appendix B of the NIH Guidelines. The Centers for Diseases Control and Prevention (CDC) has developed a list of select agents identified as potential weapons for biological terrorism. These select agents are subject to Federal regulation 42 CFR Part 72, published by CDC on October 24, 1996, in the **Federal Register** (61 FR 55190). This regulation promulgates the final rule of additional requirements for facilities transferring or receiving select agents. Most of the biological agents in the select agents list are already included in Appendix B except these three agents requested for inclusion by ASM. In a letter dated December 20, 1996, ORDA asked Dr. Flemming to clarify the proper Risk Group classification of these three viruses. In her letter dated February 3, 1997, Dr. Fleming stated that Flexal virus should be listed as a Risk Group 3 agent based on the classification recommended in the CDC/NIH publication entitled: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, 1993. Sabia virus and Equine morbillivirus have not been formally classified in this publication. Dr. Fleming stated that she has consulted with Dr. Michael P. Kiley, Chairman of the Subcommittee on Arboviral Laboratory Safety (SALS) of the American Society for Tropical Medicine and Hygine, with regard to the proper Risk Group classification of these two viruses. Dr. Kiley recommended that Sabia and Equine morbillivirus should be classified as Risk Group 4 agents. Risk Group 4 agents are handled under Biosafety Level 4 physical containment, because they are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not available.

The ASM request was reviewed by Brian R. Murphy, M.D., Head, Respiratory Viruses Section, NIH, and Stephen E. Straus, M.D., Chief, Laboratory of Clinical Investigation, NIH. Dr. Murphy presented his review and Dr. Straus' written review at the March 6–7, 1997, RAC meeting. Dr. Murphy and Dr. Straus concurred with the ASM request with regard to the classification of these three viruses.

The RAC deliberated the issue at the March 6–7, 1997, RAC meeting. A motion was made by the RAC to amend: (1) Appendix B–III–D, Risk Group 3 (RG3)—Viruses and Prions, to include Flexal, an arenavirus, and (2) Appendix B–IV–D, Risk Group 4 (RG4)—Viral Agents, to include Sabia, an arenavirus, and Equine morbillivirus, a paramyxovirus. The motion passed by a vote of 8 in favor, 0 opposed, and no abstentions.

I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

II. Summary of Actions

A. Appendix B–III–D, Risk Group 3 (RG3)—Viruses and Prions, will be amended to include Flexal, an arenavirus.

B. Appendix B–IV–D, Risk Group 4 (RG4)—Viral Agents, will be amended to include Sabia, an arenavirus, and Equine morbillivirus, a paramyxovirus.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: September 30, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–27093 Filed 10–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Assessment Plan: Grant Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is given that the document titled ''Assessment Plan for the Natural Resource Damage Assessment of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments'' (''The Plan'') will be available for public review and comment on the date of publication in the **Federal Register**. The U.S. Department of the Interior, and The State of Indiana (''trustees'') are trustees for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan. 40 CFR

300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted by November 13, 1997.

ADDRESSES: Requests for copies of the Plan may be made to:

Supervisor, Ecological Services Office, U.S. Fish and Wildlife Service, 620 S. Walker Street, Bloomington, Indiana 47403.

or:

Ms. Elizabeth Admire, Indiana Department of Environmental Management, 100 N. Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on the Plan should be sent to the the Indiana Department of Environmental Management at the address listed above. The trustees will coordinate comment review.

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from the suspected injury to natural resources of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments which have been exposed to hazardous substances released by area steel mills, refineries and other potential sources. It is suspected that this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended. The Plan addresses the trustees' overall assessment approach and utilizes existing data. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 97–26788 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; Point Reyes National Seashore, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Point Reyes National Seashore and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

Background

The purpose of the GMP/EIS will be to state the management philosophy for the Seashore and provide strategies for addressing major issues. Two types of strategies will be presented in the GMP: (1) Those required to manage and preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Point Reyes National Seashore should address these to the Superintendent, Point Reyes National Seashore, Point Reyes, California 94956. Questions regarding the plan should be addressed to the superintendent either by mail to the above address, or by telephone at (415) 663–8522. Comments on the scoping of the proposed GMP/EIS should be received no later than January 31, 1998.

Public scoping sessions to receive comments and suggestions will be conducted during the scoping period at the park and in the vicinity. The times and locations of these sessions will be announced in the local media.

The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service. The draft GMP/EIS is expected to be available for public review in the spring of 1999, and the final GMP/EIS and Record of Decision completed early in 2000.

Dated: September 30, 1997.

John Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 97–27107 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Management Plan/ Environmental Impact Statement for the Vancouver National Historic Reserve, Washington

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Park Service, in cooperation with the City of Vancouver, Washington, U.S. Army, and the State of Washington, will prepare a comprehensive management plan and environmental impact statement (EIS) for the Vancouver National Historic Reserve in Vancouver, Washington.

The 366-acre Reserve, which includes Fort Vancouver National Historic Site, Vancouver Barracks, Officers Row, Pearson Field, the Water Resources Education Center, and portions of the Columbia River Waterfront, was established with the signing of Public Law 104–333 on November 12, 1996. The Reserve is to be administered in accordance with a comprehensive management plan to be developed by a partnership consisting of the U.S. Army, the National Park Service, the City of Vancouver, and the State of Washington Office of Historic Preservation.

The comprehensive management plan will take a long-range look at ways to protect the Reserve resources and opportunities for management and use, and will help determine management direction for the next 10 to 15 years. One of the primary components of the plan is interpretive planning. Interpretive planning identifies the primary interpretive themes, recommends appropriate interpretive services, facilities, and programs that will best communicate the Historic Reserve's purpose, significance, compelling stories, themes, and values. The plan will also define roles and responsibilities of the Reserve partners and provide estimates of management, development, and operating costs and staffing needs.

The legislation establishing the Reserve also directed that the Plan include an economic study for Pearson Field. The Partners will work to determine the scope of the study and to look at funding options in preparing the study as an attachment to the final plan.

DATES: A newsletter will be issued in October 1997, that will describe the planning process and schedule, and list the draft purpose, significance, and interpretive themes for the Reserve.

Public scoping meetings to discuss the planning process, solicit public input on the purpose, significance, and desired future conditions for the Reserve, and identify issues to be addressed in the EIS will be held on October 29, 1997, at 7:30 p.m. at the Doubletree Hotel at the Quay, 100 Columbia Street, Vancouver, Washington, and on October 30, 1997, at the Oregon Historical Society, Oregon History Center, 1200 S.W. Park Avenue, Portland, Oregon, at 12:00 noon.

ADDRESSES: As part of the scoping process, the public is encouraged to send written comments and suggestions concerning the preparation of the plan and EIS by November 14, 1997, to: Tony Sisto, Superintendent, Fort Vancouver National Historic Site, 612 E. Reserve Street, Vancouver, WA 98661.

FOR FURTHER INFORMATION: Contact Mr. Lawrence Beal, Planning Team Leader, at Vancouver National Historic Reserve Planning Team, Denver Service Center—Beal DSC/RP, 12795 West Alameda Parkway, PO Box 25287, Denver, CO 80225–9901, or call (505) 899-0205, ext. 224, or E-mail at: larry—__beal@nps.gov. The NPS Internet Homepage at http://www.nps.gov/planning will also have the newsletter and further information about this plan and EIS.

Dated: September 30, 1997.

Rory Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 97–27106 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 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 October 29, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Washington County

Evergreen Cemetery, Jct. of University and William Sts., Fayetteville, 97001279

COLORADO

Costilla County

Salazar, A.A., House (Ornamental Concrete Block Buidings in Colorado MPS), 603 Main St., San Luis, 97001281

Delta County

Stolte House (Ornamental Concrete Block Buildings in Colorado MPS), 1812 CO 65, Cedaredge vicinity, 97001280

FLORIDA

Broward County

Bryan Building, 220–230 Brickell Ave., Fort Lauderdale, 97001282

Putnam County

Tenney House and Groveland Hotel, 100 and 102 Commercial Ave., Federal Point, 97001284

Volusia County

Seybold Baking Company Factory (Daytona Beach MPS), 800 Orange Ave., Daytona Beach, 97001283

IOWA

Appanoose County

Appanoose County Sheriff's House and Jail (Centerville MPS), 527 N. Main St., Centerville, 97001292

Courthouse Square Historic District (Centerville MPS), Roughly bounded by Van Buren, Haynes, Maple, and 10th Sts., Centerville, 97001291

Drake Public Library (Centerville MPS), 115 Drake Ave., Centerville, 97001290

Cerro Gordo County

First Church of Christ Scientist, 23 Third St., NW, Mason City, 97001285

Fayette County

Maynard Town Hall and Jail, 330 Main St. W, Maynard, 97001286

Montgomery County

Osborne, Edmund B., House, 1020 Boundary St., Red Oak, 97001287

Poweshiek County

Manatt, William, House, 306 Jackson St., Brooklyn, 97001288

Woodbury County

Nancy Elizabeth Day Nursery, 814 Court St., Sioux City, 97001293

Schulein, Ben and Harriet, House, 2604 Jackson St., Sioux City, 97001289

MARYLAND

Frederick County

Carrollton Manor, 5809 Manor Woods Rd., Buckeystown vicinity, 97001294

Baltimore Independent City

SS JOHN W. BROWN (Liberty Ship), Pier 1, Clinton St., Baltimore, 97001295

MASSACHUSETTS

Worcester County

Bolton Center Historic District, Roughly along Main St., between Harvard Rd. and I–495, Bolton, 97001296

MISSISSIPPI

Attala County

Attala County Courthouse and Confederate Monument, 230 W. Washington St., Kosciusko, 97001299

Lincoln County

First Methodist Church, 215 W. Cherokee St., Brookhaven, 97001298

Lowndes County

Sims–Brown House, 324 9th St. N, Columbus vicinity, 97001297

Yalobusha County

Newberger, Leopold, House, 714 Depot St., Coffeeville, 97001300

NEVADA

White Pine County

McGill Drug Store, 11 4th St., McGill, 97001301

Carson City Independent City

Belknap House, 1206 N. Nevada St., Carson City, 97001302

NEW YORK

New York County

Sullivan, Ed, Theater, 1697–1699 Broadway, New York, 97001303

NORTH CAROLINA

Wake County

Carolina Power and Light Company Car Barn and Automobile Garage, 116 N. West St., Raleigh, 97001304

Raleigh Electric Company Power House, 513—515 W. Jones St., Raleigh, 97001305

PUERTO RICO

San Juan Municipality

Casa Klumb, #1 Ramon B. Lopez St., San Juan, 97001307

Maternity Building, Ave. Ponce de Leon, Pda. 37½, Rio Piedras, 97001306

UTAH

Cache County

Pond, Martin and Martha, Farmstead, 320 South 800 West, Lewiston, 97001308

Davis County

Barnard-Garn-Barber House (Centerville MPS), 1198 N. Main St., Centerville, 97001309

Brandon, Thomas and Margaret, House (Centerville MPS), 185 E. Center St., Centerville, 97001310

Deuel, Osmyn and Emily, House (Centerville MPS), 271 South 200 East, Centerville, 97001311

Duncan, John, Harriet, and Eliza Jennett, House (Centerville MPS), 445 North 400 East, Centerville, 97001312
Ford-Rigby House (Centerville MPS), 1592 N. Main St., Centerville, 97001313
Harris-Tingey House (Centerville MPS), 269 E. Center St., Centerville, 97001314
Holland-Smith-Brown House (Centerville MPS), 19 South 200 East, Centerville, 97001315
Kilbourn-Leak House (Centerville MPS), 170 North 200 East, Centerville, 97001316
Porter, Nathan and Rebecca Cherry and Eliza Ford, Farmstead (Centerville MPS), 370 West 400 South, Centerville, 97001317
Rich-Steeper House (Centerville MPS), 415 S. Main St., Centerville, 97001318
Roberts, B.H., Louisa Smith and Cecilia Dibble, House (Centerville MPS), 315 South 300 East, Centerville, 97001319
Smith-Larsen House (Centerville MPS), 280 E. Center St., Centerville, 97001320
Streeper, William Henry and Mary, House (Centerville MPS), 1020 N. Main St., Centerville, 97001321
Taylor, John W., Janet (Nettie), and May Rich, House, 49 East 500 North, Farmington, 97001325
Thurston-Chase Cabin (Centerville MPS), 975 N. Main St., Centerville, 97001322
Walton, Franklin and Amelia, House (Centerville MPS), 98 West 280 South, Centerville, 97001323
Young Men's Hall—Tingey House (Centerville MPS), 85 South 300 East, Centerville, 97001324

WYOMING

Sweetwater County

Our Lady Sorrows Catholic Church, A at Broadway, Rock Springs, 97001326

[FR Doc. 97–27130 Filed 10–10–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** notice on this information collection request on August 6, 1997, in 62 FR 42262, at which time a 60-calendar day comment period was announced. This comment period ended October 6, 1997. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before November 13, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–5871.

Summary of Form Under Review

Type of Request: Revised form.
Title: OPIC's Expedited Screening Questionnaire—Downstream Investments.
Form Number: OPIC–168.
Frequency of Use: Once per project submission.
Type of Respondents: OPIC's Fund Managers.
Standard Industrial Classification Codes: All.
Description of Affected Public: OPIC's Fund Managers.
Reporting Hours: 1 hour per form.
Number of Responses: 150 per year.
Federal Cost: $918.00 annually.
Authority for Information Collection: Section 231(K) (1–2) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The questionnaire is completed by OPIC's Fund Managers. The Fund Managers will complete the information for companies in which the Fund proposes to invest. The information collected will be reviewed to determine the expected effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: October 8, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–27132 Filed 10–10–97; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated March 31, 1997, and published in the **Federal Register** on April 29, 1997, (62 FR 23268), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacture of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a), as well as information provided by other bulk manufacturers, and determined that the registration of Celgene Corporation to manufacturer methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 3, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 97–27142 Filed 10–10–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–47]

City Drug Company: Revocation of Registration

On August 29, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA), issued an Order to Show Cause to City Drug Company, (Respondent) of Opp, Alabama, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AC5430450, and deny any pending

applications for registration under 21 U.S.C. 823(f), for reason that its continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

By letter dated September 19, 1996, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Mobile, Alabama on April 15, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On July 24, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications for renewal of such registration be denied. In addition, Judge Randall recommended that favorable consideration be given to a new application for registration should Respondent present any persuasive evidence of proposed procedural changes for the dispensing of controlled substances. On August 4, 1997, Respondent filed a general objection to the Administrative Law Judge's decision, and on August 26, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

By letter dated September 17, 1997, Judge Randall forwarded a letter from Respondent's counsel dated September 9, 1997, that set forth information concerning procedural changes implemented at Respondent and continuing education received by Respondent's owner. This letter was received by the Administrative Law Judge after the record had closed and been transmitted to the Acting Deputy Administrator. The Acting Deputy Administrator has not considered Respondent's September 9, 1997 letter in rendering his decision in this matter since it was submitted after the record had closed, and Respondent did not offer any explanation as to why this information was not submitted prior to the closing of the record.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with one noted exception, the Opinion and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is one of five pharmacies located in Opp, Alabama and has been in existence for approximately 25 years. Joseph Grimes is the owner and pharmacist in charge of Respondent.

On March 2, 1992, a search warrant was executed at Respondent pharmacy as a result of an undercover operation conducted by a local police department. During the search, DEA investigators conducted a physical count of controlled substances on the premises using Respondent's pill counting machine, and collected all relevant controlled substance records for the period January 15, 1990 to March 2, 1992, except purchase invoices and records of controlled substances, if any, returned to suppliers. A DEA investigator later contacted Respondent's suppliers and obtained records of controlled substance sales to Respondent for the period January 15, 1990 to March 2, 1992.

Alabama law requires a pharmacy to conduct an inventory of controlled substances on the 15th day of January of each year. Included in the records seized during execution of the search warrant were these inventories conducted by Respondent for 1990, 1991, and 1992. Mr. Grimes testified at the hearing in this matter that when performing an inventory, he counts all individual dosage units of Schedule II controlled substances, and as permitted by Federal and state law, he estimates the quantities of Schedule III through V controlled substances.

Using Respondent's records, records from Respondent's suppliers, and the closing inventory conducted on March 2, 1992, DEA conducted several accountability audits. One audit of Schedule III and IV controlled substances was conducted using Respondent's January 15, 1990 inventory as the initial inventory figure and DEA's March 2, 1992 count as the closing inventory. This accountability audit revealed that Respondent could not account for 80,223 dosage units, including 18,774 dosage units of Darvocet/propoxyphene 100 mg. and 10,428 dosage units of Darvocet/propoxyphene 65 mg. In addition, the audit revealed an overage of 402 dosage units of hydrocodone 5 mg. (brand and generic).

An audit of the Schedule II controlled substance oxycodone 5 mg. for the period January 15, 1990 to January 15, 1992, revealed an overage of 859 dosage units. This unit used Respondent's January 15, 1990 inventory as the initial inventory figure, and its January 15, 1992 inventory as the closing inventory figure.

Another audit was conducted of Schedule III and IV controlled substances using Respondent's January 15, 1990 inventory as the initial inventory figure and its January 15, 1992 inventory as the closing inventory figure. This audit revealed shortages totaling 13,706 dosage units and overages totaling 705 dosage units.

Following execution of the search warrant, DEA organized prescription records taken from Respondent according to the prescribing doctor. Eleven of these doctors were provided copies of prescriptions attributed to them and each doctor reviewed his patient records in the presence of a DEA investigation to determine whether or not he had authorized the prescriptions found at Respondent pharmacy.

Prescriptions taken from Respondent pharmacy indicated that Dr. Rex Butler had prescribed a total of 2,427 dosage units of controlled substances to five patients. By affidavit dated March 19, 1997, Dr. Butler indicated that he had not authorized any of these prescriptions. Respondent provided affidavits from two of these patients and one of their relatives which indicated that they had witnessed Mr. Grimes receiving authorization from Dr. Butler for controlled substance prescriptions for them. Another of the patients indicated by affidavit that Dr. Butler had prescribed Limbitrol DS for him on several occasions. However, like Judge Randall, the Acting Deputy Administrator finds these patient affidavits to be of limited value since they do not specifically address the prescriptions at issue nor do they reference any time period for their statements. In addition, the Acting Deputy Administrator finds Dr. Butler's affidavit to be more reliable than the patients' affidavits, since Dr. Butler's affidavit is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more than six years after the event.

Dr. Steven Davis declared in an affidavit dated March 3, 1997, that after reviewing the prescriptions taken from Respondent's files that were attributed to him and comparing them to his patient records, he determined that he had not authorized prescriptions for 20 specifically named patients, amounting to a total of approximately 2,650 dosage units of controlled substances. Respondent provided affidavits from patients or immediate family members of patients concerning Dr. Davis's

prescribing practices. The majority of these affidavits fail to address the specifically questioned prescriptions or to provide relevant time periods for their statements, and are therefore of limited value. However, two of the patients do indicate in their affidavits that they were prescribed the medication on the specific date at issue. Nonetheless, the Acting Deputy Administrator finds Dr. Davis' affidavit to be more reliable than the affidavits of these two patients since Dr. Davis' affidavit is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more then six years after the event. As Judge Randall noted, the affidavit of the wife of one of the patients verified that her husband was prescribed Vicodin in December 1991 by Dr. Davis. Since Dr. Davis does not address in his affidavit whether or not he authorized this prescription, the Acting Deputy Administrator agrees with Judge Randall that the wife's affidavit ''warrant[s] a belief that this December 1991 prescription was authorized by Dr. Davis.''

Prescriptions taken from Respondent pharmacy indicated that Dr. James Guest had prescribed a total of 1,205 dosage units of Halcion and Xanax for one patient between June 25, 1990 and February 29, 1992. By affidavit dated February 13, 1997, Dr. Guest stated that he had last seen this patient on May 17, 1989, and had not authorized any of the prescriptions taken from Respondent pharmacy that were attributed to him. Respondent provided affidavit from the patient and her daughter which indicated that Mr. Grimes had telephoned Dr. Guest's office for authorization to dispense Halcion and Xanax. However, like many of the previously discussed affidavits, these affidavits fail to address the specific prescriptions in question or to provide any specific time period for their statements.

Respondent's prescription records indicated that Dr. Joe Sanders authorized the dispensing of 2,600 dosage units of propoxyphene N–100 or Darvocet N–100 to one patient between August 31, 1990 and February 1, 1992. But, in a letter dated June 4, 1993, Dr. Sanders wrote that he had last seen the patient on May 17, 1990, and had no record or recollection of calling in any prescriptions for the patient since that time.

According to Respondent's records, between January 19, 1990 and November 21, 1991, Respondent dispensed 2,280 dosage units of lorazepam 2 mg. to one patient as allegedly authorized by Dr. Kirit Joshi. However, by affidavit dated February 18, 1997, Dr. Joshi declared that while he has issued that patient prescriptions for other controlled substances, he had not authorized the lorazepam prescriptions for the patient. In an affidavit, the patient's husband stated that, ''[t]o my knowledge Joe Grimes has phoned Dr. Kiruit [sic] Joshi's office for lorazepam and other medication in 1990 and 1992 for my wife * * *.'' The Acting Deputy Administrator finds Dr. Joshi's affidavit to be more reliable than the husband's affidavit, since Dr. Joshi's affidavit is based upon a review of his patient record which was prepared and maintained during the relevant time period, whereas the husband's affidavit is based upon his recollection more than six years after the event.

Respondent's records indicate that Dr. D.A. Marsh telephoned two prescriptions to Respondent for an individual, one on November 25, 1991, for 18 dosage units of Fiorinal #3 with codeine, and the other on December 5, 1991, for 6 dosage units of Fiorinal #3 with codeine. In an affidavit dated February 19, 1997, Dr. Marsh declared that he did in fact see this patient on November 19 and 25, 1991, and that he did write her a prescription for 20 Fiorinal #3 with codeine on November 25, 1991. However, Dr. Marsh stated he did not orally authorize any prescriptions for this individual, and specifically denied authorizing the two prescriptions noted above. In an affidavit dated April 9, 1997, the patient stated that, ''[p]rescriptions for Fiorinal #3 were authorized for me by D.A. Marsh MD in November and December of 1991 and were filled at [Respondent] * * *. Some of these prescriptions were phoned in.'' She indicated that she was allergic to a drug prescribed for her by Dr. Marsh and that once he was informed of this allergy, ''Dr. Marsh authorized a prescription for 6 Fiorinal with codeine capsules for me.'' While the patient's affidavit might help explain the prescription in Respondent's files for the six Fiorinal #3 with codeine, it does not address the 18 dosage units allegedly dispensed pursuant to an oral prescription, on the same day Dr. Marsh admitted issuing the patient a written prescription for 20 dosage units. However, as with the other affidavits, the Acting Deputy Administrator finds Dr. Marsh's affidavit to be more reliable than that of the patient since it is based upon a review of his patient record which was prepared and maintained during the relevant time period, whereas the patient's affidavit is based upon her recollection more than six years after the event.

According to Respondent's records, between January 1, 1990 and March 2, 1992, Dr. Donald Newman orally authorized prescriptions for 2,600 dosage units of chlordiazepoxide 10 mg. for a specific patient. By affidavit dated February 18, 1997, Dr. Newman stated that while he did prescribe controlled substances on occasion to this patient, it was always in writing and he did not authorize any of the oral prescriptions for chlordiazepoxide found in Respondent's files. Respondent provided an affidavit from this patient dated April 9, 1997, who stated that, ''I have witnessed Joe Grimes calling Dr. Donald Newman's office for permission to refill Librium (chlordiazepoxide HCL) on several occasions during the period of January 1990 to January 1991.'' However, this affidavit does not address the specific prescriptions at issue. Again, the Acting Deputy Administrator finds Dr. Newman's affidavit to be more reliable than that of the patient since it based upon a review of his patient record which was prepared and maintained during the relevant time period, whereas the patient's affidavit is based upon her recollection more than six years after the event.

According to Respondent's records, Dr. Steven Price authorized five prescriptions for a total of 150 dosage units of controlled substances to three patients. As to the first patient, Dr. Price stated in an affidavit dated February 20, 1997, that while he had prescribed the patient Xanax in January 1991, he did not authorize the prescription for Xanax found in Respondent's files dated February 22, 1991. Regarding the second patient, Dr. Price denied prescribing diazepam 5 mg. for the individual on the dates listed on the three prescriptions found in Respondent's files. Finally, Dr. Price stated that he has no record of the patient whose name appeared on the fifth prescription attributed to Dr. Price. The first patient, in an affidavit dated April 9, 1997, stated that Dr. Price had prescribed Xanax for her in January and February 1991. This affidavit confirms Dr. Price's conclusion, after reviewing his patient's chart, that he had prescribed Xanax in January of 1991, yet conflicts with his conclusion concerning the February 1991 prescription. Regarding the second patient, Respondent provided an affidavit dated April 9, 1997, from an individual who stated that she could ''verify that [the patient] was prescribed Valium (diazepam) by Dr. Steven Price and sometimes the prescription was phoned into [Respondent]. I personally

picked up this medication on many occasions for [the patient].'' The affidavit fails to give a time period for her statements. The Acting Deputy Administrator finds Dr. Price's affidavit to be more reliable than those submitted by Respondent, since it is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon the recollection of individuals more than six years after the event.

During execution of the search warrant, investigators obtained from Respondent five prescriptions allegedly authorized by Dr. B.A. Santa Rossa for an individual for a total of 180 dosage units of proproxyphene 65 mg. and 120 dosage units of Wygesic. In his affidavit dated March 17, 1997, Dr. Santa Rossa stated that while he had prescribed controlled substances for this individual in the past, he always issued a written prescription for the drugs. In addition, a review of his patient record revealed that he had not authorized any of the five prescriptions attributed to him that were found in Respondent's files. Further, in his affidavit, Dr. Santa Rossa denied issuing a prescription to a second individual on June 8, 1991, for 30 dosage units of diazepam 10 mg. However, Respondent provided an affidavit from this second patient who stated that, ''according to my best judgment and recol[l]ection do attest to the fact that Joe Grimes has called for permission to fill diazepam 10 mg. in June 1991.'' As Judge Randall noted, ''[e]ven if this affidavit is given more credibility than Dr. Santa Rossa's affidavit, a total of 300 dosage units of controlled substances were dispensed, without authority, by the Respondent's pharmacists * * *.''

According to Respondent's records, Dr. Richard Spurlin authorized multiple prescriptions to six individuals which accounted for the dispensation of over 12,000 dosage units of controlled substances by Respondent. By affidavit, Dr. Spurlin stated that after reviewing his records for these patients, he determined that while he had at various times issued these individuals controlled substances prescriptions, he had not authorized any of the prescriptions found in Respondent's files. Respondent provided affidavits from four of these patients. Three of them indicated that they had observed Mr. Grimes telephoning Dr. Spurlin's office for authorization to fill or refill prescriptions. Yet, none of these affidavits address the specific prescriptions at issue nor do they provide a time period for the statements made. The other patient's affidavit indicated that ''Dr. Spurlin has authorized prescriptions for Xanax .25 mg. (alprazolam) and Halcion for me from 1988 to 1997.'' The Acting Deputy Administrator finds that while this patient references a general time period, like the other patients, she fails to address the specific prescriptions at issue. Therefore,the Acting Deputy administrator finds Dr. Spurlin's affidavit to be more reliable than those submitted by Respondent, since it is based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more than six years after the event.

In December 1992, DEA investigators asked Dr. Reddoch Williams to review prescriptions found in Respondent's files that indicated that they were authorized by him. By letter dated February 26, 1997, Dr. Williams certified that he had reviewed the original prescriptions and his patient filed. Dr. Williams also wrote that he had not authorized ''[Respondent] or any other person or pharmacy to fill or refill the prescriptions which are marked as 'forgery' or otherwise marked as not authorized by me.'' Some of Dr. Williams handwritten comments are difficult to read and other comments are not definitive in nature, being qualified with statements such as ''I believe'' or ''I think''. Therefore, the Acting Deputy Administrator declines to find that any of these prescriptions were unauthorized. However, in those instances where the prescriptions are clearly marked as forgeries without any qualifying language, the Acting Deputy Administrator finds that these prescriptions were not authorized by Dr. Williams. These unauthorized prescriptions accounted for the dispensation of over 1,100 dosage units of controlled substances. Three of the patients, whose names appeared on the prescriptions which were clearly marked as forgeries by Dr. Williams, provided affidavits. However, these affidavits did not provide any time period for their statements and the other only provided a general reference to a time period, but did not specifically reference the date of the prescription at issue. Like with the previously discussed affidavits, the Acting Deputy Administrator finds Dr. Williams' comments to be more reliable than the patients' affidavits, since his comments are based upon a review of his patient records which were prepared and maintained during the relevant time period, whereas the patients' affidavits are based upon their recollection more than six years after the event.

In conducting the accountability audits which revealed significant shortages, DEA investigators included the unauthorized prescriptions as drugs for which Respondent could account. Mr. Grimes testified at the hearing before Judge Randall that he never filled a prescription without a doctor's authorization, and that while he disputes the results of the accountability audits, he does not have any explanation for the shortages and overages revealed by the audits.

The state of Alabama has not withdrawn its licensing commission from Respondent. In addition, while arrested and charged, Mr. Grimes was ultimately found not guilty by a jury of all charges stemming from the undercover operation conducted by the local police department which led to the execution of the search warrant. Further, it is undisputed that there have never been any complaints about Respondent or Mr. Grimes made by any drug supplier, and no doctor or pharmacist has ever contacted Mr. Grimes about illegal prescriptions. Finally, Respondent introduced into evidence a letter from the co-chairman of a drug company attesting to Mr. Grimes' honesty and integrity.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 F.R. 16,422 (1989).

Respondent contends that the Government has not met its burden of proof in establishing that Respondent's continued registration would be inconsistent with the public interest. Judge Randall concluded and the Acting Deputy Administrator concurs that all five factors are relevant in determining the public interest in this matter.

As to factor one, it is undisputed that the State of Alabama has not taken any action against Respondent pharmacy or its owner Mr. Grimes. Regarding Respondent's conviction record relating to controlled substances, it is also undisputed that neither Respondent pharmacy nor its owner Mr. Grimes has been convicted of any such offense.

Factors two and four, Respondent's experience in dispensing controlled substances and its compliance with state, Federal, or local laws relating to controlled substances, are clearly relevant in determining whether Respondent's continued registration would be inconsistent with the public interest. The Acting Deputy Administrator finds that Respondent pharmacy dispensed over 25,000 dosage units of controlled substances without authorization from a physician in violation of 21 U.S.C. 829. Respondent argues that the physicians whose names appeared on the prescriptions at issue could have forgotten to note in the patient chart that the telephone prescriptions had been authorized. Respondent further argues that a patient's recollection is more reliable, since a patient is more likely to remember what was actually prescribed to him or her. Respondent also contends that in instances where there was no patient affidavit, Mr. Grimes was able to recall the circumstances of the dispensing at issue.

The Acting Deputy Administrator concludes that it is highly unlikely that eleven different physicians forgot to note numerous prescriptions in patient charts which accounted for the dispensing of over 25,000 dosage units of controlled substances. Also as stated previously, most of the patients' affidavits are of little value since they do not address the specific prescriptions at issue nor do they provide a time period for the statements contained in the affidavits. In addition, the physicians' affidavits were based upon a review of patient records prepared contemporaneously with the events at issue, whereas the patients' affidavits and Mr. Grimes' testimony are based upon their recollection of events which occurred over six years ago.

Therefore, the Acting Deputy Administrator finds that Respondent pharmacy dispensed controlled substances in violation of 21 U.S.C. 829. In addition, Mr. Grimes violated his corresponding responsibility as set forth in 21 C.F.R. 1306.04, to ensure that controlled substances are only prescribed and dispensed for a legitimate medical purpose.

Additionally, pursuant to 21 U.S.C. 827, a registrant must maintain complete and accurate records of controlled substances received, sold, delivered or otherwise disposed of by him. The Acting Deputy Administrator finds that accountability audits of Respondent's controlled substances handling revealed that for the period January 15, 1990 to March 1992, Respondent could not account for over 80,000 dosage units of Schedule III and IV controlled substances. In addition, the audits revealed overages of some audited substances, including an overage of 859 dosage units of oxycodone 5 mg., a Schedule II controlled substance. In conducting these audits, the investigators included the unauthorized prescriptions in their calculation of the total amount of controlled substances dispensed by Respondent. Had Respondent not been given credit for these unauthorized dispensations, the shortages would have been significantly greater.

In its post-hearing filing, Respondent proposes a number of possible explanations for the audit discrepancies. First, Respondent argues that as allowed, it estimated the amount of Schedule III through V controlled substances on hand when conducting its yearly inventory, and consequently, it is possible that the overages and shortages could have resulted from these estimations. Respondent also argues that the audit results were possibly the result of a review by DEA of incorrect or incomplete receiving and/or return records. Next Respondent argues that it is possible that the audit discrepancies were the result of other prescription records not being examined at the time of the audit. In support of this argument, Respondent contends that in conducting the audit, DEA did not examine additional ledgers used by Respondent during the audit period. Finally, Respondent argues that another possible explanation for the audit results is that DEA's closing inventory conducted on March 2, 1992, was inaccurate since DEA used Respondent's pill counting machine without first verifying the accuracy of the machine.

The Acting Deputy Administrator concurs with Judge Randall's conclusion that these possibilities advanced by Respondent ''are mere speculation, unsupported by the record in this case.'' Respondent did not provide any specific evidence that would account for the over 80,000 dosage unit shortage of controlled substances. While it is permissible to estimate Schedule III through V controlled substances when conducting an inventory, clearly such estimations would not account for over 80,000 dosage units. In addition, a registrant cannot estimate Schedule II controlled substances, however, the audit revealed a significant overage of the one Schedule II controlled substance audited. The investigators who conducted the audits were confident that they had obtained all of the necessary records. It is significant to note that if one were to accept Respondent's argument that the receiving records were incomplete, then the shortages revealed by the audit should actually have been greater, since Respondent would have had to account for more controlled substances. As to the prescription ledgers that Respondent argues would have effected the audit, the investigator testified that those ledgers were examined, however, since they did not contain any information necessary for conducting an audit, they were discounted. Finally, Respondent did not present any evidence that its pill counting machine was not operating properly.

Thus, the Acting Deputy Administrator concludes that the preponderance of the evidence supports a finding that Respondent did not maintain complete and accurate records of controlled substances as required by 21 U.S.C. 827, as evidenced by the results of the audits. The Acting Deputy Administrator finds it extremely significant that had DEA not included the unauthorized prescriptions in the audit and given Respondent credit for those dispensations, the shortages would have been far greater.

As to factor five, the Acting Deputy Administrator concurs with Judge Randall's finding that Mr. Grime's failure to accept responsibility for the significant unexplained shortages and unauthorized dispensations of controlled substances indicates a potential threat to the public health and safety. Previously, DEA's then-Administrator found that a pharmacist's ''refusal to acknowledge the impropriety of his dispensing practices * * * give[s] rise to the inference that [he] is not likely to act more responsibly in the future.'' Medic-Aid Pharmacy, 55 FR 30,043 (1990); see also, Rocco's Pharmacy, 62 FR 3056 (1997).

The Administrative Law Judge concludes that ''[t]he Government has proven by a preponderance of the evidence that the Respondent's past

conduct would justify revocation of its DEA Certificate of Registration.'' Judge Randall further concluded that Respondent did not present any mitigating or rehabilitating evidence as it relates to its dispensing practices. Therefore, Judge Randall recommended that Respondent's DEA Certificate of Registration be revoked. Judge Randall further recommended however, that ''[s]ubsequently, should the Respondent provide any evidence of proposed procedural changes for the dispensing of controlled substances in a new application for a Certificate of Registration, and should such evidence be persuasive, then I would concur with a favorable decision concerning that subsequent application.''

The Acting Deputy Administrator agrees with the Administrative Law Judge that the Government has met its burden of proof and that Respondent's registration should be revoked. However, the Acting Deputy Administrator does not adopt Judge Randall's recommendation that favorable consideration will be given to a new application for registration should Respondent present persuasive evidence of procedural changes regarding the dispensing of controlled substances. A change in procedures, in and of itself, might not justify granting Respondent a new registration, since Mr. Grimes has failed to acknowledge that he and his pharmacy have done anything improper. An unexplained shortage of $80,000 dosage units and the unauthorized dispensation of over 25,000 dosage units of controlled substances are not merely minor technical violations. The egregious nature of the violations in this matter demonstrate that Respondent has failed miserably in its responsibility as a DEA registrant to protect against the diversion of controlled substances from the legitimate chain of distribution. Respondent is certainly free to apply for a new DEA Certificate of Registration. Any such application will be evaluated in light of all of the relevant circumstances in existence at that time to determine whether to grant the application.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate AC5430450, issued to City Drug Company, be, and it hereby is, revoked. The Acting Deputy Administrator further order that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective November 13, 1997.

Dated: October 7, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–27144 Filed 10–10–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 28, 1997, and published in the **Federal Register** on March 28, 1997, (62 FR 14944), Johnson & Johnson Pharmaceutical Partners, HC02 State Road 933, KMO.1 Makey Ward, HC–02 Box 19250, Gurabo, Puerto Rico 00778–9629, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Sufentanil (9740), a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson & Johnson Pharmaceutical to manufacturer sufentanil is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 1, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–27143 Filed 10–10–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of a New System of Records; Amendments To Existing Systems of Records

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of a new system of records; amendments to existing systems of records.

SUMMARY: The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds a new system of records to this Department's current systems of records. With the addition of this new system of records, the Department will be maintaining 145 systems of records. This document also proposes to revise the Routine Uses Category for two of the Department's existing systems of records. The proposed routine uses provide additional protection to the privacy interests of the participants in the surveys which are being conducted by the managers of the relevant systems of records. Finally, various administrative (non-substantive) changes are being made to three of the existing systems of records. Two of the three systems being amended administratively, are the same systems which are the subject of the proposed revised Routine Uses Category.

DATES: Persons wishing to comment on this new system of records and on the proposed new Routine Uses may do so by November 24, 1997.

EFFECTIVE DATE: Unless there is a further notice in the **Federal Register**, the new system of records, and the proposed amendments to the two existing systems, DOL/BLS–13, and DOL/BLS–17, will become effective on December 8, 1997. The remaining amendments, which relate to DOL/OAW–1, DOL/BLS–13 and DOL/BLS–17, are administrative (non-substantive), and therefore, will become effective on October 14, 1997.

ADDRESSES: Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW, Room N–2428, Washington, DC 20210, telephone (202) 219–8188.

SUPPLEMENTARY INFORMATION: Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of a new system of records currently maintained pursuant to the Act. This document supplements this Department's last publication in full of all of its Privacy Act systems of records. The document also proposes to amend the Routine Uses Category for two of the Department's existing systems of records. On September 23, 1993, in Volume 58 at page 49548 of the **Federal Register**, we published a notice containing 138 systems of records which were maintained under the Act. Subsequent publications of new systems were made on April 15, 1994 (59 FR 18156) (two new systems); on May 10, 1995 (60 FR 24897) (one new system); and on June 15, 1995 (60 FR 31495) (one new system); and on April 7, 1997 (62 FR 16610) (one new system). The new system published herein will increase the total number of systems to 145.

1. The new system published herein is entitled DOL/OSBP–1, Office of Small Business Programs, Small Entity Inquiry and Complaint Tracking System. It is a non-exempt system of records. The new system is being established in order to comply with the statutory requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The system will enable the Department to report to the Small Business Administration (SBA), and to the Congress, on how it assists small entities in complying with Departmental regulations.

2. The Department also hereby proposes to amend two existing systems of records, DOL/BLS–13, and DOL/BLS–17, which are each research surveys of youth, so that a revised Routine Uses Category can be substituted into these two systems of records. The revised Routine Uses Category will provide additional protection to the privacy interests of the participants in the surveys which are being conducted by the managers of each of these systems of records. This additional privacy protection, for the participants in the survey, is achieved by making several of the Universal Routine Uses, contained within the General Prefatory Statement, inapplicable to these two systems of records. DOL/BLS–13 was last published on September 23, 1993 at 58 FR 49592, and DOL/BLS–17 was last published on April 7, 1997 at 62 FR 16612.

3. This document makes various administrative (non-substantive) changes to the above discussed systems, DOL/BLS–13 and DOL/BLS–17. Since these administrative amendments are non-substantive, public comment is not required. These changes merely refine each of the systems.

4. Finally, the Department is making an administrative (non-substantive) amendment to DOL/OAW–1 at this time by transferring this system of records into the Employment Standards Administration, and by renaming it as DOL/ESA–45. This amendment is necessary because the Office of the American Workplace no longer exists as a component of the Department of Labor. The Office of Labor-Management Standards which created and maintains this system has been transferred into the the Employment Standards Administration.

Universal Routine Use

In its September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM–5 and DOL/OASAM–7. These eleven paragraphs were presented in the General Prefatory Statement for that document, and it appeared at pages 49554–49555 of Volume 58 of the **Federal Register**. Those eleven paragraphs were republished in an April 15, 1994 document in order to correct grammatical mistakes in the September 23, 1993 version. In the May 10, 1995, June 15, 1995 and April 7, 1997 publications, the General Prefatory Statement was republished as a convenience to the reader of the document. We are again republishing the General Prefatory Statement as a convenience to the reader. At this time we are making a syntactical change to paragraph 10.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on the proposed amendment in this document. A report on the new system, and on the proposed revisions to DOL/BLS–13 and DOL/BLS–17, has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r). The administrative (non-substantive) amendments do not have to be submitted for comment to OMB and to the Congress.

General Prefatory Statement

The following routine uses apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses *do not* apply to DOL/OASAM–5, Rehabilitation and Counseling File, nor to DOL/OASAM–7, Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from any system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Public Law 93–647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation and the legislative coordination and clearance process.

11. Disclosure may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

I. Publication of a New System of Records

DOL/OSBP–1

SYSTEM NAME:

Office of Small Business Programs, Small Entity Inquiry and Complaint Tracking System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Labor, Office of Small Business Programs, Frances Perkins Building, 200 Constitution Ave., NW, Room C–2318, Washington, DC 20210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make oral or written complaints about, or requests or inquiries concerning, enforcement activities under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) of the U.S. Department of Labor (Department).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the name and address of the individuals making complaints, requests, or inquiries concerning enforcement activities of the Department of Labor, and any other information under SBREFA necessary to respond to the complaint or request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Subtitles A and B of The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, sec. 213, 110 Stat. 858–859.

PURPOSES:

Section 213 of Title II of Pub. L. 104–121 requires each agency to establish a program for providing informal guidance to small entities regulated by that agency. Section 213(c) requires the agency to report to Congress on ''the scope of the agency's program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.'' The records in this system are maintained for the purpose of complying with the above statutory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those Universal Routine Uses included in the Department's General Prefatory Statement, last republished in the **Federal Register** on April 7, 1997, at 62 FR 16611–16612, relevant records may be disclosed to the Small Business Administration (SBA).

The records may be disclosed to the SBA in response to a referral from the SBA of a complaint filed against this Department by a small entity. The above described referrals are authorized by Subtitles A and B of The Small Business Regulatory Enforcement Fairness Act of 1996.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically.

RETRIEVABILITY:

Name or Control Number.

SAFEGUARDS:

Accessed by authorized personnel only. Passwords are used for the data, which is electronically stored.

RETENTION AND DISPOSAL:

Five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Small Business Programs, U.S, Department of Labor, 200 Constitution Ave., NW, Room C–2318, Washington, DC 20210.

NOTIFICATION PROCEDURES:

Mail all inquiries or present in writing to System Manager at above address.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the system manager at the address listed above. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of the creation of the file.

c. Individuals requesting access must also comply with the Privacy Act regulations regarding the verification of identity at 29 CFR 70a.70.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the system manager and must meet the requirements of 29 CFR 70a.7.

RECORD SOURCE CATEGORIES:

Individuals who make complaints, requests, other inquiries concerning enforcement activities of the Department of Labor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

II. Publication of a Proposed Amendment

DOL/BLS–13, National Longitudinal Survey of Youth (NLSY) Database, is amended by revising the category for Routine Uses to read as set forth below. For the convenience of the reader, the entire system is being republished in full. At this time, the various administrative (non-substantive) amendments are being published as set forth below.

DOL/BLS–13

SYSTEM NAME:

National Longitudinal Survey of Youth 1979 (NLSY79) Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Opinion Research Center (NORC), University of Chicago, 1155 E. 60th Street, Chicago, IL 60637.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A random sample of the general population who were ages 14–21 on January 1, 1979, with over representation of blacks, Hispanics, poor whites, and persons serving in the military.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number, control number, marital history, education, military service, Armed Services Vocational Aptitude Battery scores, job history, unemployment history, training history, fertility/family planning, child health history, alcohol use, drug use, reported police contacts, assets and income, school records, Government assistance program participation, childhood residence, child development outcomes, history of mother/child relationship, time use, time spent on childcare and household chores, and immigration history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 2.

PURPOSE(S):

To serve a variety of policy-related research interests concerning the labor market problems of youth. Data are used for studies such as: Diffusion of useful information on labor, examination of employment and training programs, understanding labor markets, guiding military manpower and measuring the effect of military service, analysis of social indicators and measuring maternal and child inputs and outcomes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Bureau of Labor Statistics may release records to the National Opinion Research Center (NORC) and/or Ohio State University to compile data which are not individually identifiable for use by the general public and other federal agencies who are conducting labor force research. Under written agreements to protect the confidentiality and security of identifying information, BLS provides potentially-identifying geographic information to researchers to conduct specific research projects which further the mission and functions of BLS. The records also may be disclosed where required by law. Items 3, 4, 7, 8, 9, 10, and 11 listed in the General Prefatory Statement to this document are not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and on paper.

RETRIEVABILITY:

Name or Control Number.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data and locked locations for paper files.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, NLS Youth 1979 Cohort Study, Office of Employment and Unemployment Statistics, Room 4945, Postal Square Building, 2 Massachusetts Ave., NE, Washington, DC 20212.

NOTIFICATION PROCEDURE:

Mail, or present in writing, all inquiries to the System Manager at the above address.

RECORD ACCESS PROCEDURES:

As in notification procedure.

CONTESTING RECORD PROCEDURES:

As in notification procedure.

RECORD SOURCE CATEGORIES:

From individuals concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

III. Publication of a Second Proposed Amendment

DOL/BLS–17, National Longitudinal Survey of Youth 1996 (NLSY96) Database, is amended by revising the category for Routine Uses to read as set forth below. For the convenience of the reader, the entire system is being republished in full. At this time, the various administrative (non-substantive) amendments are being published as set forth below.

DOL/BLS–17

SYSTEM NAME:

National Longitudinal Survey of Youth 1997 (NLSY97) Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Opinion Research Center (NORC), University of Chicago, 1155 E. 60th Street, Chicago, IL 60637.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A random sample of the general population who were ages 12–16 on December 31, 1995 with over representation of disabled students.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number, control number, marital history, education, job history, unemployment history, military service, training history, fertility/family planning, child health history, alcohol use, drug use, reported police contacts, anti-social behavior, assets and income, school records, Government assistance program participation, childhood residence, child development outcomes, expectations, history of mother/child relationship, time use, time spent on child care, immigration history, and Armed Services Vocational Aptitude Battery scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 2.

PURPOSE(S):

To serve a variety of policy-related research interests concerning the school-to-work transition and the labor market problems of youth. Data are used for studies such as: Diffusion of useful information on labor, examination of employment and training programs, understanding labor markets, analysis of social indicators, measuring maternal and child inputs and outcomes, norming the Department of Defense

Armed Services Vocational Aptitude Battery in its computerized adaptive form, and creation of norms for the Department of Defense Interest Measure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Bureau of Labor Statistics may release records to the National Research Center (NORC) and/or Ohio State University to compile data which are not individually identifiable for use by the general public and federal agencies who are conducting labor force research. Under written agreements to protect the confidentiality and security of identifying information, BLS provides potentially-identifying geographic information to researchers to conduct specific research projects which further the mission and functions of BLS. The records also may be disclosed where required by law. Items 3, 4, 7, 8, 9, 10, and 11 listed in the General Prefatory Statement to this document are not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically and on paper.

RETRIEVABILITY:

Name or Control Number.

SAFEGUARDS:

Access by authorized personnel only. Computer security safeguards are used for electronically stored data, and locked locations for paper files.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, NLS Youth 1996 Cohort Study, Office of Employment and Unemployment Statistics, Room 4945, Postal Square Building, 2 Massachusetts Ave., NE., Washington, DC 20212.

NOTIFICATION PROCEDURE:

Mail, or present in writing, all inquiries to the System Manager at the above address.

RECORD ACCESS PROCEDURES:

As in notification procedure.

CONTESTING RECORD PROCEDURES:

As in notification procedure.

RECORD SOURCE CATEGORIES:

From individuals concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

IV. Publication of an Administrative (Non-Substantive)

DOL/OAW–1, entitled Investigative Files, a system of records maintained by the Office of Labor-Management Standards, is amended by transferring it to the Employment Standards Administrative and by revising its name to read as follows:

DOL/ESA–45

SYSTEM NAME:

Investigative Files of the Office of Labor-Management Standards.

* * * * *

Signed at Washington, DC this 2nd day of October, 1997.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 97–27080 Filed 10–10–97; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,553; Brainard Rivet Co., Girard, OH

TA–W–33,735; Monarch Machine Tool Co., Sidney, OH

TA–W–33,680; Tubafor Mill, Inc., Crane Creek Div., Amanda Park, WA

TA–W–33,703; Willamette Industries, Albany, OR

TA–W–33,719; Liberty Fabrics, North Bergen, NJ

TA–W–33,749; U.S. Can Co., Racine, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,778; Oneita Industries, Cullman, AL

TA–W–33,777; U.S. Ring Binder Corp., New Bedford, MA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,799; West Virginia Shoe Co., Marlinton, WV

TA–W–33,774; Noma Appliance and Electronics, Noma, AZ

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,493; Honeywell, Inc., Arlington Heights Operation, Arlington Heights, IL

All production at the subject plant was transferred to other U.S. located plants. Sales of these products as reported by the company, have not declined.

TA–W–33,757; International Titanium Corp., Cedartown, GA

TA–W–33,737; Klein Bicycle Corp., Chehalis, WA

TA–W–33,715; Brandon Apparel Group, Inc., Columbus, WI

TA–W–33,619; Trinity Industries Ladish Co., Russellville, AR

TA–W–33,753; Borg Warner Automotive, Inc., Blytheville, AR

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination

references the impact date for all workers for such determination.

TA–W–33,683; Lucas Varsity Kelsey-Hayes, Light Vehicle Braking System Div., Brighton, MI: July 15, 1996.

TA–W–33,526; The Somon Co., Leeds, AL: August 28, 1996.

TA–W–33,781; Mitsubishi Consumer Electronics, Inc., Santa Ana, NY: August 21, 1996.

TA–W–33,764; Kaiser Aluminum & Chemical Corp., Engineered Products Div., Erie, PA: August 14, 1996.

TA–W–33,793; Thomas & Betts, Augat Div., Sanford, ME: August 7, 1996.

TA–W–33,692; Wright's Knitwear Corp., Hamburg, PA: July 17, 1996.

TA–W–33,718 A & B; McCoy Manufacturing #3, Caledonia, MS, McCoy Manufacturing #2, Amory, MS and Glenn Slacks, Bruce, MS: July 25, 1996.

TA–W–33,755; Perfect Cirle/Sealed Power Div., Dana Corp., Rochester, IN: August 6, 1996.

TA–W–33,587; Angelica Image Apparel, Missouri Service Center, Mountain View, Mo: June 4, 1996.

TA–W–33,748; United Technologies Automotive, Inc., 2000 Walter Glaub Dr., Plymouth, IN: July 30, 1996.

TA–W–33,527; Cascade Woolen Mill, Inc., Oakland, ME: March 24, 1997.

TA–W–33,598; Littlestown Mfg. Co., Strouse-Baer Div., Littletown, PA: June 16, 1996.

TA–W–33,801; Louisville Mfg. Co., Louisville, GA: August 26, 1997.

TA–W–33,652; C.L. Fashions, Inc., Hialeah, FL: June 24, 1996.

TA–W–33,647; Weyerhauser Wood Products—Plywood Div., Plywood, NC: July 1, 1996.

TA–W–33,747; Stuffed Shirt, Inc., Slidell, LA: July 24, 1996.

TA–W–33,625; Alliant Techsystems, Inc., Radford Army Ammunition Plant, Radford, VA: June 23, 1996.

TA–W–33,754; Unique Finishing, Inc., Wrightsville, GA: August 8, 1996.

TA–W–33,636; West Apparel, LLC, Woodville, AL: June 12, 1996.

TA–W–33,791; Ergodyne Corp., Pence, WI: August 22, 1996.

TA–W–33,436; Desert Cleaners, Inc., El Paso, TX: March 20, 1996.

TA–W–33,788; Conaway-Winter, Inc., Compo Shoes Div., Birch Tree, MO: August 17, 1996.

TA–W–33,721; Power Cords & Cables Corp., College Point, NY: September 22, 1997.

TA–W–33,762; Eddie Mowad Mfg Co., Inc., El Paso, TX: August 11, 1996.

TA–W–33,613; Lear Corp., Hair Haven Plant, Fair Haven, MI: June 19, 1996.

TA–W–33,812; Cumberland Apparel Co., Div. of Lee's Manufacturing Co., Inc., Monticello, KY: August 27, 1996.

TA–W–33,769; Toy Biz, Inc. Colorforms, Ramsey, NJ: August 15, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the revelant period.

NAFTA–TAA–01867; International Titanium Corp., Cedartown, GA

NAFTA–TAA–01673; Florida Specialties, Inc., Homestead, FL

NAFTA–TAA–01763; Roth Farms, Inc., Belle Glade, FL

NAFTA–TAA–01715; B. Barb Farms, Inc., Belle Glade, FL

NAFTA–TAA–10764; E & R Harvesting/ Trucking, Belle Glade, FL

NAFTA–TAA–01818; Tubafor Mill, Inc., Crane Creek Div., Amanda Park, WA

NAFTA–TAA–01767; A–1 Harvesting J & K Contracting, Inc., Belle Glade, FL

NAFTA–TAA–01738; Brainard Rivet Co., Girard, OH

NAFTA–TAA–01765; A. Duda & Sons, Inc., Belle Glade, FL

NAFTA–TAA–01720; Diamond "I" Farms, Inc., Florida City, FL

NAFTA–TAA–01844; Willamette Industries, Albany, OR

NAFTA–TAA–01724; Thomas Produce Boca Raton, FL

NAFTA–TAA–01919; Applied Molded Products Corp., Watertown, WI

NAFTA–TAA–01884; Versa Technologies, Inc., Moxness Products Div., Wausau, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01821; Evergreen Trails, dba Gray Line of Seattle, Seattle, WA

NAFTA–TAA–01929; Trutom (US) Ltd, Albany, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01803; Weyerhaeuser, Wood Products—Plywood Div., Plymouth, NC: July 1, 1996.

NAFTA–TAA–01915; Whisper Soft Mills, Inc., Wallace, NC: September 4, 1996.

NAFTA–TAA–01790; West Apparel, LLC, Woodville, AL: June 12, 1996.

NAFTA–TAA–01901; Ergodyne Corp., Pence, WI: August 22, 1996.

NAFTA–TAA–01896; Electrohome, Inc., Display Technologies Div., Carthage, MO: August 21, 1996.

NAFTA–TAA–01838; Lucas Varity Kelsey–Hayes, Brighton, MI: July 14, 1996.

NAFTA–TAA–01900; Perfect Circle/ Sealed Power Div., Dana Corp., Rochester, IN: August 7, 1996.

NAFTA–TAA–01693; Angelica Image Apparel, Missouri Service Center, Mountain View, MO: June 12, 1996.

NAFYA–TAA–01868; Kaiser Aluminum & Chemical Corp., Engineered Products Div., Erie, PA: August 7, 1996.
NAFTA–TAA–01922; The Solomon Co., Leeds, AL: August 28, 1996.
NAFTA–TAA–01905; Thomas and Betts, Augat Div., Sanford, ME: August 8, 1996.
NAFTA–TAA–01876; Eddie Mowad Mfg. Co., Inc., Milwaukee, WI: August 11, 1996.
NAFTA–TAA–01813; MagneTek, Inc., Huntington, IN: July 2, 1996.
NAFTA–TAA–01782; Flexel, Inc., Covington, IN: June 23, 1996.

I hereby certify that the aforementioned determinations were issued during the month of September, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 30, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27074 Filed 10–10–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination on the date of which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later October 24, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 24, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 09/22/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,826	Chevron USA (Wkrs)	Healdton, OK	09/09/97	Oil and Petroleum Products.
33,827	Jobs for St. Landry (Wkrs)	Opelousas, LA	09/11/97	High Pressure Pipe Fittings.
33,828	Dana Corp. (USWA)	Reading, PA	09/12/97	Heavy Truck Siderail.
33,829	Trans World Airlines (IAMAW)	Kansas City, MO	09/11/97	Service Aircraft and Aircraft Engines.
33,830	Calvin Klein (UNITE)	New York, NY	09/03/97	Ladies' Sportswear.
33,831	Comsat RSI Plexsys (Wkrs)	Corinth, MS	08/26/97	Cellular Switching Systems.
33,832	Medline Industries, Inc. (Comp)	Frisco City, AL	09/10/97	Medical Apparel for Doctors, Nurses.
33,833	Pacific Refining Co (Wkrs)	Hercules, CA	09/05/97	Crude Oil Refiner.
33,834	Jonbil, Inc (Comp)	Chase City, VA	09/02/97	Blue Jeans.
33,835	Hillsboro Glass Co (GMP)	Hillsboro, IL	09/02/97	Glass Bottles for Liquor Companies.
33,836	Arnold Palmer Golf Co (Comp)	Pocahontas, AR	09/05/97	Golf Bags.
33,837	Russell Corp. (Wkrs)	Cumming, GA	08/15/97	Basic T-Shirts.
33,838	Elaine Benedict, Inc (Wkrs)	Miami, FL	08/31/97	Sportswear.
33,839	Irwin Manufacturing Corp (Comp)	Alma, GA	08/01/97	Baby's Apparel.
33,840	Energizer Power Systems (Comp)	Gainesville, FL	08/27/97	Rechargeable Batteries.
33,841	M. Fine and Sons Mfg. (UFCW)	Bedford, IN	09/02/97	Boys' Blue Denim Jeans.
33,842	Applied Molded Products (LETC)	Watertown, WI	08/13/97	Fiberglass Reinforced Plastics.
33,843	Lummi Indian Gaming Comm. (Wkrs)	Bellingham, WA	08/29/97	Provides Gaming Services.
33,844	Bose Corp (Wkrs)	Westboro, MA	09/09/97	Advanced Speaker Systems.
33,845	Onan Corp (Comp)	Huntsville, AL	09/09/97	Single and Twin Cylinder Gasoline Engines.
33,846	Kimberly Clark (UPIU)	Oconto Falls, WI	08/28/97	Bales of Pulp.

[FR Doc. 97–27075 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,624]

Fruit of the Loom, Sherman Warehouse Distribution Center, Sherman, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 7, 1997, in response to a worker petition which was filed on behalf of workers at Fruit of the Loom, Sherman Warehouse Distribution Center, located in Sherman, Mississippi.

An active certification covering the petitioning group of workers is already in effect (TA–W–33,767E). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27079 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,792]

Label Art/Short Run Labels, Inc. Linthicum Heights, MD; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1997 in response to a worker petition which was filed on behalf of workers and former workers at Label Art/Short Run Labels, Incorporated, located in Linthicum Heights, Maryland (TA–W–33,792).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 26th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27078 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,567]

Lee Sportswear, Inc., Plantersville (Tupelo), Mississippi; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 1997 in response to a worker petition which was filed on June 16, 1997 on behalf of workers at Lee Sportswear, Incorporated, located in Plantersville (Tupelo), Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27077 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

The Lovable Company

TA–W–33,5845 Buford, Georgia
TA–W–33,584C, St. Augustine, Florida
TA–W–33,584D, Orlando, Florida
TA–W–33,584E, Branson, Missouri
TA–W–33,584F, Osage Beach, Missouri
TA–W–33,584G, Sikeston, Missouri
TA–W–33,584H, Commerce, Georgia
TA–W–33,584I, Locust Grove, Georgia
TA–W–33,584J, Eddyville, Kentucky
TA–W–33,584K, Horse Cave, Kentucky
TA–W–33,584L, Myrtle Beach, South Carolina
TA–W–33,584M, Normal, Illinois
TA–W–33,584N, Nashville, Tennessee
TA–W–33,584O, Woodbridge, Virginia

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 29, 1997, applicable to all workers of The Lovable Company, Buford, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 46775).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that all workers will be separated at The Lovable Company's various outlet stores when they close in September, 1997. The workers provide retail selling of ladies' undergarments that are manufactured by The Lovable's production facilities.

The intent of the Department's certification is to include all workers of The Lovable Company adversely affected by increased imports of ladies' undergarments.

The amended notice applicable to TA–W–33,584 is hereby issued as follows:

''All workers of The Lovable Company, Buford, Georgia (TA–W–33,584); and at the various locations cited below, who became totally or partially separated from employment on or after June 9, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–33,584C St. Augustine, Florida
TA–W–33,584D Orlando, Florida
TA–W–33,584E Branson, Missouri
TA–W–33,584F Osage Beach, Missouri
TA–W–33,584G Sikeston, Missouri
TA–W–33,584H Commerce, Georgia
TA–W–33,584I Locust Grove, Georgia
TA–W–33,584J Eddyville, Kentucky
TA–W–33,584K Horse Cave, Kentucky
TA–W–33,584L Myrtle Beach, South Carolina
TA–W–33,584M Normal, Illinois
TA–W–33,584N Nashville, Tennessee
TA–W–33,584O Woodbridge, Virginia.''

Signed at Washington D.C. this 24 day of September, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27076 Filed 10–10–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,529]

Norton McNaughton, Incorporated, New York, New York; Notice of Revised Determination on Reopening

On September 22, 1997, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 20, 1997, because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce women's career and casual clothing. The denial notice was published in the **Federal Register** on July 18, 1997 (62 FR 38584).

Sales at Norton McNaughton, Incorporated declined from 1995 to

1996 and in January through April 1997 compared to January through April 1996.

Employment at the subject firm declined in January through April 1997 compared to January through April 1996.

A review of United States imports of women's career and casual clothing including women's and girls' jackets, shirts, blouses, sweaters and skirts reveal that imports increased absolutely and relative to domestic shipments from 1995 to 1996 and in the twelve months through March 1997 compared to the twelve months through March 1996. The ratio of imports to domestic shipments (I./S.) was more than 100 percent from 1995 through the twelve months ending March 1997.

U.S. imports of women's and girls' slacks and shorts increased absolutely and relative to domestic shipments from 1995 to 1996; the I./S. ratio was more than 100 percent. Imports continued to increase in the twelve months through March 1997 compared to the same time period a year earlier; the I./S. is not available but is estimated to be more than 100 percent.

U.S. imports of women's suits steadily increased from 1995 to 1996, and in the twelve months ending March 1997 compared to the twelve months ending March 1996. The I./S. ratio is not available for these time periods.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with women's career and casual clothing produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Norton McNaughton, Incorporated, New York, New York, who became totally or partially separated from employment on or after May 16, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 26th day of September 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–27073 Filed 10–10–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–149]

Conduct of Employees, Notice of Waiver Pursuant to Section 207(j)(5), Title 18, United States Code

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice.

SUMMARY: The Administrator of the National Aeronautics and Space Administration has determined, after consultation with the Director of the Office of Government Ethics, that it is in the national interest to waive the post-employment restrictions of Section 207, Title 18, United States Code, with respect to the former Director of the Kennedy Space Center, Jay Honeycutt.

FOR FURTHER INFORMATION CONTACT: R. Andrew Falcon, Office of the General Counsel, NASA Headquarters, Washington, DC 20546, 202–358–2028.

SUPPLEMENTARY INFORMATION: Section 207(j)(5) of Title 18 of the United States Code authorizes the Administrator of the National Aeronautics and Space Administration to waive the post-employment restrictions of sections 207(a)(1), 207(a)(2), and 207(c), to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications, where it has been determined that the national interest would be served by the participation of the former employee.

It has been established to my satisfaction that Jay Honeycutt, the former Director of Kennedy Space Center, has outstanding technological qualifications in space flight hardware and software development, mission control, launch processing, and flight operations. I am further satisfied that, as the President of Lockheed Martin Space Mission Systems and Services, he will be required to utilize those qualifications in the performance of his duties with respect to the development, operation, and upgrade of the Space Shuttle and related systems, and that it will be in the national interest to permit him to appear before and communicate with Government officials on these matters.

Therefore, after consultation with the Office of Government Ethics, I have waived the post-employment prohibitions of section 207(a)(1), 207(a)(2), and 207(c) of Title 18 of the United States Code in order to permit direct communications between Mr. Honeycutt and employees of NASA and other Government agencies with respect to space flight activities.

Daniel S. Goldin,

NASA Administrator.

[FR Doc. 97–27037 Filed 10–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–147]

Notice of prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective patent license.

SUMMARY: NASA hereby gives notice that AI Gordon Software, Inc. 5600 Clustermill Road, Greensboro, North Carolina 27407, has applied for a partially exclusive license for the patent application entitled ''System and Method for Creating Expert Systems,'' NASA Case No. GSC–13,672–1, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Stop 204, Greenbelt, MD 20771, telephone (301) 286–7351.

Dated: October 3, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–27035 Filed 10–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–148]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that CASI, of Signal Mountain, TN 37377, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent Numbers 5,214,388;

5,373,245; 5,515,001; and 5,539,292 entitled respectively, ''Phase Discrimination Capacitive Array Sensor,'' ''Capaciflector Camera;'' ''Current Measuring OP–AMP Circuits;'' and ''Capaciflector-Guided Mechanisms;'' and the following NASA inventions disclosed in NASA Case No. GSC–13,377–2, ''Driven Shield Capacitive Proximity Sensor,'' and NASA Case No. GSC–13710–1, ''3–D Capaciflector.'' All of the aforementioned inventions are assigned to the United States of America as represented by the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Keith L. Dixon, Patent Attorney, Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771; telephone (301) 286–7351.

Dated: October 3, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–27036 Filed 10–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–146]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Computer Sciences Corporation, 4601 Powder Miller Road, Calverton, Maryland 20705, has applied for a partially exclusive license for the patent application entitled ''System and Method for Creating Expert Sytems,'' NASA Case No. GSC–13,672–1, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

DATES: Responses to this notice must be received by December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Stop 204, Greenbelt, MD 20771, telephone (301) 286–7351.

Dated: October 3, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–27034 Filed 10–10–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: The Industry Executive Subcommittee (IES) of the President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Tuesday, October 21, 1997, from 9:00 a.m. to 12:30 p.m. The meeting will be held at Booz-Allen & Hamilton, Inc., 8283 Greensboro Drive, McLean, Virginia. The agenda is as follows:

—Call to Order/Welcoming Remarks
—NSTAC XX Planning
—Operations Support Group Report
—Information Infrastructure Group Report
—Network Group Report
—Legislative and Regulatory Group Report
—Adjournment

Attendance at this meeting is limited, due to the capacity of the meeting facility. Anyone wishing to attend this meeting must confirm their attendance with Ms. Janet Jefferson, Customer Service and Information Assurance Division, (703) 607–6209.

FOR FURTHER INFORMATION CONTACT: Ms. Jefferson or write the Manager, National Communications System, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 97–27038 Filed 10–10–97; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Art and the Humanities will be held at 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, in Room 714, from 9:00 a.m. to 5:30 p.m., on Monday, November 24, 1997.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and Humanities for exhibitions beginning after January 1, 1998.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Nancy E. Weiss, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, or call (202) 606–8322.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 97–27131 Filed 10–10–97; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company; (Point Beach Nuclear Plant, Unit Nos. 1 and 2); Exemption

I

Wisconsin Electric Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located at the licensee's site in Manitowoc County, Wisconsin.

II

The Code of Federal Regulations at 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain a

criticality accident monitoring system in each area where such material is handled, used, or stored. Subsection a(2) of 10 CFR 70.24 specifies detection and sensitivity requirements that these monitors must meet. Subsection a(2) also specifies that all areas subject to criticality accident monitoring must be covered by monitoring devices.

Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Subsection (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of subsection (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at Point Beach Nuclear Plant is in the form of nuclear fuel; the quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass. The Commission technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Point Beach Nuclear Plant and has determined that such an accident cannot occur if the licensee meets the following seven criteria:

1. Only one new fuel assembly is allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by Point Beach Nuclear Plant General Design Criterion 18 which is analogous to 10 CFR part 50, Appendix A, General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5 weight percent.

By letter dated June 7, 1997, Wisconsin Electric Power Company requested an exemption from 10 CFR 70.24. In this exemption request the licensee addressed the seven criteria given above. The Commission technical staff has reviewed the licensee's submittal and has determined that Point Beach Nuclear Plant, Units 1 and 2, meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in special nuclear materials handling or storage areas at Point Beach Nuclear Plant.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that, if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by Point Beach Nuclear Plant's General Design Criterion 18, in fuel storage and handling areas. Specifically, Point Beach Nuclear Plant's General Design Criterion 18 requires ''Monitoring and alarm instrumentation shall be provided for fuel and waste storage and associated handling areas for conditions that might result in loss of capability to remove decay heat and to detect excessive radiation levels.'' These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to Point Beach Nuclear Plant's General Design Criterion 18 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Wisconsin Electric Power Company an exemption from the requirements of 10 CFR 70.24 for the Point Beach Nuclear Plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 45883).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27085 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 97–04 to all holders of operating licenses for nuclear power plants, except those who have permanently ceased operations and have certified that fuel has been permanently removed

from the reactor vessel, to request that addressees submit information necessary to confirm the adequacy of the net positive suction head available for emergency core cooling (including core spray and decay heat removal) and containment heat removal pumps.

The generic letter is available in the NRC Public Document Room under accession number 9710060324.

DATES: The generic letter was issued on October 7, 1997.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: William O. Long at (301) 415–3026.

SUPPLEMENTARY INFORMATION: This generic letter only requests information from addressees under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The requested information will enable the staff to determine whether the NPSH analyses of addressees conform with the current licensing basis for their respective facilities, including the licensing safety analyses and the principal design criteria which require and/or commit that safety-related components and systems be provided to mitigate the consequences of design-basis accidents.

New NPSH analyses are neither requested nor required to be performed to respond to this information request. However, new NPSH analyses may be warranted if an addressee determines that changes in plant design or procedures have occurred which may have reduced the available NPSH. In such cases, each affected addressee must take appropriate corrective action to restore its facility to compliance, in accordance with the requirements stated in Appendix B to 10 CFR Part 50.

Dated at Rockville, Maryland, this 7th day of October 1997.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–27083 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on October 21 (Room T–2B3) and 22 (Room T–2B1), 1997, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 21, 1997—8:30 a.m. until the conclusion of business
Wednesday, October 22, 1997—8:30 a.m. until 12:00 Noon

The Subcommittee will continue its review of matters related to the Staff Requirements Memorandum dated May 27, 1997, regarding the use of uncertainty versus point values in the PRA-related regulatory decisionmaking process. The Subcommittee will also review the proposed final Standard Review Plan (SRP) sections and Regulatory Guides for risk-informed, performance-based regulation. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 7, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–27081 Filed 10–10–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of an Information Collection: Standard Forms 2803 and 3108

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 the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of an information collection. Form 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

There are approximately 520 respondents for SF 2803 and 260 respondents for SF 3108. It takes approximately 30 minutes to complete SF 2803 and 30 minutes to complete SF 3108. The hourly annual burden for SF 2803 is 260 and for SF 3108 is 130 for a total annual burden of 390 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 15, 1997.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–27111 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form SF 2802, SF 2802–B, RI 36–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised of the following information collections: SF 2802, Application for Refund of Retirement Deductions (Civil Service Retirement System); SF 2802B, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions; and RI 36–7, Marital Information Required of Refund Applicants. The OPM must have the SF 2802 completed and signed before paying a refund of retirement contributions from the Civil Service Retirement and Disability Fund. SF 2802B must be completed if there are spouse(s) or former spouse(s) who must be notified of the employee's intent to take a refund from the Fund. RI 36–7 is needed when the SF 2802 received at the OPM is incomplete about the applicant's marital status.

Approximately 35,000 SF 2802 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 26,250 hours. Approximately 31,500 SF 2802B forms are completed annually. We estimate it takes approximately 15 minutes to complete. The estimated annual burden is 7,875. Approximately 21,050 RI 36–7 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 3,508 hours. The total combined annual burden is 37,663 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before December 15, 1997.

ADDRESSES: Send or deliver comments to Lorraine E. Dettman, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–27112 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, October 23, 1997, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: October 6, 1997.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–27108 Filed 10–10–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Nu-Tech Bio-Med, Inc., Common Stock, $.01 Par Value) File No. 1–13900

October 7, 1997.

Nu-Tech Bio-Med, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

In making the decision to withdraw its Security from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security. The Company does not see any particular advantage in the dual trading of its securities.

The Company has complied with the Rules of the BSE by filing with such Exchange details of the reasons for such proposed withdrawal, and the facts in support thereof.

By letter dated September 22, 1997, the BSE informed the Company that the Exchange has no objection to the withdrawal of the Company's Security from listing on the BSE.

Any interested person may, on or before October 29, 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 exchange 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. 97–27040 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39191; File No. SR–AMEX–97–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to Revised Equity Fee Schedule

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] notice is hereby given that on September 24, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the fee change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the fee change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange has revised its schedule of fees imposed on trades in exchange-traded fund products (''EXTRA Funds'') executed on the Exchange.

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 fee change and discussed any comments it received on the fee change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently imposes a transaction charge and a regulatory fee on trades in equity securities executed on the Exchange. The Exchange's equity transaction charge is a two-part fee consisting of a share charge and a value charge, based on the total number of shares traded and the value of such shares, respectively. All equity trades executed through the Exchange's Post Execution Reporting (''PER'') order routing system up to 1,099 shares are exempt from Exchange equity transaction charges (excluding only those for the account of nonmember competing dealers). The Exchange also imposes a separate regulatory fee on all equity trades calculated at $.00005 times the value of shares traded.

The Exchange currently lists a number of exchange-traded fund products, which are subject to the Exchange's equity fee schedule. Standard & Poor's Depositary Receipts (''SPDRs'') is a fund product based on the S&P 500 Index that has traded on the Exchange since 1993. MidCap SPDRs and World Equity Benchmark Shares (''WEBS'') are also currently traded, with additional fund products expected to be traded in the future.

The Exchange is revising its schedule of equity fees to exempt customer (i.e., non broker-dealer) PER trades in exchange-traded fund products up to 5,099 shares from both the equity transaction charge and the regulatory fee. We believe that these changes are necessary in order to make the cost of trading on the Exchange comparable to the economics of trading these products in other markets.

The revised equity fee schedule will be implemented starting with transactions effected on September 26, 1997 or as soon as practical thereafter. The Exchange will notify member firms as to the date of effectiveness and as to any necessary modifications to provide for proper identification of orders entitled to the fee exemption.

(2) Statutory Basis

The fee change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b)(4)[2] in particular in that is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The fee change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[3] and subparagraph (e)(2) of Exchange Act Rule 19b–4.[4] At any time within 60 days of the filing of such fee change, the Commission may summarily abrogate such fee change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the fee change that are filed with the Commission, and all written communications relating to the fee change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–AMEX–97–34 and should be submitted by November 4, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b)(4).

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27041 Filed 10–10–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 39199; File No. SR–BSE–97–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to Its Transaction Fee Schedule

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1997, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its transaction fee schedule to implement two additional transaction fee maximums.

The text of the proposed rule change is available at the Office of the Secretary, BSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed fee revision is to respond to the needs of the Exchange's constituents with respect to overall competitive market conditions and customer satisfaction. As such, the Exchange intends to implement two additional transaction fee maximums.

A monthly transaction fee maximum (including both Trade Recording and Comparison and Value Charge fees) of $50,000 per member firm for all electronic order flow (both incoming and outgoing trades) is being implemented. The monthly electronic transaction fee maximum of $50,000 will precede the existing total volume maximum of $.45 per 100 average monthly shares. Member firms will continue to pay the current rate for Trade Recording and Comparison and Value Charge fees on all electronic trades up to the maximum charge of $50,000 for this type of order flow. Any electronic trading beyond the $50,000 electronic transaction fee cap will be assessed at $0.00 per 100 average monthly shares throughout the remainder of the month.[1] If at month's end, a member firm's fee for electronic order flow has reached the $50,000 maximum and its total volume rate per 100 average monthly shares exceeds $.45, the firm's transaction fees will then be capped at $.45 per 100 average monthly shares.[2]

A transaction fee maximum (including both Trade Recording and Comparison and Value Charge fees) for multiple automated cross trades is also being implemented. The transaction fee maximum of $.25 per 100 shares will apply once a firm has executed 100,000 average daily multiple automated cross trade shares. This maximum is in addition to the maximum rate per trade side of $25.00 for Trade Recording and Comparison fees and $50.00 for Value Charge fees. Member firms will pay the lesser of $.25 per 100 shares or the original rate per share at the time of execution.[3]

2. Statutory Basis

The basis for the proposed rule change is Section 6(b)(5) of the Act, in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities; 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; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other change imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4

[1] Telephone conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Sep. 17, 1997).

[2] For example, assume Member Firm ABC generated $100,000 in total transaction fees, $60,000 of which were associated with electronic order flow. Assume further that this $100,000 related to 200,000 total shares traded during the month. Under the new fee maximum, ABC's electronic order flow fees would be capped at $50,000 and any electronic order flow executed beyond this maximum would be assessed at $0.00 throughout the remainder of the month. At the end of the month, the Exchange would calculate the total fees generated by ABC's account, here $90,000 ($50,000 in electronic order flow plus $40,000 in non-electronic order flow), and divide it by the total number of shares traded during the month. Here, the Exchange would divide $90,000 by 200,000 shares, which would equate to a rate of $.45 per 100 average monthly shares. Thus ABC would pay a total of $90,000 in transaction fees for that month. If, however, the resulting rate were greater than $.45 per 100 average monthly shares, the total transaction fees would be further reduced to this maximum. Telephone Conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Sep. 24, 1997).

[3] For example, assume Member Firm ABC executed 2,500,000 multiple automated cross trade shares in a month comprised of 21 trading days. Under the new proposal, the cost structure of the first 2,100,000 multiple automated cross trade shares (21 trading days × 100,000 average daily shares) would not change. However, for every share of this type executed above and beyond 100,000 average daily shares (in this example, 2,100,000 shares), the cost per share would be the lesser of $.0025 per share or the original rate per share at the time of execution. If a 7,500 share cross trade generated a total fee of $30.00 ($.0040 per share), the total fee of this trade would be capped at $18.75 ($.0025 per share) for a reduction in the cost of the trade of $11.25. If the same trade generated a total fee of $15.00 ($.0020 per share), the total cost of the trade would remain at $15.00. Telephone Conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Oct. 1, 1997).

thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the 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–97–05 and should be submitted by November 4, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27047 Filed 10–10–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39202; File No. SR–CBOE–97–45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Certain Rules Governing Market-Maker Obligations With Respect to the Trading of Options on the DJIA

October 3, 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 September 8, 1997,[3] the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain of its rules governing market-maker obligations with respect to the trading of options on the Dow Jones Industrial Average (''DJIA'' or ''Index''). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain Exchange rules governing market-maker obligations with respect to the trading of options on the DJIA (trading symbol ''DJX''). Specifically, the Exchange is proposing to make the following changes with respect to trading in options on the DJIA: (i) Amending Rule 24.17 to apply the rules governing the Retail Automatic Execution System (''RAES'') eligibility in options on the Standard & Poor's 100 Stock Index (''S&P 100'') (''OEX'') to options on the DJIA; (ii) amending Rule 24.17 to add an interpretation and policy that the provisions of paragraph (b)(v)(C) and (D) will not apply to DJX market makers until December 1, 1997; (iii) creating Rule 24.17A, RAES Operations in Options on the DJIA, which applies the RAES operations in OEX to DJX and states that the Exchange can determine the maximum order size for RAES orders for options on the DJIA up to 100 contracts, a higher level than for OEX; (iv) amending paragraph (a)(2) of Rule 8.51 (and related interpretations) governing the minimum firm quote requirement, for a market-maker trading crowd; (v) applying the terms of the previously approved OEX firm quote program to the DJX trading crowd, and amending the fine amount under the Minor Rule Plan for violations of the Firm Quote Rule; (vi) amending the fine schedule for violations of the Firm Quote Rule for OEX; and (vii) amending Rule 8.16, RAES Eligibility in Equity Options, to indicate that it does not apply to DJIA options.[4]

The purpose for these proposed rule changes is to enhance market-maker obligations with respect to the trading of options on the DJIA. The Exchange expects these change to enhance the depth and liquidity of the market for options on the DJIA. The Exchange also notes that because option contracts on the DJIA will be based upon one-one hundredth of the value of the DJIA, these options contracts will overlie approximately one-tenth of the value that other broad-based index options overlie, such as options on the Standard & Poor's 500 Stock Index (''SPX'') and on OEX. This is so because the values of the S&P 500 Index and the S&P 100 Index currently are approximately one-tenth of the value of the DJIA, yet OEX and SPX are based on the full value of their respective underlying indexes. Consequently, the Exchange believes an increase in these market-maker obligations is necessary to ensure an appropriate level of market-maker commitment.

Under the proposed rule change, the rules applicable to RAES in OEX will apply to RAES in DJX. The proposed rule change revises Rule 24.17, RAES Eligibility in OEX to refer to ''Option Class'' instead of OEX. ''Option Class'' will mean either OEX or DJX, as appropriate. Also, the Rule will be revised to refer to the ''appropriate Committee'' which will mean the OEX Market Performance Committee'' the

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 to the proposed rule change, the substance of which is incorporated into this notice. See letter from Timothy H. Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Market Regulation, Commission, dated September 16, 1997 (''Amendment No. 1'').

[4] The Exchange's OEX firm quote program was approved by the Commission under Section 19(b) of the Act in Securities Exchange Act Release No. 37388 (June 28, 1996), 61 FR 35821 (July 8, 1996).

case of OEX and ''the Exchange Committee to which the Exchange delegates the market performance function for options on the DJIA'' in the case of DJX. The proposed rule change also adds Interpretation and Policy .02 to Rule 24.17 to state that the provisions of paragraphs (b)(v) (C) and (D) (formerly paragraphs (a)(v) (C) and (D)) shall not apply to DJX market makers until December 1, 1997.[5]

The proposed rule change also adds a new Rule 24.17A that sets forth the RAES Operations for Options on the DJIA, stating that RAES will operate the same for DJX as for OEX, including that the Exchange shall determine that series will be eligible for RAES in DJX. Over the years, the Commission has approved OEX RAES operational policies to Section 19(b) of the Act; however, these policies have not been codified in the Exchange rules. CBOE now proposes that these policies also extend to DJX.[6] For example, the proposed rule change will apply DJX RAES the OEX RAES that allows OEX RAES orders to trade ahead of orders on the customer limit order book in situations where the displayed bid or offer is equal in price to a customer order, reflected in the limit order book. This is an exception to the normal protection afforded customer orders on the book, where RAES orders entered when a booked order matches the price of the disseminated bid (for a RAES order to sell) or offer (for a RAES order to buy) are ''kicked out'' of RAES and generally executed manually on the floor.[7]

The Exchange believes that it is reasonable to apply this OEX RAES policy to DJX, based upon the way in which the Exchange expects the DJX trading crowd to function, the amount of protection it expects the ''stranded'' booked orders to receive on the floor, and the operational difficulties associated with ''kicking out'' RAES orders for manual execution on the floor.[8]

Specifically, CBOE has stated that it expects this portion of the proposed rule change to have only a nominal effect on the execution of booked orders because, based on information gathered from talking to firms and investors, it believes that DJX will attract a large order flow and that large market-making firms will have a presence in the trading crowd. The Exchange believes that this combination of active order flow and liquid, well-capitalized traders will result in the DJX trading floor operating much like the trading floors in OEX and IBM. The Exchange believes that in this type of trading environment where there is high liquidity, the likelihood that a booked order will not be executed after the execution of a RAES order at the same price is small. In addition, the CBOE notes that the likelihood of the ''stranded'' order not being executed is diminished by the Exchange's existing priority rule, Rule 6.45, which ensures that no transaction can take place on the floor at a price equal to or better than the price of the booked order until the booked order has been filed.[9] Finally, CBOE states that the adverse effects to customer orders that would result if RAES orders were ''kicked out'' to be executed on the trading floor, such as delayed and missed executions, outweigh the potential disadvantage that might result to customer limit orders on the book from the proposed limited exception to the normal priority rules.[10]

Proposed Rule 24.17A also states that the Exchange will have the discretion to set the eligible order size for RAES orders up to one hundred (100) contracts. The Exchange believes expanding the eligible contract limit size for RAES will provide the benefits of: more timely and cost-effective executions of customer options orders to a greater number of orders than would be the case if no changes were made; enhanced audit trail; enhanced fill reporting and price reporting; increased customer confidence; and reduction of transactions that have to be executed manually on the trading floor, thereby increasing the efficiency in the handling of non-RAES orders. The Exchange also notes that Rule 24.15(e) allows the Exchange to set an eligible order size of up to ninety-nine contracts for SPX options. As noted, an SPX option covers approximately ten times the value of an option on the DJIA.

CBOE believes that this proposed rule change will not impose any significant burdens on the operation, security, integrity, or capacity of RAES, but will increase the efficiency of the Exchange operations.

The Exchange also is proposing to amend Rule 8.51 to allow the firm quote requirement for options on the DJIA to be set at a level of up to one hundred (100) contracts. Under Rule 8.51, a trading crowd is obligated to fill non-broker-dealer customer orders for up to the specified number of contracts at the quotes that are displayed when the order reaches the trading station at which the option is traded. The reasons specified above justifying the change in the maximum RAES order size—the relatively smaller dollar value of options on one-one-hundredth of the DJIA as compared to other broad-based index options and the Exchange's desire to enhance the depth and liquidity of the market for options on the DJIA—apply equally to this proposed change in the firm quote requirement. The exchange is also proposing to amend Interpretations .01 and .03 to Rule 8.51 to make these interpretations consistent with the change to paragraph (a) of Rule 8.51.

Finally, the Exchange is proposing to apply the terms of the OEX firm quote program to trading in DJX. Among the significant terms of the firm quote program are that: Floor Officials may designate one or more market-makers to take the contra side of a transaction if market-makers do not voluntarily honor the trading crowd's obligation; market-makers have the obligation to state the size of their markets if those markets are for less than the DJX firm quote limit; market-maker and broker-dealer quotes for less than the firm quote limit will

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[5] Rule 24.17(b)(v) (C) and (D) state that a market maker in RAES who wants to participate in OEX (and now DJX) must execute at lease seventy-five percent of his market-maker contracts for the preceding calendar month in OEX and execute at least seventy-five percent of his market maker trades for the preceding calendar month in OEX (and now DJX) in person.

[6] See letter from Timothy H. Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Market Regulation, Commission, dated September 24, 1997 (''September letter''). *See* Securities Exchange Act Release Nos. 23490 (August 1, 1996), 51 FR 28788 (August 11, 1986) (firms on the Order Routing System will automatically be on RAES for purposes of routing small public customer market or marketable limit orders into RAES; the system will automatically attach a price to an order when it receives the order, which price will be determined from this displayed quote at the time of the order's entry; RAES orders that match customer orders on the book will not be kicked out but will be executed on RAES against normal priority rules; participating market makers will be assigned to the system as contraparties on a rotating basis; Exchange rule shall not apply to the extent they are inconsistent with the terms of the program; RAES orders will count towards fulfillment of the in-person requirement of Rule 8.7); and 38702 (May 30, 1997), 62 FR 31184 (June 6, 1997) (all or none, immediate or cancel, fill or kill, and minimum quantity contingency orders that are otherwise RAES eligible may be executed on RAES).

[7] See *supra* note 6 and letter from Timothy H. Thompson, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated October 2, 1997 (''October letter''). OEX and IBM options are the only two classes where RAES orders are granted priority over booked orders.

[8] See October letter *supra* note 7. The primary purpose and benefit of this policy of ''kicking out'' RAES orders is to allow the ''kicked out'' RAES order to interact with the booked order.

[9] The Commission notes that this does not take into account the market moving through the booked order before it is executed.

[10] The Exchange expects the number of DJX RAES orders that would be ''kicked out'' under the normal priority rules would be significant because of the fact that DJX is designed to appeal to retail customers who are more likely to send in small RAES eligible orders, the larger RAES eligible order size for DJX, and the greater percentage of DJX series that will be eligible for RAES in DJX (all series) than in OEX (only those series where the offer is $10 or less are currently eligible).

not be displayed;[11] and Floor Brokers may choose one of two alternatives in obtaining a fill under the Firm Quote Rule, as described in the first circular attached as Exhibit B to the submitted filing.

The second Firm Quote Circular, attached as Exhibit C to the submitted filing, sets forth a schedule of fines that may be imposed pursuant to the Minor Rule Violation rule for violation of the Firm Quote Rule. The Exchange believes that both of these circulars are essentially identical to the OEX firm quote program circulars except that they apply to trading in DJX and they accordingly have a different firm quote requirement. In addition, the Exchange has decided to adopt a policy whereby the fine for a third and fourth violation of the firm quote policy in both DJX and OEX would be $2,500, and for subsequent violations there is a mandatory referral to the Business Conduct Committee (''BCC'').[12] The Exchange will reissue the OEX circular with the revised fine schedule. The Exchange notes that although the upper fine limit is being reduced, the Exchange will exercise its authority to commence a disciplinary proceeding pursuant to Exchange Rule 17.2 in egregious situations and will refer the case to the BCC for violations past the fourth violation. Of course, in disciplinary proceeding the violating member could be subject to even greater fines and other sanctions including suspension.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Exchange believes that accelerated effectiveness of the proposed change is appropriate because the Commission has approved other proposals by options exchanges allowing similar increases in the number of option contracts eligible for automatic execution[13] and has approved an essentially identical firm quote program for OEX. In addition, for the same reasons, the Exchange believes an increase in the firm quote requirement is justified and that the increase in the firm quote requirement is a benefit to public customers without any disadvantages to public customers. Also, because options on the DJIA are based on one-one hundredth of the value of the Index, the value of the Index underlying an option on the DJIA is only approximately one-tenth or the value of the indexes underlying certain other broad based indexes which have a RAES eligible order size of ten or more and a firm quote requirement of ten. Therefore, the Exchange believes no unique or novel questions are raised by this change.

2. Statutory Basis

By establishing market-maker obligations with respect to trading options on the DJIA, including a firm quote requirement and a maximum size for DJX orders eligible for execution through RAES, the Exchange believes that the proposed rule change will better serve the needs of CBOE's public customers and the Exchange members who make a market for such customers, and is consistent with and furthers the objectives of Section 6(b)(5) of the Act[14] in that it is 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 to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. 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–CBOE–97–45 and should be submitted by November 3, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[15] in that it is 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 to protect investors and the public interest.[16]

The Commission believes it is reasonable for the Exchange to amend Rule 24.17 to apply the OEX RAES eligibility requirements to DJX, and to apply the terms of the previously approved firm quote program for OEX to DJX because they are similar products that are expected to trade in a similar manner and it is necessary to have a RAES rule and a firm quote program in order to ensure efficient trading in DJX. Also, the Commission believes it is reasonable under the Act to exempt DJX market makers from the requirements in amended Rule 24.17(b)(v)(C) and (D)[17] until December 1, 1997 because when options on the DJIA begin to trade on October 6, 1997 there will be no ''preceding month'' against which to measure a DJX market maker's performance.

The Commission also believes it is reasonable for the Exchange to establish

[11] The largest possible firm quote limit will be 100 contracts, which is approximately equal in value to 10 contracts in OEX. In addition, broker-dealer orders for less than the applicable firm quote requirement will not be disseminated.

[12] The current fine schedule for violations of the firm quote policy for OEX states that the fine for third and subsequent violations is $3,000 to $5,000.

[13] See Securities Exchange Act Release Nos. 38169 (January 14, 1997), 62 FR 3547 (January 23, 1997) (order approving File No. SR–CBOE–96–72) (increasing the maximum order size eligibility for interest rate options); 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (order approving File No. SR–PHLX–95–39) (increasing the maximum execution order size eligibility for public customer orders for all equity and index options to 50 contracts); 33476 (January 13, 1994), 59 FR 3140 (January 20, 1994) (order approving File No. SR–Amex–93–33) (increasing the size of Japan Index options orders eligible for automatic execution to 99 contracts); and 25950 (July 28, 1988), 53 FR 29293 (August 3, 1988) (order approving File No. SR–Amex–87–20) (increasing the number of Institutional Index options eligible for automatic execution to 100 contracts).

[14] 15 U.S.C. 78f(b)(5).

[15] U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] See supra note 6.

Rule 24.17A, RAES Operations in DJX, which will be the same for OEX except for the maximum contract size eligible for RAES. The maximum size for RAES in DJX will be up to 100 contracts, whereas the maximum size for OEX is 10 contracts. Similar to OEX, the Exchange will have the authority to choose which DJX series will be eligible for RAES.[18]

As a general rule, the Commission believes that customer limit orders in the limit order book should receive priority protection over other orders when the quoted market touches the limit order. Specifically, RAES orders generally should not be executed by market makers when customer limit orders are also price eligible to interact with the RAES orders. The Commission believes that exceptions to this principle are only appropriate in limited circumstances where it is unlikely that affected limit orders will receive an inferior execution. The Commission has previously approved CBOE rule changes that afforded such an exception in two highly liquid options classes, OEX index options and IMB equity options. After careful review, the Commission has determined that it is appropriate to allow DJX RAES orders to be automatically executed notwithstanding the possibility that customer limit orders could be priced identically to the prevailing disseminated best bid or offer. The Commission notes that it is basing this approval upon the fact that the Exchange expects DJX to be a heavily traded index product. As a result, it is anticipated that most limit orders will receive fair executions, particularly since CBOE Rule 6.45 ensures that no transaction can take place on the floor at a price equal to or better than the price of the booked order until the booked order has been filled. The Commission expects the Exchange to monitor the actual depth and liquidity of the DJCX trading floor and the treatment of customer orders on the limit order book that are traded behind RAES orders at the market.

The Commission also believes that increasing the number of DJX contracts eligible for RAES and to increase the firm quote requirement for DJX is consistent with the Act because options on the DJIA are approximately one-tenth the value of options on indexes underlying other broad-based indexes.[19] Therefore, increasing the RAES eligibility and firm quote requirements for DJX should enhance market maker obligations and commitments in these options, as well as help add depth and liquidity to the market for DJX. In addition, increasing the size of the RAES eligibility for DJX will provide the benefits of RAES execution to a larger number of customer orders and reduce the number of transactions to be executed manually on the floor, which could increase the efficiency of executing non-RAES orders.

The Commission believes it is consistent with the Act to amend the Minor Rule Plan fine amount for violations of the firm quote rule for both OEX and DJX because the amended fine schedule should still ensure adequate and effective enforcement of the firm quote program. The amended fine amount for third and fourth violations of the firm quote policy, which will be $2500[20] is a reasonable amount in order to help deter non-compliance with the firm quote program, and there will now be mandatory referral to the BCC for any violations after the fourth violation. In addition, the Commission notes that the Exchange always has the authority to commence a full disciplinary proceeding under Exchange Rule 17.2 under its Minor Rule Plan program for any violation of the firm quote program, and that the CBOE stated that it will exercise this authority in egregious situations.[21]

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The Commission believes that accelerated approval of the proposal is appropriate because it believes the proposed changes to the various trading rule should become effective prior to the day that the CBOE begins to trade options on the DJIA, in order to ensure that all rules applicable to trading DJIA options are in place prior to when such trading commences. In addition, the Commission has previously approved similar increases in the number of options contracts eligible for automatic execution on other options exchanges[22] and has previously approved the almost identical firm quote program for OEX.[23] Finally, the Commission believes that the proposed rule change does not raise any significant regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2)[24] that the proposed rule change, as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

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[18] The Commission requests that the CBOE distribute a Notice to Members discussing all RAES operations and policies that will apply to DJX. In addition, the Commission expects CBOE, in the near future, to codify RAES operations for OEX and DJX in manner similar to that for SPX.

[19] The Commission notes that this reasoning applies to an option contract based upon one-one-hundredth of the DJIA and that the same reasoning would not apply if the COE were to start trading an options contract based upon one-tenth of the DJIA. The Commission expects the CBOE to reset the RAES eligible size and the firm quote limit accordingly for an options contract based on one-tenth of the DJIA.

[20] The current fine schedule for violations of the firm quote program for OEX states that the fine for third and subsequent violations is $3000 to $5000.

[21] The Commission believes it is reasonable under the Act to amend Rule 8.16, RAES Eligibility in Equity Options, to indicate that it does not apply to DJIA options because DJX will now be covered by the RAES eligibility rule for OEX.

[22] See *supra* note 4.

[23] See *supra* note 5.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39196; File No. SR–NASD–97–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trading Halts

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1997, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, with Items have been prepared by the Nasdaq Stock Market, Inc. (''Nasdaq''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 4120 and IM–4120–1 to expand Nasdaq's trading halt authority and to clarify procedures for initiating certain trading halts. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

4120. Trading Halts

(a) Authority to Initiate Trading Halts

In circumstances in which [the Association] *Nasdaq* deems it necessary to protect investors and the public

interest, [the Association] *Nasdaq* may, pursuant to the procedures set forth in paragraph (b):

(1) halt trading in the over-the-counter market of a security *listed on Nasdaq* [authorized for inclusion in Nasdaq pending] *to permit* the dissemination of material news;

(2) halt trading in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or

(3) halt trading by [ITS/CASES]*: (i) CQS* market markers [of a] *in a CQS* security [listed on a national securities exchange and authorized for inclusion in the ITS/CAES linkage during] *when a national securities exchange imposes* a trading halt [imposed by such exchange] *in that CQS security* because of an order imbalance or influx (''operational trading halt''); *or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security.* [ITS/CAES] *CQS and Nasdaq* market makers may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b)[.]*; or*

(4) halt trading in an American Depository Receipt (''ADR'') or other security listed on Nasdaq, when the Nasdaq-listed security or the securities underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or

(5) halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(i) material news;

(ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300 and 4400 Series; or

(iii) any other information which is necessary to protect investors and the public interest.

(b) Procedure for Initiating a Trading Halt

(1) [The Board of Governors requires that] Nasdaq issuers *are required to* notify [the Association]*Nasdaq* of the release of any material news prior to the release of such information to the press as required by Rule 4310(c)(16) and 4320(d)(15).

(2) Notification shall be provided directly to [the Association's Market Regulation] *Nasdaq's MarketWatch* Department by telephone*, facsimile, or other compatible means of electronic communication.** Information communicated orally by authorized representatives of a Nasdaq issuer should be confirmed promptly in writing.

(3) Upon receipt of [the] information [the Association, after consultation with the issuer,] *from the issuer or other source, Nasdaq* will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

[(4) Should the Association determine that a trading halt pending the dissemination of material news is necessary and in the public interest, the trading halt will become effective simultaneously with appropriate notice in the Nasdaq ''NEWS'' frame.

(5) Should a national securities exchange notify the Association that it has halted or will halt trading in a security listed on that exchange pending the dissemination of material news, the Association may halt trading in such security in the over-the-counter market. The commencement of the trading halt will be effective simultaneously with appropriate notice in the Nasdaq ''NEWS'' frame.]

(4) Should Nasdaq determine that a basis exists under Rule 4120(a)(1), (a)(2), (a)(3), (a)(4), or (a)(5) for initiating a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice in the Nasdaq ''NEWS'' frame.

[(6)] *(5)* Trading in a halted security shall resume upon notice via the Nasdaq ''NEWS'' frame that a trading halt is no longer in effect.

IM–4120–1. Disclosure of Material Information

Rules 4310(c)(16) and 4320(d)(15) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through the news media any material information which would reasonably be expected to effect the value of their securities or influence investors' decisions and that Nasdaq issuers notify [the Association] *Nasdaq* of the release of any such information prior to its release to the public through the news media. [The Board of Governors] *Nasdaq* recommends that Nasdaq issuers provide such notification at least ten minutes before such release.* Under unusual circumstances issuers [are] *may* not *be* required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its *legitimate* corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to [the Association] *Nasdaq* upon request pursuant to Rules 4310(c)(15) or 4320(d)(14).

Whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether [conditions requiring corrective action exist and, if so, should take whatever action is appropriate] *there is material information or news which should be disclosed*. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public*, or if information from a source other than the issuer becomes known to the investing public,* a clear public announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though *the issuer may not have previously been advised of such information or* the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Trading Halts

A trading halt benefits current and potential shareholders by halting all trading in any Nasdaq securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known to them but which is not known to others. [A trading halt normally lasts until one half hour after the appearance of the news on wire services but it may last longer if a determination is made that the news has not been adequately disseminated.] A trading halt provides the public with an opportunity to evaluate the information and consider it

* The current telephone number is 1–800–537–6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590–6413. The StockWatch fax number is (301) 590–6482.

* Notification may be provided to the [Market Regulation] MarketWatch Department by telephone 1–800–537–3929, (301) 590–6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590–6413. Information communication orally should be confirmed promptly in writing. The StockWatch fax number is (301) 590–6482.

in making investment decisions. It also alerts the marketplace to the fact that news has been released.

[The Association's Market Regulation] *Nasdaq's Market Watch* Department monitors real time trading in all Nasdaq series during the trading day for price and volume activity. In the event of certain price and volume movements, the [Market Regulation] *Market Watch* Department may contact an issuer and its market makers in order to ascertain the cause of the unusual market activity. The [Market Regulation] *Market Watch* Department treats the information provided by the issuer and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. A Nasdaq listing includes an obligation to disclose to the [Market Regulation] *Market Watch* Department information that the issuer is not otherwise disclosing to the investing public or the financial community. On occasion, changes in market activity prior to the issuer's release of material information may indicate that the information has become known to the investing pubic. *Changes in market activity also may occur when there is a release of material information by a source other than the issuer, such as when a Nasdaq issuer is subject to an unsolicited take-over bid by another company.* Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the [Market Regulation] *Market Watch* Department may work with the issuer to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated [a] *e*ffect of the information on the price of the issuer's securities, the [Market Regulation] *Market Watch* Department may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. *A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.*

The [Market Regulation] *Market Watch* Department is required to keep non-public information[, including denial of rumors,] confidential and to use such information only for regulatory purposes.

Material information which would reasonably be expected to affect the value of the securities of an issuer or influence investors' decisions would include information regarding issuer events of an unusual and/or nonrecurrent nature. The following list of events, while not an exhaustive summary of all situations in which disclosure to [the Association] *Nasdaq* should be considered, may be helpful in determining whether information is material. It should also be noted that every development that might be reported to [the Association] Nasdaq in these areas would not necessarily be deemed to warrant a trading halt.

- A merger, acquisition or joint venture;
- A stock split or stock dividend;
- Earnings and dividends of an unusual nature;
- The acquisition or loss of a significant contract;
- A significant new product or discovery;
- A change in control or a significant change in management;
- A call of securities for redemption;
- The public or private sale of a significant amount of additional securities;
- The purchase or sale of a significant asset;
- A significant labor dispute.
- Establishment of a program to make purchases of the issuer's own shares;
- A tender offer for another issuer's securities; and
- An event requiring the filing of a current report under the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing amendments to Rule 4120 to expand its existing trading halt authority. Rule 4120 currently sets out the bases on which Nasdaq may initiate trading halts. In addition to the existing bases, the proposed amendments authorize Nasdaq to: halt trading in the third market of a CQS security when a national securities exchange halts trading in such security for operational reasons; halt trading in a Nasdaq-listed security that is a derivative or component of a CQS security, when a national securities exchange halts trading in the underlying CQS security for operational reasons; halt trading in an American Depository Receipt (''ADR'') or other Nasdaq-listed security when a national or foreign securities exchange or regulatory entity imposes a regulatory trading halt in the security underlying the ADR or the Nasdaq-listed security; and halt trading when Nasdaq requests from an issuer information relating to material news or the issuer's compliance with Nasdaq listing qualification requirements. Additionally, the proposed amendments clarify that the procedures in the rule permit Nasdaq to initiate trading halts when material information emanates from a source other than the issuer.

First, the proposed amendments expand Nasdaq's existing authority to initiate a trading halt in the third market of an exchange-listed security when the primary market initiates an operational trading halt in such security.[1] Rule 4120(a)(3) currently authorizes Nasdaq to impose an operational trading halt in a security listed on a national securities exchange and traded through the ITS/CAES linkage.[2] Under the current rule, Nasdaq may initiate a trading halt when there is an order imbalance or influx in

[1] The ''third market'' is the market for exchange-listed securities away from exchange markets.

[2] ITS/CAES is the NASD's link to the Intermarket Trading System (''ITS''), which is a system that enables ITS/CAES market makers to trade certain exchange-listed securities—known as SEC Rule 19c–3 securities—by allowing such market makers to direct agency and principal orders to, and receive orders from, other ITS members. SEC Rule 19c–3 prohibits off-board trading restrictions from applying to securities that: (1) were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. (The Computer Assisted Execution System (''CAES'') is the NASD's automated system that allows members to direct principal and agency orders in exchange-listed securities to CAES for automated execution in the third market). Thus, pursuant to the ITS Plan, trading in ITS/CAES is limited to SEC Rule 19c–3 securities and excludes those securities not subject to SEC Rule 19c–3.

the security and the primary market halts trading to resolve operational issues. The proposed amendments expand Nasdaq's authority and permit Nasdaq to halt trading in all securities traded in the third market (*i.e.,* CQS securities) [3]—not just those securities traded through the ITS/CAES linkage—when a national securities exchange initiates an operational trading halt in the CQS security.[4]

In addition, the amendments authorize Nasdaq to halt trading in a security which is listed on Nasdaq and which also is a derivative or component of a CQS security (such as convertible bond, warrant, or unit), when a national securities exchange imposes an operational trading halt in the CQS security, *i.e.,* when a national securities exchange halts trading in a CQS security for an order imbalance. Currently, the Nasdaq-listed derivative security would not be halted in conjunction with the operational trading halt in the CQS security, thus making it difficult for market makers in the Nasdaq-listed security to price accurately the derivative security due to the lack of current pricing information in the underlying CQS security. That is, because the primary market is temporarily closed, price discovery is not occurring in that venue, and market makers must attempt to determine pricing independent of the primary market or may wait until the primary market reopens to price their issues. The proposed amendments, however, would allow Nasdaq to halt trading in the Nasdaq-listed security, such as a Nasdaq-traded convertible bond whose value is tied closely to an exchange-listed security, when a national exchange initiates an operational trading halt in a CQS security. Similar to the current provisions of Rule 4120(a)(3), the proposed amendments permit CQS and Nasdaq market makers to commence quotations and trading at any time following the initiation of the operational trading halt. Nasdaq believes that the proposed amendments foster orderly markets and investor protection because they allow Nasdaq to halt trading—based on a national securities exchange's operational trading halt—to allow market makers in related issues to assess the situation and determine the appropriate pricing of the security.

Second, Rule 4120 is being amended to authorize Nasdaq to halt trading in an ADR or other security listed on Nasdaq, when a national or foreign securities exchange or regulatory authority, for regulatory reasons, imposes a trading halt in the security underlying the ADR or the dually-listed (Nasdaq) security. There are times when another exchange, market, or regulatory entity—such as a Canadian commission or European market center with which a Nasdaq company's securities are registered or listed—implements a regulatory trading halt. These trading halts sometimes occur because the issuer is delinquent in making a required filing with the national or foreign securities exchange or regulatory entity, or the market or regulatory entity halts trading in the company's stock for a violation of that entity's rules or regulations. For example, an issuer, which is registered as a reporting company with a Canadian regulatory commission and which also is a Nasdaq-listed company or has its ADRs listed on Nasdaq, becomes delinquent in its filings with the Canadian commission. The Canadian commission subsequently initiates a trading half in the issuer's securities. Currently, trading would continue on Nasdaq even though regulatory concerns prompted another regulatory entity to halt trading in the issuer's securities, because the issuer is in compliance with Nasdaq filing requirements. Under the proposed amendments, however, Nasdaq could halt trading.

Specifically, the amendments authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when the Nasdaq-listed security underlying the ADR is listed on or registered with a national or foreign securities exchange or market and trading is halted in the security for regulatory reasons by such exchange or market, or regulatory authority overseeing such exchange or market. Thus, the amendments ensure investor protection because they allow Nasdaq to take coordinated action when another market or regulatory authority identifies a regulatory basis for halting trading in an issue.

Third, Rule 4120(a)(1) currently permits Nasdaq to halt trading in a Nasdaq-listed security to permit the dissemination of material news, and Rules 4120(b)(1)–(3) set out the procedures for doing so.[5] Specifically, Rule 4120(b)(1) requires Nasdaq issuers to inform Nasdaq of any material news prior to the release of such information, and Rule 4120(b)(3) authorizes Nasdaq to evaluate information provided by the issuer to determine if trading should be halted prior to the release of such information. Rule 4120(b)(3) does not specifically set out procedures for initiating a trading halt when Nasdaq is advised of material news about a particular Nasdaq issuer and such news emanates from a source other than that issuer. For instance, a Nasdaq issuer may be subject to an unsolicited take-over bid by another company, of which the Nasdaq-listed company is unaware. In such instance, the acquiring issuer might disseminate news about the unsolicited take-over bid to the public; thus, Nasdaq may learn of information warranting a trading halt from a source other than the Nasdaq issuer, such as a news headline.[6] The proposed amendments to Rule 4120(b)(3) and IM–4120–1 clarify that Nasdaq may halt trading when Nasdaq learns of material news about an issuer, regardless of whether the news emanates from the particular issuer or from another source. Furthermore, proposed amendments to Rule 4120(b)(3) reflect that Nasdaq may halt trading without first consulting the issuer about material news because it may not be practicable or possible for Nasdaq to do so, such as when material news is released (without consultation with Nasdaq) by a source other than the issuer.

Next, the proposed amendments permit Nasdaq to halt trading when Nasdaq requests information from an issuer relating material news or qualification matters. For example, Nasdaq may be advised of material news about an issuer which appears to be

[3] The Consolidated Quotation System (''CQS'') is a service that provides quotations of all participating exchange specialists and market makers on all securities listed on the New York Stock Exchange and the American Stock Exchange, and selected securities listed on the regional stock exchanges.

[4] Thus, the proposed amendments would give Nasdaq expanded authority to initiate operational trading halts in the third market of SEC Rule 19c–3 securities, as well as those securities not subject to SEC Rule 19c–3.

[5] The proposed change to Rule 4120(a)(1) specifies that trading in a Nasdaq-listed security may be halted ''to permit'' the dissemination of material news. (Rule 4120(a)(1) currently provides that trading in a Nasdaq-listed security may be halted ''pending'' the dissemination of material news.) The rule is being amended to specifically authorize Nasdaq to halt trading when material news technically is not ''pending'' but a trading halt is necessary to protect investors and maintain an orderly market. For example, there are instances where Nasdaq is not advised of pending material news, material news is disseminated partially, and Nasdaq learns of such news, and Nasdaq quickly determines that a halt is necessary to permit complete dissemination of the material news. Additionally, the amendments to Rule 4120(a)(1) will bring it into parity with the language in Rule 4120(a)(2).

[6] If the company initiating the unsolicited take-over bid is a Nasdaq issuer, that company—in certain circumstances—may not be required to report the take-over bid to Nasdaq if such information is not material to the company. Thus, even if the company initiating the bid is listed on Nasdaq, Nasdaq may not be apprized of such information by either the Nasdaq company which is initiating the unsolicited take-over or the Nasdaq company which is the target of the unsolicited take-over.

factually inaccurate or incomplete. This incomplete or inaccurate disclosure may raise regulatory and listing qualification issues (*i.e.*, whether the issuer is in compliance with all Nasdaq listing requirements, as set out in the Rule 4300 and 4400 Series), which Nasdaq staff would thoroughly investigate, *i.e.*, when a Nasdaq-listed company issues a press release making highly questionable claims of significant discovery. The Nasdaq company is unable to immediately substantiate the basis for the claims, which raises serious concerns with Nasdaq as to the accuracy of the company's public statement. Accordingly, Nasdaq staff determines that additional information from the issuer is required to evaluate whether the company's public statement is accurate or requires further clarification. The proposed amendments permit Nasdaq, upon the request of certain information, to halt trading so that it may determine whether continued trading is advisable once the information is received and reviewed.

Nasdaq is proposing to amend IM–4120–1 to clarify that all trading halts initiated under Rule 4120—not just those imposed to permit the dissemination of material news—generally last one half hour, but may last longer if necessary to permit the dissemination of material news or if the original or an additional basis under Rule 4120(a) exists for continuing the halt. Furthermore, the statement in IM–4120–1 that Nasdaq will keep denials of rumors confidential is deleted to reflect Nasdaq's policy of issuing press releases indicating that MarketWatch has reviewed unusual trading activity, has contacted the issuer, and is not initiating a halt because it has not been advised of a basis for doing so.[7]

The proposed amendments also include minor conforming changes to both Rule 4120 and IM–4120–1. For example, the procedures for halting trading have been consolidated into a revised Rule 4120(b)(4) in light of the inclusion of the additional bases for initiating trading halts. References in Rule 4120 and IM–4120–1 to the ''Association'' and ''Market Regulation Department'' have been replaced with references to ''Nasdaq'' and ''MarketWatch Department'' respectively, to reflect that Nasdaq has authority for trading halts under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. Changes to Rule 4120(b)(2) reflect that issuers may notify MarketWatch of material news by facsimile, as well as by telephone—which is stated in the accompanying footnote to the rule but not in the rule text. Finally, references in Rules 6350(b) and 6430(b) to operational trading halts for ITS/CAES market makers have been changed to reflect that Rule 4120 will authorize Nasdaq to initiate trading halts for CQS market makers, as well as ITS/CAES market makers.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, in that it is designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment 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. As noted above, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer), and thus will prevent fraudulent practices and protect investors. The proposed rule changes also will broaden Nasdaq's authority to impose operational trading halts in the over-the-counter markets when market conditions so warrant, and thus will remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–97–60 and should be submitted by November 3, 1997.

For the Commission, by the Division of the Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27049 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

[7] Note that under the proposed amendments, Nasdaq still is required to keep confidential all non-public information and use such information only for regulatory purposes.

[8] 17 CFR 300.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39198; File No. SR–NASD–97–73]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to Rule 4612, Primary Nasdaq Market Maker Standards

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

in Items I, II, and III below, which Items have been prepared by the Nasdaq Stock Market, Inc. (''Nasdaq''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act, Nasdaq, a wholly owned subsidiary of the NASD, is herewith filing a proposed rule change to extend a suspension of the Primary Nasdaq Market Maker qualification criteria (''PMM Standards'') found in Rule 4612 (a) and (b) of the NASD Rules for all Nasdaq National Market securities for six months or until such earlier time when new PMM Standards can be adopted and implemented.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to extend a suspension of the existing PMM Standards until April 1, 1998 or until such earlier time that new PMM Standards can be adopted and implemented. The standards currently contained in NASD Rule 4612 have been suspended on a temporary basis since February of this year.[2] That suspension will expire after October 1, 1997.

The suspension was necessary because the previous numerical criteria used to establish Primary Nasdaq Market Maker status was rendered significantly less relevant due to implementation of the new SEC Order Execution Rules (*i.e.*, the Limit Order Display Rule and amendments to the Quote Rule). This is because the old PMM standards were based primarily on a market maker's quotes in relation to the inside quote and the quotes of other market makers, and the ratio of executions to quote changes.[3] Because the new SEC rules, implemented in January of this year, incorporate customer limit orders in a market maker's quote, a market maker's proprietary activity has become indistinguishable from its customer activity.

It was therefore determined that developing new PMM standards would be necessary. Nasdaq's Quality of Markets Committee and Nasdaq staff, in consultation with Commission staff, endeavored to develop new and meaningful PMM Standards as expeditiously as possible. The new PMM Standards are intended to more properly identify firms that are engaging in responsible market maker activity deserving of the benefits associated with being designated a Primary Nasdaq Market Maker, such as being exempt from the short sale rule. A detailed and comprehensive proposal was recently approved by the Board of Directors of The Nasdaq Stock market at its meeting in September 1997, and Nasdaq expects to submit new PMM Standards to the Commission in the form of a proposed rule change shortly.

Nasdaq believes this proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and facilitates transactions in securities. In particular, this temporary extension should provide market makers with certainty regarding whether they are entitled to an exemption under the rule which should promote market efficiency and enhance the orderliness of the market during a transition period. It should also help in reducing investor confusion at this time and thereby promote efficient and fair markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. In addition, the Commission finds that accelerated approval of this proposal will continue to accommodate the new SEC Order Execution Rules while Nasdaq seeks to implement new standards applicable to market makers. The Commission notes, however, that while it is approving this proposed rule change, that it anticipates no delay in the filing of the proposed rule change by the NASD with respect to the newly developed PMM standards.

In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.[4]

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day

[2] See Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of File No. SR–NASD–97–07).

[3] Specifically, a Nasdaq market maker was deemed to be a Nasdaq Primary Market Maker if it met two of three criteria: (1) The market maker maintains the best bid or best offer as shown on Nasdaq no less than 35% of the time; (2) a market maker maintains a spread no greater than 102% of the average dealer spread; and (3) no more than 50% of a market maker's quotation changes occur without a trade execution. In addition, if a registered market maker meets only one of the above criteria, it may nevertheless qualify if the market maker accounts for volume at least 1½ times its proportionate share of overall volume in the stock.

[4] 15 U.S.C. 78c(f).

after the date of publication of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change, SR–NASD–97–73, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27050 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39197; File No. SR–NASD–97–68]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Syndicate Covering Transactions and Members' Obligations To Obtain an Underwriting Activity Report

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 8, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the prposed rule change and on September 17, 1997, the NASD filed Amendment No. 1. The proposed rule change and Amendment No. 1 are described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. (''NASD Regulation''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rules 2710, 4624, and 6540. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2700. Securities Distributions

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

No change.

(b) Filing Requirements

(1) through (10)

No Change.

(11) Request for Underwriting Activity Report

Notwithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject security or reference security that is subject to SEC Rule 101 *or an ''actively-traded'' security under SEC Rule 101 (except for a security listed on a national securities exchange)* shall submit a request to the Corporate Financing Department for an Underwriting Activity Report with respect to the subject and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related Rules of the Association. The request shall be submitted at the time a registration statement or similar offering document is filed with the Department, the SEC, or other regulatory agency, or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under Sec Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriting of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumted responsibility for compliance with this subparagraph. For purposes of subparagraphs (b) (11) and (12), SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: A distribution, A distribution participant, A reference security, A restricted period, and A subject security.

(12) Submission of Pricing Information

A member acting as a manager (or in a similar capacity) of a distribution [subject to subparagraph (b)(11)] of securities that are listed on a national securities exchange *and considered a subject security or reference security that is subject to SEC Rule 101 or an ''actively-traded'' security under SEC Rule 101* or *a distribution of any other securities that* are considered ''actively-traded'' under SEC Rule 101 shall provide written notice to the Market Regulation Department of NASD Regulation, Inc., no later than the close of business the day the offering terminates, that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated, which notice may be submitted on the Underwriting Actvity Report.

(13) Information on Syndicate Covering Transactions

A member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject security or reference security that is subject to SEC Rule 101 or an ''actively-traded'' security under SEC Rule 101 shall, no later than thirty (30) days after the effective date of the offering, maintain information as required by the Corporate Financing Department of NASD Regulation, Inc. on the amount of the syndicate short position in a manner consistent with SEC Rule 17a–2.[2]

(c) Underwriting Compensation and Arrangements

No change.

4000. The NASDAQ Stock Market

4624. Penalty Bids and Syndicate Covering Transactions

(a) A market maker acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. A market maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on Nasdaq pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

(1) The identity of the security and its Nasdaq symbol;

(2) The date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions[; and

[5] 17 U.S.C. 78s(B)(2).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The requirement in Rule 2710(b)(13) will expire no later than January 1, 2000.

(3) The amount of the syndicate short position, in the case of syndicate covering transactions]

(c) Notwithstanding paragraph (a), a market maker may request that its quotation *be* identified as a penalty bid on Nasdaq [display] by providing notice to Nasdaq Market Operations, which notice shall include the date and time that the penalty bid identified should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identified is entered on Nasdaq.

(d) The written notice required by [paragraphs (a) and (c) of] this Rule may be submitted on the Underwriting Activity Report [by including the information required by subparagraphs (b)(1) and (b)(2) or paragraph (c)].

6500. OTC Bulletin Board Service

6540. Requirements Applicable to Market Makers

(a) No change.

(b) No change.

(1) Permissible Quotation Entries.

(A)–(C)—No change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) No change.

(ii) No change.

(iii) provide written notice to the Corporate Financing Department of NASD Regulation, Inc. of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur [and the amount of the syndicate short position]; and

(iv) No change.

(E) The written notice required by subparagraphs (b)(1)(D) (i), (iii) and (iv) of this rule may be submitted on the Underwriting Activity Report provided by the Corporate Financing Department of NASD Regulation, Inc. [by including the information required by those subparagraphs.]

(F) No change.

(2) through (4) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 1, 1997, NASD Rules designed to facilitate compliance with the SEC's Regulation M became effective.[3] Rule 104 of Regulation M requires members acting as managing underwriters to notify the appropriate regulator of the market for the security in distribution of a member's intention to engage in syndicate short covering transactions. It is the understanding of NASD Regulation staff that the purpose of this requirement is to establish a database at the regulator of those offerings in which syndicate short covering transactions may have been conducted, thereby facilitating a study of syndicate short covering practices by the staff of the SEC. Because the Association has traditionally been responsible for regulating the permissible amount of over-allotment options that may be utilized to cover syndicate short positions in public offerings, NASD Regulation believes that the Association has a long-standing interest in developing information to assist it and the SEC in the regulation of the over-allotment process.

To allow NASD members to comply with their notification obligations under Rule 104, NASD Regulation developed a standardized form designated as the Regulation M Trading Notification. Both NASD Rule 4624 regarding The Nasdaq Stock Market and NASD Rule 6540 regarding the OTC Bulletin Board Service require that members include the amount of the syndicate short position on the Regulation M Trading Notification. This latter information is not required to be provided under SEC Rule 104 of Regulation M.

Members of the industry have expressed concern regarding their ability to provide accurate data on the amount of a syndicate short position at the time the Regulation M Trading Notification is required to be submitted *i.e.*, prior to the first syndicate covering transaction. At that time, the member cannot generally provide accurate information as to the total amount of the syndicate short position.

While NASD Regulation believes it important to be able to collect accurate information on the amount of the syndicate short position in order to assist the SEC in its study of syndicate short covering activities, such information need not be immediately provided to the Association. In order to address the concerns of the industry, NASD Regulation is proposing to amend NASD Rule 4624 and NASD Rule 6540 to delete the current requirement to provide immediate information on the amount of syndicate short positions. In its place, NASD Regulation is proposing to amend Rule 2710, the Corporate Financing Rule, to establish a new requirement in Subparagraph (b)(13) that, no later than 30 days after the effective date of the offering, the managing underwriter shall maintain information as required by the Corporate Financing Department of NASD Regulation, Inc. on the amount of the syndicate short position and that such information be retained in the same manner as the managing underwriter's syndicate covering transaction records under SEC Rule 17a–2. Rule 17a–2 requires that a managing underwriter separately maintain information on stabilizing transactions and syndicate covering transactions. It is anticipated that the managing underwriter will maintain with its records of syndicate covering transactions, as required by Rule 17a–2, a record of the amount of the syndicate short position. NASD Regulation intends to require that the information to be retained by the managing underwriter consist of whether the syndicate short position was no greater than the over-allotment option, or whether a naked short position was less than 1%, between 1% and 5%, between 5% and 10%, or over 10% of the offering size. The proposed change to NASD Rule 2710 includes a sunset provision to eliminate the requirement to retain information on the amount of syndicate short positions at the conclusion of the study of syndicate short covering practices, but no later than January 1, 2000.

In addition, NASD Regulation is proposing to amend Subparagraph (b)(11) of Rule 2710 to conform its rule language to that of Subparagraph (b)(12) and to the Association's original intent

[3] Securities Exchange Act Release No. 38360 (March 4, 1997), and amended Securities Exchange Act Release No. 38399 (March 14, 1997).

regarding the scope of that provision. The proposed rule change would clarify that the managing underwriter is required to request an Underwriting Activity Report with respect to a distribution of a security that is considered an ''actively-traded'' security under SEC Rule 101.[4] Currently, the language of Subparagraph (b)(11) is misleading in that it only imposes this requirement with respect to subject or reference securities that are ''subject to SEC Rule 101.'' Because ''actively-traded'' securities are exempt from SEC Rule 101, they are not considered ''subject to'' SEC Rule 101. In Notice to Members 97–10 (March 1997), announcing adoption of the amendments of the NASD to implement Regulation M, the NASD stated that the Underwriting Activity Report'' will indicate whether the security qualifies under SEC Rule 101 as an actively-traded security or for the one-day or five-day restricted periods.'' Thus, the proposed change to Subparagraph (b)(11) will make the rule language consistent with the Association's requirement that the managing underwriter request an Underwriting Activity Report for securities that are considered ''actively-traded'' under SEC Rule 101.

Moreover, NASD Regulation is proposing to amend Subparagraph (b)(11) to exclude exchange-listed securities from the requirement that the managing underwriter obtain an Underwriting Activity Report. Originally, it had been anticipated that the managing underwriter would be provided information on the value of average daily trading volume and market value of public float with respect to exchange-listed securities, in addition to securities included in The Nasdaq Stock Market, Inc. or quoted on the OTC Bulletin Board Service. However, since this information has not been available, the proposed rule change would eliminate the obligation of managing underwriters to request the Underwriting Activity Report with respect to exchange-listed securities. The managing underwriter of an offering of exchange-listed securities would, nonetheless, continue to be responsible under Subparagraph (b)(12) to advise the Market Regulation Department of information regarding the pricing and termination of the offering. Conforming amendments are made to Subparagraph (b)(12) in light of this proposed change to Subparagraph (b)(11). Finally, Subparagraph (b)(12) is also proposed to be revised to clarify that the managing underwriter of any offering of securities considered ''actively-traded'' under SEC Rule 101 must also advise the Market Regulation Department of information on pricing and termination.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2)[5] of the Act in that the proposed rule change will enforce and facilitate compliance by NASD members with the requirements of SEC Regulation M.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 4, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.[6]

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change, SR–NASD–97–68, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27051 Filed 10–10–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39200; File No. SR–NYSE–97–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend Its Rule 382 Relating to Carrying Agreements

October 3, 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 September 16, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or

[4] An ''actively-traded'' security is a subject or reference security with a value of average daily trading volume of at least $1 million, which is issued by an issuer whose common equity securities have a public float of at least $150 million.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78c(f).

[7] 17 U.S.C. 78s(B)(2).

[8] 17 CFR 200.30–3(a)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 382, Carrying Agreements to better monitor the activities of introducing firms that are parties to carrying agreements. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise Exchange Rule 382 to enhance the ability of the Exchange and other securities self-regulatory organizations (''SROs'') to monitor the activities of introducing firms that are parties to carrying agreements. Exchange Rule 382 governs the contractual agreements, known as ''carrying agreements,'' between a ''carrying'' and an ''introducing'' firm, that allocate certain functions and responsibilities associated with the carrying of, and transactions in, customer accounts. In ''carrying'' the accounts of others, carrying firms provide an introducing firm with a variety of services for the accounts that are ''introduced'' to them on behalf of customers, pursuant to the carrying agreement.

Under Rule 382, all carrying agreements must be filed with and approved by the Exchange if either party to the agreement is a member of the Exchange. Rule 382 also requires, with respect to all ''fully disclosed'' arrangements, that the carrying agreement specifically identify and allocate between the carrying and introducing organization certain key enumerated functions and responsibilities. To address recent concerns regarding the ability of self-regulatory organizations to monitor the activities of introducing firms, the Exchange believes the proposed amendments will increase SROs' ability to monitor the activities of introducing firms that are party to carrying arrangements. Generally, the proposed amendments will provide for increased monitoring of customer complaints regarding introducing organizations, require specific procedures for introducing organizations requesting reports offered by carrying organizations, and address procedures and responsibility for introducing organizations that are permitted to issue negotiable instruments of the carrying organizations.

Specifically, the rule amendments will require carrying organizations to furnish promptly any written customer complaint it receives regarding the introducing firm to the introducing organization and such firm's Designated Examining Authority (''DEA''). In addition, the proposal would require that the customer who submitted the written complaint be notified in writing by the carrying organization that the complaint was received, that it was furnished to the introducing firm and the DEA, and that the customer has the right, at the customer's discretion, to transfer the account to another broker-dealer.

The proposed amendment also requires the carrying organization to furnish, at the commencement of the agreement and annually thereafter, to each of its introducing organizations, a list of all reports (*e.g.,* exception type reports) that it offers to the introducing firm in order to assist the introducer in supervising and monitoring customer accounts. The proposal requires introducing firms to notify the carrying firm of those specific reports on the list that should be furnished to it to supervise and monitor customer accounts.

In addition, the carrying organization will be required to retain and preserve copies of the specific reports requested by and/or supplied to the introducing firm pursuant to Exchange Rule 440 or have the capability to: (1) Recreate copies of reports furnished, or (2) provide the report format and data elements provided in the original reports. The proposal further requires the carrying firm to provide written notice, on an annual basis within 30 days of July 1 of each year, to the Chief Executive Officer and Compliance Officer of the introducing firm, of the list of reports offered to the introducer and specify those reports actually requested or supplied as of the report date. A copy of this written notice must also be provided to the introducer's DEA.

The amended rule also addresses those agreements that allow introducing organizations to issue negotiable instruments (*e.g.,* checks) to their customers, for which the carrying organization is the maker or drawer. The proposed rule provides that the introducing organization must represent to the carrying organization that it has supervisory procedures in place, which it enforces and which are satisfactory to the carrying organization, with respect to the issuance of such instruments.

The Exchange believes that the proposed amendments to Rule 382 will clarify the relationship and responsibilities between organizations involved in carrying arrangements while also recognizing the nature of the contractual relationship between carrying firms and introducing firms. The Exchange further believes that provisions requiring furnishing of customer complaints and lists of reports submitted by and furnished to introducing organizations will enhance the ability of the Exchange and other SROs to monitor the activities of such entities. In addition, the Exchange believes that the requirement that carrying organizations maintain and be prepared to furnish copies of exception reports or to recreate the report or provide report format/data fields will ensure that appropriate records are available that detail the information actually provided to the introducing organization to monitor its customer accounts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act which [3] requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it establishes standards to which members and member organizations that are parties to carrying agreements must adhere while providing customer protection through appropriate

[3] 15 U.S.C. 78f(b)(5).

disclosures and implementation of specific procedures and controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 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 that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commissions' 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 above-mentioned self-regulatory organization. All submissions should refer to File Number SR–NYSE–97–25 and should be submitted by November 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27046 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39203; File No. SR–OCC–97–14]

Self-Regulatory Organizations; The Option Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Cross-Margining Agreement With the Board of Trade Clearing Corporation

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 18, 1997, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments form interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow OCC to amend the cross-margining agreement between OCC and the Board of Trade Clearing Corporation (''BOTCC'') and to amend the agreements that are required to be executed by participating clearing members and market professionals participating in the cross-margining programs established by the cross-margining agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to revise the amended and restated cross-margining agreement between OCC and BOTCC (''Agreement'').[3] OCC and BOTCC have executed an amendment to the Agreement to revise the Agreement.[4] Specifically, OCC proposed to amend Exhibit A to the Agreement to update the list of contracts eligible of OCC/BOTCC cross-margining. OCC also proposes to amend the agreements governing the cross-margin accounts of clearing members and market professionals that participate in OCC/BOTCC cross-margining. The changes to those agreements essentially will conform them to the comparable form of the agreements used in the cross-margining program among OCC, the Chicago Mercantile Exchange (''CME'') and the Commodity Clearing Corporation (''CCC'').[5]

The following forms of agreements are required to be executed by clearing members and market professionals participating in the cross-margining program established by the Agreement: (1) Proprietary cross-margin account agreement and security agreement for a joint clearing member; (2) proprietary cross-margin account agreement and security agreement for affiliated clearing members; (3) non-proprietary cross-margin account agreement and security agreement for a joint clearing member; (4) non-proprietary cross-margin account agreement and security agreement for affiliated clearing members; (5) subordination agreement for cross-margining for a joint clearing member; and (6) subordination agreement for cross-margining for

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] For a description of the existing agreement, refer to Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 [File No. SR–OCC–91–07] (order approving establishment of cross-margining program between OCC and BOTCC) and Securities Exchange Act Release No. 32681 (July 27, 1993), 58 FR 41302 [File No. SR–OCC–92–24] (order approving expansion of cross-margining program between OCC and BOTCC to include non-proprietary positions).

[4] A copy of the amendment has been submitted with the proposed rule change and is available for inspection and copying at the Commission 's Public Reference Room or at the principal office of OCC.

[5] For a description of the cross-margining agreement among OCC, CME, and CCC, refer to Securities Exchange Act Release No. 38584 (May 8, 1997), 62 FR 26602 [File No. SR–OCC–97–04] (order granting accelerated approval to proposed rule change).

affiliated clearing members.[6] Each of these agreements is based on the comparable existing agreement used in the current OCC/BOTCC cross-margining program, and each of the agreements has been modified as necessary to reflect changes that have been made to the cross-margining program among OCC, CME, and CCC.

With respect to the proprietary cross-margin account agreement and security agreement for a joint clearing member, section 2 will be revised to make clear that margin deposited with respect to the cross-margined proprietary accounts (''proprietary X–M accounts'') is security for all of the obligations of the joint clearing member whether or not such obligations arise from the proprietary X–M accounts. Section 5 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the proprietary X–M accounts. Section 5 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. Section 5 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the proprietary X–M accounts. Section 5 will be amended to reflect that the prohibition against the joint clearing member granting any lien on or security interest in such collateral without the written consent of OCC and BOTCC shall not apply to any interest of the joint clearing member in the collateral which is subordinate to that of OCC and BOTCC. OCC has informed the Commission that no other substantive changes have been made to the proprietary cross-margin account agreement and security agreement for a joint clearing member.

With respect to the proprietary cross-margin account agreement and security agreement for affiliated clearing members, section 2 will be amended to make the affiliated clearing members jointly and severally liable to OCC and BOTCC for any obligation arising from the proprietary X–M accounts. Section 2 also will be revised to make clear that neither of the affiliated clearing members is obligated to make any contribution to the clearing or guarantee fund of a clearing organization (*i.e.*, OCC or BOTCC) of with such clearing member is not itself a member. Section 3 will be revised to make clear that margin deposited with respect to the proprietary X–M accounts is security for all of the obligations of the affiliated clearing members whether or not such obligations arise from the proprietary X–M accounts. Section 6 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the proprietary X–M accounts by adding a specific reference to the accounts. Section 6 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. Section 6 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the proprietary X–M accounts. Section 6 also will be amended to reflect that the prohibition against a clearing member granting any lien on or security interest in such collateral without the written consent of OCC and BOTCC shall not apply to any interest of the clearing member in the collateral which is subordinate to that of OCC and BOTCC. OCC has informed the Commission that no other substantive changes have been made to the proprietary cross-margin account agreement and security agreement for affiliated clearing members.

With respect to the non-proprietary cross-margin account agreement and security agreement for a joint clearing member, section 3 will be amended to provide for the selection of a designated clearing organization (''DCO'') (*i.e.*, either OCC or BOTCC) by a joint clearing member that does not maintain any proprietary X–M accounts. Section 5 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the cross-margined non-proprietary accounts (''non-proprietary X–M accounts''). Section 5 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. In addition, section 5 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the non-proprietary X–M accounts. OCC has informed the Commission that no other substantive changes have been made to the non-proprietary cross-margin account agreement and security agreement for a joint clearing member.

With respect to the non-proprietary cross-margin account agreement and security agreement for affiliated clearing members, section 2 will be changed to make affiliated clearing members jointly and severally liable to OCC and BOTCC for any obligation arising from the non-proprietary X–M accounts, Section 2 also will be changed to provide that neither of the affiliated clearing member is obligated to make any contribution to the clearing or guarantee fund of a clearing organization (*i.e.*, OCC or BOTCC) of which such clearing member is not itself a member. Section 4 will be amended to provide for the selection of a DCO by affiliated clearing members that do not maintain proprietary X–M accounts. Section 6 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the non-proprietary X–M accounts. Section 6 also will be amended to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. In addition, section 6 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the non-proprietary X–M accounts. OCC has informed the Commission that no other substantive changes have been made to the non-proprietary cross-margin account agreement and security agreement for affiliated clearing members.

With respect to each of the subordination agreement for cross-margining for a joint clearing member and the subordination agreement for cross-margining for affiliated clearing members (''market professionals agreements''), section 1 will be changed to include a representation that the member executing the agreement is a member or a firm owning a membership on the Chicago Board of Trade. Section 4 of each of the market professionals agreements will be amended to include the liquidation provisions found in Appendix B of Part 190 of the regulations of the Commodity Futures Trading Commission (''CFTC'')[7] and to provide that claims against a clearing member will be subordinated to all other customers as provided in subchapter III of Chapter 7 of the U.S. Bankruptcy Code.[8] The current market professionals agreements used for OCC/BOTCC cross-margining do not follow the liquidation distribution scheme of Appendix B of Part 190 of the CFTC's regulations. Section 5 of the market professionals agreements will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the non-proprietary X–M accounts. Section 5 also will be amended to make explicit that the member has granted to OCC and BOTCC a right of setoff against collateral held with respect to the non-proprietary X–M accounts of the clearing member. A new section 7 will be added to each of the market professional agreements to provide that an executed copy of each such agreement is to be filed with OCC and BOTCC and that an executed market professionals agreement cannot

[6] Copies of the agreements have been submitted with the proposed rule change and are available for inspection and copying at the Commission's Public Reference Room or at the principal office of OCC.

[7] 17 CFR 190, App. B.

[8] 11 U.S.C. 741, *et seq.*

be modified without the approval of the clearing organization. These changes are intended for the protection of OCC and BOTCC. OCC has informed the Commission that all other changes to the market professionals agreements are either stylistic or nonsubstantive in nature.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because cross-margining enhances the safety of the clearing system while providing lower clearing margin costs to participants.

(B) Self-Regulatory Organization's Statement on Burden of Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [9] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. Section 17A(a)(2)(A)(ii) of the Act [10] directs the Commission to use its authority under the Act to facilitate the establishment of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options. The Commission believes that the proposed rule change is consistent with these requirements under the Act.

Similar to other cross-margining arrangements to which OCC is a party, the current proposal links and coordinates the clearance and settlement facilities of OCC and BOTCC with respect to shared management of risks associated with the clearing members' intermarket portfolios and with respect to information sharing regarding the financial condition of participating joint and affiliated members. The Commission views cross-margining arrangements as a significant risk reduction method because they provide a means whereby individual clearing organizations do not have to manage independently the risk associated with some components (*i.e.*, the futures or options component) of a clearing member's total portfolio. Therefore, cross-margining programs serve to help OCC assure the safeguarding of securities and funds and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of futures and options, transactions in securities.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because the proposed changes to the OCC/BOTCC cross-margining program are based on the OCC/CME/CCC cross-margining program, which the Commission has previously approved. In addition, the Commission does not expect to receive any adverse comments on the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–97–14 and should be submitted by November 4, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–OCC–97–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27052 Filed 10–10–97; 8:45 am]

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[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(a)(2)(A)(ii).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39188; File No. SR–PCX–97–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Listing and Trading of Portfolio Depositary Receipts

October 2, 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 August 25, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt new rules relating to the listing and trading of Portfolio Depositary Receipts (''PDRs'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 8.300 to accommodate the trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of PDRs, i.e., securities that are interests in a unit investment trust (''Trust'') holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities, (2) trades like a share of common stock, and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to unlisted trading privileges, PDRs based on one or more stock indexes or securities portfolios.[3] PDRs based on each particular stock index or portfolio will be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based will be selected by the Exchange, or by another person having a proprietary interest in and authorize use of such index or portfolio, and may be revised as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) if the index on which the Trust is based is no longer calculated; or

(c) if such other event occurs or condition exists, which, in the opinion of the Exchange, makes further dealings in such securities on the Exchange inadvisable.

A Trust will terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust (the ''Sponsor''), following notice to PDR holders, will have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs. Dealing in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures would also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.

With respect to trading halts, the trading of PDRs would be halted, along with the trading of all other listed or traded stocks, in the event the ''circuit breaker'' thresholds are reached.[4] PCX does not propose to automatically halt trading or delay opening of index-based PDRs upon the triggering of futures price limits for the S&P 500 Composite Price Index, S&P'' 100 Composite Price Stock Index (''S&P'' ''100 Index'') or Major Market Index (''MMI'') futures contracts. Such an event, however, could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options (''OEX''), S&P 500 Index Options (''SPX''), or Major Market Index Options (''XMI''), in deciding whether to halt trading in PDRs.

The Exchange will issue a circular to its Members and Member Organizations informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 7.11, the Exchange's rule governing trading halts for index options, in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure. Proposed Rule 8.300(c) requires that Members and Member Organizations provide to all purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a Member or Member Organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member than execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to Member or Member Organizations. The written description must be included with any sales material on that series of PDRs that a Member provides to customers or the public. Moreover, other written materials provided by a Member or Member Organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs].'' Additionally, as noted above, the Exchange requires that Members and Member Organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

[3] The Commission notes that PCX has not identified a particular trading product that it seeks to list pursuant to the proposed listing standards. Prior to trading a particular product, PCX may have to submit an additional Section 19(b) filing that more specifically addresses potential issues associated with items such as the composition, calculation and dissemination of the applicable index.

[4] See Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) & note 7 therein.

Two existing PDRs, SPDRs, and MidCap SPDRs, are traded on the American Stock Exchange (''Amex'').[5] The Exchange is not asking for permission to list SPDRs or MidCap SPDRs at this time, but rather with trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved.

Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and the Exchange's proposed rule change is designed to create similar standards for PDR listing and/or trading on the PCX. As stated above, the Exchange proposes to trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges upon arrival of this rule filing.

Because the Exchange is not itself listing SPDRs and MidCap SPDRs, but will merely be trading these securities pursuant to unlisted trading privileges, the Exchange will not independently ensure conformity of SPDRs and MidCap SPDRs to PCX listing standards. Instead, the Exchange will rely on the primary market to determine whether SPDRs and MidCap SPDRs meet the relevant listing standards. If at a later time the Exchange desires to list SPDRs and MidCap SPDRs, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act, the Exchange will independently ensure that SPDRs and MidCap SPDRs conform to the Exchange's own listing standards.

The remainder of this section of the filing merely provides background information on SPDRs and MidCap SPDRs. The information, taken mostly from SR–AMEX–94–52 and SR–AMEX–92–18, describes the structure and mechanics of SPDRs and MidCap SPDRs.

SPDRs and MidCap SPDRs Generally. On December 11, 1992, the Commission approved Amex Rules 1000 *et seq*.[6] to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity (''Creation Unit'') in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Composite Stock Price Index (''S&P'' Index), known as Standard & Poor's Depositary Receipts (''SPDRs''). SPDRs have been trading on Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,[7] known as Standard & Poors MidCap 400 Depositary Receipts (''MidCap SPDRs'').[8] The Sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. (''Distributor'') acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

SPDRs. It is anticipated that the term of the SPDR Trust will be 25 years.[9] The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[10] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for ''Portfolio Deposits'' of all of the S&P 500 Index securities weighted according to their representation in the Index.[11] An investor making a Portfolio Deposit into the Trust will receive a ''Creation Unit'' composed of 50,000 SPDRs.[12] The price of SPDRs will be based on a current bid/offer market.[13] SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (i.e., 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an-in-kind distribution of securities identical to a Portfolio Deposit.[14] PDR Distribution Services, Inc., a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

MidCap SPDRs. All orders to create MidCap SPDRs in Creation Unit Size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement (''CNS'') system of the National Securities Clearing Corporation (''NSCC'') or a Depositary Trust Company (''DTC'') participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by: (1) The ''in-kind'' deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution (''Dividend Equivalent Payment''), subject to certain adjustments. The securities and cash accepted by the

[5] SPDRs and MidCap SPDRs are defined and discussed more fully below.

[6] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[7] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between $200 million and $5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[8] See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995).

[9] The SPDR Trust may terminate at an earlier time under certain circumstances, as provided in the prospectus.

[10] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in proportion as all other shares of the securities are voted.

[11] A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[12] The Trust is structured so that the net asset value of an individual SDPR should equal one-tenth of the value of the S&P 500 Index.

[13] The Amex has designated 1/64's as the minimum fraction for trading in SPDRs. The Exchange has proposed this same minimum variation for the trading of SPDRs on the PCX.

[14] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemption.

Trustee are referred to, in the aggregate, as a ''Portfolio Deposit.''

It is anticipated that the term of the MidCap SPDR Trust will be 25 years.

Issuance of MidCap SPDRs. Upon receipt of a Portfolio in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a ''Creation Unit.'' The Amex anticipates that a Creation Unit will be made up of 25,000 MidCap SPDRs.[15] Individual Mid Cap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitragers, and the Exchange specialist.

The Trustee or Sponsor will make available: (1) On a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such date; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding Mid Cap SPDR.

The Amex has set the minimum fractional trading variation for MidCap SPDRs at 1/64 of $1.00. The Exchange is proposing this same minimum variation for MidCap SPDRs.

Redemption of MidCap SPDRs. Mid Cap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a ''Cash Component'' (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions for MidCap SPDRs. The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-divident date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date (''Dividend Payment Date''). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[16] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

2. Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[17] in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

A. By order approve such rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such

[15] PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service (''DRS'').

[16] The creation of PDRs in connection with the DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[17] 15 U.S.C. 78f(b)(5).

filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–35 and should be submitted by October 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–27042 Filed 10–10–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Application for Retirement Insurance Benefits—0960–0007. The Social Security Administration uses the information on Form SSA–1 to determine an individual's entitlement to retirement insurance benefits. The respondents are applicants for retirement benefits.

Number of Respondents: 1,600,000.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 280,000 hours.

2. Physician's/Medical Officer's Statement, Patient's Capability to Manage Benefits—0960–0024. The Social Security Administration uses the information on Form SSA–787 to determine whether an individual is capable of handling his/her benefits. The information is also used for leads in selecting a representative payee. The respondents are physicians of the beneficiaries or medical officers of institutions where beneficiaries reside.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 20,000 hours.

3. Claimant's Statement When Request for Hearing Is Filed and The Issue Is Disability—0960–0316. The Social Security Administration requires that applicants for disability benefits provide the updated medical information requested on Form HA–4486, to facilitate processing their Old Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) claims. This information also enables the Administrative Law Judge hearing the case to fully inquire into the claimant's medical condition. The respondents are applicants for OASDI and SSI Benefits.

Number of Respondents: 283,460.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 70,865 hours.

4. Representative Payee Report of Benefits and Dedicated Account—0960–0576. The Social Security Administration uses Form SSA–6233 to ensure that payment of SSI benefits is made to a relative, another person, or an organization when the best interests of the beneficiary would be served. The form is also used to ensure that the representative payee is using the benefits received for the beneficiary's current maintenance and personal needs and that expenditures of funds from the dedicated account are in compliance with the law. The respondents are individual and organizational representative payees required by law to establish a separate (''dedicated'') account in a financial institution for certain past-due SSI monthly benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, *Attn:* Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Date: October 6, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer Social Security Administration.

[FR Doc. 97–27121 Filed 10–10–97; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1498).

TIME AND DATE: 9 a.m. (CDT), October 15, 1997.

PLACE: TVA Allen Fossil Plant Assembly Room, 2574 Plant Road, Memphis, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 8, 1997.

New Business

B—Purchase Awards

B1. Increase in the amount of an existing Blanket Purchase Order with ABB Power T&D Company, Inc., from $7.99 million to $26 million.

B2. Approval to enter into a contract with Allied Welding & Safety, LLC, for welding supplies and equipment for all TVA locations.

C—Energy

C1. Approval to supplement engineering services contracts with Midpoint International Corporation (TV–95252V) and Martin-Williams International, Inc. (TV–95264V), to provide engineering services in a staff augmentation role for TVA Nuclear. The supplements will add a cumulative amount not to exceed $8.5 million and extend the term of the contracts to September 30, 2000.

C2. Public auction sale of Cawood Branch Coal Lease, Red Bird Coal Reserves, Harlan and Leslie Counties, Kentucky (Tract No. XEKCR–39L) and delegation of authority to the Vice President, Fuel Supply and Engineering, or a designated representative, to administer, amend, or modify the terms of the lease.

E—Real Property Transactions

E1. Grant of permanent easement to the State of Alabama for a bridge project, affecting approximately 1.15 acres of land on Bear Creek in Marion County, Alabama (Tract No. XTBCSF–1H).

E2. Grant of permanent easement to the State of Tennessee for State Highway No. 306 improvement project,

[18] 17 CFR 200.30(a)(12).

affecting 1.09 acres of land on Chickamauga Lake in Meigs County, Tennessee (Tract No. XTCR–192H).

E3. Sale of noncommercial, nonexclusive permanent easements to Robert K. Tallent (Tract No. XTELR–197RE) and John T. Smolik (Tract No. XTELR–198RE) for construction and maintenance of recreational water-use facilities affecting 0.42 acre of land on Tellico Lake in Loudon County, Tennessee.

E4. Grant of permanent easement to LaFollette Utilities for a powerline affecting approximately 5.02 acres of TVA land and former TVA land on Norris Lake in Campbell County, Tennessee (Tract No. XTNR–110PR).

E5. Sale of 40-year easement to Lighthouse Fuels, Inc., for industrial development, affecting approximately 37.5 acres of land on Pickwick Lake in Tishomingo County, Mississippi (Track No. XYECR–111E).

Unclassified

F1. Approval to file condemnation cases in connection with the following power transmission lines: Alpha-Loughridge, Murray County, Georgia; Batesville-West Batesville, Panola County, Mississippi; Savannah-North Adamsville, Hardin County, Tennessee; and Widows Creek-Fort Payne, Jackson County, Alabama.

Information Items

1. Approval for calculation adjustments to distributor retail rate schedules related to the price increase which became effective October 1, 1997.

2. Approval of completion of final contract negotiations with Southern Company Services, Inc., and execution of reciprocal network transmission service agreements to serve each company's isolated native loads located within the other company's control area.

3. Approval to abandon a portion of TVA's Chickamauga-Friendship transmission line right-of-way easement affecting 0.1 acre in Hamilton County, Tennessee (Tract No. 2CF–10).

4. Amended and restated agreement among TVA, Southeastern Power Administration, and Tennessee Valley Public Power Association regarding power supply from the Corps of Engineers' Cumberland River projects.

5. Approval to submit two proposals to the Department of Energy under which TVA would offer to provide DOE with irradiation services for the production of tritium.

6. Reformation of a contract between TVA and the TVA Retirement System.

7. Approval to amend the program for TVA contributions to the cost of medical coverage in TVA-sponsored medical plans for current and future retirees and to count all Federal civilian service prior to coming to TVA as creditable service for persons who retire from TVA after January 1, 1997.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: October 8, 1997.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 97–27217 Filed 10–9–97; 8:45 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–20]

WTO Dispute Settlement Proceeding Regarding Japanese Varietal Testing and Quarantine Requirements

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 has requested establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO), to examine Japan's prohibition on imports of certain agricultural products. Specifically, for each agricultural product for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety even though the treatment has proven effective with respect to other varieties of the same product. This redundant testing requirement has no apparent scientific basis but serves as a significant barrier to market access. In this dispute the United States alleges that these Japanese measures are inconsistent with the obligations of Japan under the Agreement on the Application of Sanitary and Phytosanitary Measures, the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), and the Agreement on Agriculture. USTR also invites written comments from the public concerning the issues raised in the dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 10, 1997 to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted by Ileana Falticeni, Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: Japan Fruit Quarantine Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, (202) 395–7305, Audrae Erickson, Office of Agricultural Affairs, (202) 395–6127, or Elizabeth Hyman, Office of the General Counsel, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on October 3, 1997, the United States requested the establishment of a WTO dispute settlement panel to examine whether the import prohibition on agricultural products, in particular the varietal testing requirements, maintained by Japan are inconsistent with Japan's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures, the GATT 1994, and the Agreement on Agriculture. The WTO Dispute Settlement Body is likely to establish the panel no later than mid-November, 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaint

For each agricultural product for which Japan requires quarantine treatment, Japan prohibits the importation of each variety of that product until the quarantine treatment has been tested for that variety, even though the treatment has proven effective with respect to other varieties of the same product. The relevant provisions of Japanese laws include the Plant Protection Law (Law No. 151) enacted May 4, 1950, as amended, and the Plant Protection Law Enforcement Regulation (Ministry of Agriculture, Forestry and Fisheries Ordinance No. 73) of June 30, 1950, as amended.

For example, after years of effort by the United States, in January 1995 Japan agreed to permit imports of U.S. Red Delicious and Golden Delicious apples based on Japan's determination that treatment of fruit from inspected orchards both with methyl bromide fumigation and a cold storage treatment would be effective against codling moth, a plant pest. However, Japan has refused

to allow other varieties of apples, such as Gala, Fuji, Braeburn, Jonagold and Granny Smith, to be imported into Japan unless lengthy and expensive tests are performed on each variety to prove the efficacy of the same methyl bromide/cold storage treatment at killing codling moths. There is no scientific basis for distinguishing between different varieties of fruit in this respect.

The USTR believes that these measures are inconsistent with the obligations of Japan under several provisions of the WTO Agreements, including Articles 2, 3, 4, 5, 7 and 8 of the Agreement on the Application of Sanitary and Phytosanitary Measures; Article XI of the General Agreement on Tariffs and Trade 1994; and Article 4 of the Agreement on Agriculture.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' 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.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, 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 received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–20, ''U.S.-Japan Fruit Quarantine Dispute'') may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 97–27067 Filed 10–10–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–52]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 3, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 29009, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on October 8, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29009.

Petitioner: United Airlines, Inc.

Sections of the FAR Affected: 14 CFR part 93, subparts K and S.

Description of Relief Sought: To prevent the withdrawal of domestic slots from UAL at O'Hare International Airport for reallocation to foreign carriers.

[FR Doc. 97–27147 Filed 10–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1549.

Form Number: None.

Type of Review: Extension.

Title: Tip Reporting Alternative Commitment for the food and beverage industry.

Description: Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 40 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 237,881 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–27113 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 7, 1997 .

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/International Trade Data Systems Project Office

OMB Number: 1505–0162.

Form Number: CF 3461, CF 3461 ALT, CF 7501, CF 7512, and CF 7533.

Type of Review: Extension.

Title: North American Trade Automation Prototype Data.

Description: The requested data is from volunteer trading community participants in the prototype test with the United States, Canada, and Mexico to improve the electronic exchange of data in the execution of North American land border commercial trade transactions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,758 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–27114 Filed 10–10–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

October 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: IRS Form 8853.

Type of Review: New collection.

Title: Medical Savings Accounts and Long-Term Care Services and Contracts.

Description: This form is used by individuals to report general information about their medical savings accounts (MSAs), to figure their MSA deductions, and to figure their taxable distributions from MSAs. The form is also used to report taxable payments from long-term care (LTC) contracts.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,250,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 6 min.
Learning about the law or the form.	32 min.
Preparing the form	1 hr., 14 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,877,500 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–27115 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 2, 1997

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the focus group interviews described below in the late-October to November 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by October 15, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–021-G.

Type of Review: Revision.

Title: Refund Inquiry Focus Groups.

Description: The objective of these focus group interviews is to gather feedback from taxpayers on why taxpayers call the IRS multiple times to check on the status of their refunds. The groups will be held in the in the following cities: Jacksonville, Florida,

Buffalo, New York, and Seattle, Washington.

Respondents: Individuals or households.

Estimated Number of Respondents: 78 (6 groups, 13 participants in each).

Estimated Burden Hours Per Response: 3 hours.
Contact call—5 minutes.
Focus group sessions—2 hours.
Travel time—1 hour.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 195 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–27116 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

Written comments should be received on or before December 15, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

OMB Number: 1545–0390.

Form Number: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if the individual retirement account trust or annuity contract meets the requirements of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 12 hr., 46 min.

Estimated Total Annual Burden Hours: 7,662.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 30, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–27137 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of determination of necessity for renewal of the Advisory Group to the Commissioner of Internal Revenue.

SUMMARY: It is in the public interest to continue the existence of the Advisory Group to the Commissioner of Internal Revenue.

FOR FURTHER INFORMATION CONTACT: Merci del Toro, Office of Public Liaison, C:I, Room 3308, 1111 Constitution Avenue, NW., Washington, DC 20224; Telephone: 202–622–5081 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Acting Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. Advisory Group to the Commissioner of Internal Revenue (will subsequently be referred to as the Commissioner's Advisory Group or CAG).

Purpose. The CAG assists the Internal Revenue Service by providing valuable advice and information on general management issues that determine how taxpayers view the fairness and integrity of the Federal tax system. The CAG also provides invaluable advice and recommendations on the administration of new and existing servicewide tax administration programs. The CAG's advice and recommendations also provide the IRS with a gauge to measure problems encountered by taxpayers when dealing with the IRS or in meeting their tax obligations. The CAG provides an efficient and organized method of obtaining timely comments from a diverse section of the taxpaying public. This organized forum is the least costly method to obtain invaluable advice and experiences from a balanced cross-

section of professionals and private citizens.

Statement of Public Interest. It is in the public interest to continue the existence of the CAG. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the group. CAG members represent a wide spectrum of the public, allowing the IRS to easily obtain timely and pertinent feedback.

Authority for the CAG will expire two years from the date the Charter is approved by the Assistant Secretary for Management and CFO and is filed with the appropriate congressional committees, unless the CAG is renewed prior to the expiration of the charter.

The Acting Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C., Chapter 6).

Dated: October 2, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–27139 Filed 10–10–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, ''The Nature of Diamonds'' (See listed) [1], imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the American Museum of Natural History, New York City, New York, from on or about November 1, 1997, to on or about April 26, 1998; the Cranbrook Institute of Science, Bloomfield Hills, Michigan, on or about the Summer 1998; the Denver Museum of Natural History, Denver, Colorado, on or about Spring 1999; The National History Museum of Los Angeles County, Los Angeles, California, on or about Spring 1999; the Milwaukee Public Museum, Inc., Milwaukee Wisconsin, on or about Fall 1999; the Field Museum of Natural History, Chicago, Illinois; California Academy of Sciences, San Francisco, California; Houston Museum of Natural Science, Houston, Texas, from on or about January 2000 to on or about December 31, 2002; and other sites in the United States as scheduled, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: October 9, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–27253 Filed 10–10–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at 202/619–6982, and the address is room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Federal Register

Tuesday
October 14, 1997

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1, et al.

Treaty-Based Return Positions; General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Certain Payments Made Pursuant to a Securities Lending Transaction; Final Rules

Withholding on Interest in the Case of Sales of Obligations Between Interest Payment Dates; Electronic Transmission of Form W–8; Proposed Rules

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8733]

RIN 1545–AP35

Treaty-Based Return Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6114 of the Internal Revenue Code of 1986 providing that reporting is specifically required if the residency of an individual is determined under a treaty and apart from the Code.

The IRS concluded, in the process of completing the regulations under section 7701(b), that the rules of section 6114 should apply to individuals determining their residency under a treaty.

These final regulations are necessary to implement the section 6114 rules to individuals determining their residency under a treaty. Also contained in this document are final regulations relating to section 7701(b) and conforming changes to regulations under sections 6038 and 6046.

EFFECTIVE DATE: These regulations are effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: David A. Juster, telephone (202–622–3850) (not a toll-free number), regarding sections 6114 and 7701(b) and Carl M. Cooper, telephone (202–622–3840) (not a toll-free number) regarding sections 6038 and 6046, both of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1126. Responses to these collections of information are mandatory.

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

The estimated annual burden per respondent varies from 1/2 hour to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 27, 1992, a notice of proposed rulemaking was published in the **Federal Register** (57 FR 15272) proposing amendments to the final Regulations on Procedure and Administration (26 CFR 301.6114–1), published in the **Federal Register** on March 14, 1990 (55 FR 9438) and on July 12, 1990 (55 FR 28608). The proposed amendments related to § 301.6114–1 (b) and (c) and § 301.7701(b)–7(c)(2). No written comments responding to the notice were received. No public hearing was requested or held. The proposed amendments are adopted without change by this Treasury decision. This Treasury decision also includes modifications to §§ 1.6038–2(j), 1.6046–1(g), 301.6114–1(d), 301.7701(b)–3(b) (3) and (4), 301.7701(b)–7(c)(1) and 301.7701(b)–8(b) (1) and (2).

Explanation of Provisions

Section 301.6114–1(b) is amended by adding paragraph (b)(8) to provide that reporting is required under section 6114 where residency of an individual is determined under a treaty and apart from the Internal Revenue Code (Code). The regulations provide, however, that reporting is waived for an individual if payments or income items reportable by reason of paragraph (b)(8) do not exceed $100,000 in the aggregate. Section 301.6114–1(d) currently provides that when reporting is required under section 6114, a taxpayer must furnish as an attachment to his or her return a written statement with the information as set forth in paragraph (d). Section 301.7701(b)–7(b) currently provides that a dual resident taxpayer who claims a treaty benefit as a nonresident of the United States must file a statement in the form required by paragraph (c) of that section. Section 301.6114–1(d) is now amended to provide that, when reporting is required under section 6114, a taxpayer must furnish, as an attachment to his or her return, a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. Section 301.7701(b)–7(c)(1) is amended to provide that the written statement required to be furnished under paragraph (b) of that section, as an attachment to a dual resident taxpayer's return, must be in the form of a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. Form 8833 was developed to provide standardized reporting of the information currently required by §§ 301.6114–1(d) and 301.7701(b)–7(c).

In an effort to provide standardized reporting of the information currently required to be reported, under § 301.7701(b)–8(b), by taxpayers claiming the closer connection exception and exempt individuals and individuals with a medical condition, the Service has developed Form 8840 (Closer Connection Exception Statement) and Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition). Accordingly, § 301.7701(b)–8(b)(1) is amended to provide that the statement filed by alien individuals claiming the closer connection exception, described in § 301.7701(b)–2, must be in the form of a fully completed Form 8840 or appropriate successor form. Section 301.7701(b)–8(b)(2) is amended to provide that the statement filed by exempt individuals and individuals with a medical condition, described in § 301.7701(b)–3, must be in the form of a fully completed Form 8843 or appropriate successor form.

Sections 3121(b)(19), 3306(c)(19) and 3231(e)(1) of the Code provide that ''J'' class visa holders (teachers and trainees) are exempt from FICA, FUTA and Railroad Retirement Act taxes, respectively. Section 320 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296 (108 Stat. 1464), extends the FICA, FUTA and Railroad Retirement Act tax exemptions and certain other tax rules to ''Q'' class visa holders (participants in international cultural exchange programs). Accordingly, conforming changes have been made to § 301.7701(b)–3(b) (3) and (4) to reflect the revisions in the Code to the definitions of a *teacher or trainee* and *student* contained in section 7701(b)(5).

Section 301.7701(b)–7(c)(2), adopted as proposed, provides that, for purposes of stating the approximate amount of subpart F income to be included in the

statement required to be furnished under paragraph (b) of that section by a dual resident taxpayer who is a shareholder in a *controlled foreign corporation* (as defined in section 957 or section 953(c)), the approximate amount of income may be based on the audited foreign financial statements of the CFC if there are no other United States shareholders in that CFC. Parallel rules with respect to information reporting under sections 6038 and 6046 are added in §§ 1.6038–2(j)(2)(ii) and 1.6046–1(g). Under these rules, a taxpayer who claims a treaty benefit as a nonresident of the United States, but who is a United States person for purposes of the information reporting requirements of sections 6038 or 6046, may satisfy certain information reporting requirements by filing the audited foreign financial statements of the foreign corporation with respect to which the information reporting is required. However, these rules apply only if the taxpayer is the sole United States person for purposes of the information reporting requirements with respect to the foreign corporation. If there are other United States persons for those purposes, then the taxpayer must report the information required by the regulations in the form and manner generally prescribed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It 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 notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: Various personnel from the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS and the Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6038–2 is amended by:

1. Redesignating paragraph (j)(2)(ii) as paragraph (j)(2)(iii).

2. Adding new paragraph (j)(2)(ii) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(2) * * *

(ii) If an individual who is a United States person required to furnish information with respect to a foreign corporation under section 6038 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6038 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (f)(10), (f)(11), (g), and (h) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6038.

* * * * *

Par. 3. In § 1.6046–1, paragraph (g) is amended by adding a sentence at the end to read as follows:

§ 1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

* * * * *

(g) * * * If an individual who is a United States person required to make a return with respect to a foreign corporation under section 6046 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6046 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (b)(10), (11) and (12), (c)(3)(ii)(*d*), and (g) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6046.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 301.6114–1 also issued under 26 U.S.C. 6114; * * *.

Par. 5. Section 301.6114–1 is amended by:

1. Removing the language ''(c)(1)'' in paragraph (b)(4) introductory text and adding ''(c)(1)(i)'' in its place.

2. Removing the language ''(c)(1)'' in paragraph (b)(5) introductory text and adding ''(c)(1)(i)'' in its place.

3. Removing the language''(c)(4)'' in paragraph (b)(6) and adding ''(c)(1)(iv)'' in its place.

4. Removing the language ''or'' at the end of paragraph (b)(6).

5. Removing the period at the end of paragraph (b)(7) and adding ''; or'' in its place.

6. Adding a paragraph (b)(8).

7. Paragraphs (c)(1) through (c)(6) are redesignated as paragraphs (c)(1)(i) through (c)(1)(vi), respectively.

8. Paragraphs (c)(7) introductory text, (c)(7)(i), (c)(7)(ii), and (c)(7)(iii) are redesignated as paragraphs (c)(1)(vii) introductory text, (c)(1)(vii)(A), (c)(1)(vii)(B) and (c)(1)(vii)(C), respectively.

9. The introductory text of paragraph (c) is redesignated as the introductory text of paragraph (c)(1).

10. Revising newly designated paragraph (c)(1)(ii).

11. Removing the concluding text immediately following newly designated paragraph (c)(1)(vii)(C).

12. Adding paragraphs (c)(2), (c)(3), (c)(4) and (c)(5).

13. Revising paragraph (d).

The additions and revisions read as follows:

§ 301.6114–1 Treaty-based return positions.

* * * * *

(b) * * *

(8) For returns relating to taxable years for which the due date for filing

returns (without extensions) is after December 15, 1997, that residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

(c) *Reporting requirement waived.* (1) * * *

(ii) For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, that residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

* * * * *

(2) Reporting is waived for an individual if payments or income items otherwise reportable under this section (other than by reason of paragraph (b)(8) of this section), received by the individual during the course of the taxable year do not exceed $10,000 in the aggregate or, in the case of payments or income items reportable only by reason of paragraph (b)(8) of this section, do not exceed $100,000 in the aggregate.

(3) Reporting with respect to payments or income items the treatment of which is mandated by the terms of a closing agreement with the Internal Revenue Service, and that would otherwise be subject to the reporting requirements of this section, is also waived.

(4) If a partnership, trust, or estate that has the taxpayer as a partner or beneficiary discloses on its information return a position for which reporting is otherwise required by the taxpayer, the taxpayer (partner or beneficiary) is then excused from disclosing that position on a return.

(5) This section does not apply to a withholding agent with respect to the performance of its withholding functions.

(d) *Information to be reported*—(1) *Returns due after* December 15, 1997. When reporting is required under this section for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, the taxpayer must furnish, in accordance with paragraph (a) of this section, as an attachment to the return, a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form.

(2) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the taxpayer must furnish information in accordance with paragraph (d) of this section in effect prior to December 15, 1997 (see § 301.6114–1(d) as contained in 26 CFR part 301, revised April 1, 1997).

(3) *In general*—(i) *Permanent establishment.* For purposes of determining the nature and amount (or reasonable estimate thereof) of gross receipts, if a taxpayer takes a position that it does not have a permanent establishment or a fixed base in the United States and properly discloses that position, it need not separately report its payment of actual or deemed dividends or interest exempt from tax by reason of a treaty (or any liability for tax imposed by reason of section 884).

(ii) *Single income item.* For purposes of the statement of facts relied upon to support each separate Treaty-Based Return Position taken, a taxpayer may treat payments or income items of the same type (e.g., interest items) received from the same ultimate payor (e.g., the obligor on a note) as a single separate payment or income item.

(iii) *Foreign source effectively connected income.* If a taxpayer takes the return position that, under the treaty, income that would be income effectively connected with a U.S. trade or business is not subject to U.S. taxation because it is income treated as derived from sources outside the United States, the taxpayer may treat payments or income items of the same type (e.g., interest items) as a single separate payment or income item.

(iv) *Sales or services income.* Income from separate sales or services, whether or not made or preformed by an agent (independent or dependent), to different U.S. customers on behalf of a foreign corporation not having a permanent establishment in the United States may be treated as a single payment or income item.

(v) *Foreign insurers or reinsurers.* For purposes of reporting by foreign insurers or reinsurers, as described in paragraph (c)(1)(vii)(B) of this section, such reporting must separately set forth premiums paid with respect to casualty insurance and indemnity bonds (subject to section 4371(1)); life insurance, sickness and accident policies, and annuity contracts (subject to section 4371(2)); and reinsurance (subject to section 4371(3)). All premiums paid with respect to each of these three categories may be treated as a single payment or income item within that category. For reports first due before May 1, 1991, the report may disclose, for each of the three categories, the total amount of premiums derived by the foreign insurer or reinsurer in U.S. dollars (even if a portion of these premiums relate to risks that are not U.S. situs). Reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements.

* * * * *

Par. 6. Section 301.7701(b)–0 is amended in the contents listing by:

1. Adding entries for § 301.7701(b)–7, paragraphs (c)(1)(i) and (c)(1)(ii).

2. Removing the language ''[Reserved]'' in the entry for § 301.7701(b)–7, paragraph (c)(2).

3. Adding entries for § 301.7701(b)–8, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i) and (b)(2)(ii).

The additions read as follows:

§ 301.7701(b)–0 Outline of regulation provision for section 7701(b)–1 through (b)–9.

* * * * *

§ 301.7701(b)–7 Coordination with income tax treaties.

* * * * *

(c) * * *

(1) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

* * * * *

§ 301.7701(b)–8 Procedural rules.

* * * * *

(b) * * *

(1) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

(2) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

* * * * *

Par. 7. Section 301.7701(b)–3 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 301.7701(b)–3 Days of presence in the United States that are excluded for purposes of section 7701(b).

* * * * *

(b) * * *

(3) *Teacher or trainee.* A teacher or trainee includes any individual (and that individual's immediate family), other than a student, who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15)(J) (relating to the admission of teachers and trainees into the United States) or section 101(a)(15)(Q) (relating to the admission of participants in international cultural exchange programs) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J), (Q)) and who substantially complies with the requirements of being admitted.

(4) *Student.* A student is any individual (and that individual's

immediate family) who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15)(F) or (M) (relating to the admission of students into the United States) or as a student under section 101(a)(15)(J) (relating to the admission of teachers and trainees into the United States) or section 101(a)(15)(Q) (relating to the admission of participants in international cultural exchange programs) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F), (J), (M), (Q)) who substantially complies with the requirements of being admitted. For rules concerning taxation of certain nonresident students or trainees, see section 871(c) and § 1.871–9(a) of this chapter.

* * * * *

Par. 8. Section 301.7701(b)–7 is amended by:

1. Revising paragraph (c)(1).
2. Adding text for paragraph (c)(2).

The revision and addition read as follows:

§ 301.7701(b)–7 Coordination with income tax treaties.

* * * * *

(c) * * * (1) *In general*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(1) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. See section 6114 and § 301.6114–1 for rules relating to other treaty-based return positions taken by the same taxpayer.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(1) of this section must contain the information in accordance with paragraph (c)(1) of this section in effect prior to December 15, 1997 (see § 301.7701(b)–7(c)(1) as contained in 26 CFR part 301, revised April 1, 1997).

(2) *Controlled foreign corporation shareholders.* If the taxpayer who claims a treaty benefit as a nonresident of the United States is a United States shareholder in a controlled foreign corporation (CFC), as defined in section 957 or section 953(c), and there are no other United States shareholders in that CFC, then for purposes of paragraph (c)(1) of this section, the approximate amount of subpart F income (as defined in section 952) that would have been included in the taxpayer's income may be determined based on the audited foreign financial statements of the CFC.

* * * * *

Par. 9. Section 301.7701(b)–8 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 301.7701(b)–8 Procedural rules.

* * * * *

(b) * * * (1) *Closer connection exception*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(1) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8840 (Closer Connection Exception Statement) or appropriate successor form.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(1) of this section must contain the information in accordance with paragraph (b)(1) of this section in effect prior to December 15, 1997 (see § 301.7701(b)–8(b)(1) as contained in 26 CFR Part 301, revised April 1, 1997).

(2) *Exempt individuals and individuals with a medical condition*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(2) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition) or appropriate successor form.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(2) of this section must contain the information in accordance with paragraph (b)(2) of this section in effect prior to December 15, 1997 (see § 301.7701(b)–8(b)(2) as contained in 26 CFR Part 301, revised April 1, 1997).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table and revising the entry for 301.7701(b)–7 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6114–1	1545–1126
* * * * *	
301.7701(b)–7	1545–0089 1545–1126
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 28, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25997 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602

[TD 8734]

RIN 1545–AU43; 1545–AT77

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the withholding of income tax under sections 1441, 1442, and 1443 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related requirements governing collection, refunds, and credits of withheld amounts under sections 1461 through 1463 and sections 6402 and 6413. Additionally, this document contains final regulations relating to the statutory exemption under sections 871(h) and 881(c) for portfolio interest.

This document removes temporary employment tax regulations under the Interest and Dividend Compliance Act of 1983 and amends existing regulations under sections 6041A and 6050N. This document finalizes changes to the proposed regulations contained in project number INTL–52–86, published on February 29, 1988, under sections 6041, 6042, 6044, 6045, and 6049. This document also finalizes proposed regulations contained in project number IA–33–95, published on December 21, 1995 , relating to the effective date of certain temporary employment tax regulations. This document finalizes related changes to the regulations under sections 163(f), 165(j), 3401, 3406, 6109, 6114, 6413, and 6724. This document removes certain regulations under income tax treaties.

EFFECTIVE DATES: These regulations are effective January 1, 1999, except the addition of § 31.9999–0, the removal of § 35a.9999–0T and the addition of § 35a.9999–0, which are effective October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Lilo Hester or Teresa Burridge Hughes, telephone (202) 622–3840 (not a toll-free number), for questions on the regulations generally; Carl Cooper, telephone (202) 622–3840 (not a toll-free number), for questions on portfolio interest and qualified intermediary agreements; Renay France, telephone (202) 622–4940 (not a toll-free number), for questions on the regulations relating to chapter 61 of the Internal Revenue Code or section 3406.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1484. Responses to these collections of information are required to obtain a benefit (to claim an exemption to, or a reduction in, the withholding tax), and to facilitate tax compliance (to verify entitlement to an exemption or a reduced rate).

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

The estimate of the reporting burden in these final regulations will be reflected in the burdens of Forms W–8, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

Comments concerning the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Income Tax Regulations (CFR parts 1, 31, 35a and 301) under sections 163(f), 165(j), 871, 881, 1441, 1442, 1443, 1461, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Internal Revenue Code (Code) . This document also removes certain regulations under income tax treaties.

On April 15, 1996, (61 FR 17614) the IRS and Treasury published a notice of proposed rulemaking under a number of sections of the Code, dealing with the withholding of tax under section 1441, 1442, or 1443 on amounts paid to foreign persons, procedures for claiming foreign status to avoid backup withholding under section 3406 on certain payments, and the reporting to the IRS of payments to foreign persons. Reporting to the IRS may be required under sections 6011 and 1461 or under the reporting provisions of chapter 61 of the Code, such as sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, or 6050N, (the Form 1099 reporting provisions). Comments responding to the notice were received and a public hearing was held on July 24, 1996. After considering the comments submitted in writing and at the hearings, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Payments to domestic and foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under various provisions of the Code. These procedures are important to the operation of IRS matching systems. Those systems are part of a compliance program that allows the IRS to match information provided by payors with income reported on a payee's income tax return and help detect U.S. taxpayers that fail to file returns or underreport income. The withholding of tax at source and the reporting of payments to foreign persons are also important to insure that foreign persons comply with their U.S. tax obligations. The final regulations contained in this document deal mostly with payments to foreign persons, and the U.S. income tax liability resulting from such payments.

Under sections 871(a) and 881(a) of the Code, nonresident alien individuals and foreign corporations are subject to a 30-percent tax on most items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Income taxable under these provisions includes interest, dividends, royalties, compensation, other fixed or determinable annual or periodical (FDAP) income and certain gains. The tax liability imposed under sections 871(a) and 881(a) is generally collected by way of withholding at source under chapter 3 of the Code pursuant to section 1441(a) (for payments to nonresident alien individuals and foreign partnerships), section 1442(a) (for payments to foreign corporations), or section 1443(a) (for payments of certain income to foreign tax-exempt entities). Other special withholding provisions apply under section 1443(b) (dealing with the withholding of the 4-percent tax imposed under section 4948), section 1445 (dealing with gains from the disposition of U.S. real property) and section 1446 (dealing with effectively connected income of foreign partners in a partnership). The tax liability imposed under sections 871, 881, 1441, 1442, and 1443 also extends to payments to other foreign persons, including foreign trusts and estates.

The 30-percent rate is often reduced under the Code or an income tax treaty. Under current regulations, a withholding agent may generally rely on a statement furnished by, or for, the beneficial owner certifying eligibility for a reduced rate. The procedural requirements for claiming a reduced rate of withholding may vary depending upon the type of income, the status of the taxpayer, or whether an income tax treaty applies. For example, the portfolio interest exception under sections 871(h) and 881(c) for U.S. interest on an obligation in registered form is conditioned upon the beneficial owner of the interest providing a statement of foreign status to the U.S. withholding agent, which can be

provided on a Form W–8. See § 35a.9999–5(b), A–9. If a reduction is claimed under an income tax treaty, the withholding agent may generally rely on a Form 1001 provided by, or for, the beneficial owner claiming residence in a treaty country. For dividends, however, the current rules do not require certification of foreign status in order to obtain a reduced rate of withholding at source under an income tax treaty. Instead, the withholding agent may generally rely on the address of the payee and grant a reduced rate of withholding at source if the recipient's address is in a treaty country.

A withholding agent is generally required to file an annual income tax return on Form 1042 to report amounts upon which an amount was actually withheld under chapter 3 of the Code or would have been required to be withheld but for an exemption under the regulations, or an income tax treaty. An information return on a Form 1042–S must be attached to the Form 1042 and must report each recipient's name and address, amounts paid, and amounts withheld, if any. See § 1.1461–2 (b) and (c).

A payor making payments to foreign persons must also be aware of the information reporting provisions under chapter 61 of the Code and of other withholding regimes, such as section 3406 (backup withholding), section 3402 (wage withholding), and section 3405 (withholding on pensions, annuities, etc.). Payors subject to these reporting and withholding rules include both U.S. persons and foreign persons, subject to certain exceptions. Under chapter 61 of the Code, many types of payments, such as interest, dividends, royalties, broker proceeds, etc. (reportable payments) must be reported on a Form 1099 if paid to certain U.S. persons. The form is filed with the IRS and a copy is furnished to the recipient of the payment. In addition, section 3406 requires those same U.S. payees to furnish a taxpayer identifying number (TIN) to the payor, generally on a Form W–9, and, for reportable interest and dividends, a certification that the payee is not subject to notified payee underreporting. Failure to provide a TIN would generally require the payor to backup withhold on the payment at the rate of 31-percent. A payor that fails to obtain a TIN or other required information in the manner required or to backup withhold when required under section 3406 may also be liable, under section 3403, for interest and penalties, in addition to any amount that should have been withheld under section 3406.

Payments to foreign persons are exempt from Form 1099 information reporting and backup withholding. However, the exemption is generally conditioned upon the recipient furnishing a certificate supporting its foreign status. The existing regulations under the information reporting provisions of chapter 61 contain guidance to help payors determine when payments are made to a foreign person. Generally, depending upon the type of payment involved, a payor may rely on a certification of foreign status made on Form W–8, Form 1001, Form 4224, or, in the case of certain payments outside the United States, on alternative evidence of foreign status. See, for example, § 35a.9999–3, A–34. Therefore, even if an amount paid to a foreign person is exempt from withholding under chapter 3 of the Code (e.g., gain from the sale of securities), a payor must nevertheless comply with specified certification procedures in order to avoid being subject to penalties for failure to comply with the information reporting and the backup withholding procedures (only amounts subject to reporting under the Form 1099 reporting provisions are subject to backup withholding under section 3406; see section 3406(b) and § 31.3406(a)–1(a) and, for example, § 31.3406(b)(2)–1(a)).

As explained in the preamble to the proposed regulations, the IRS and Treasury have reviewed the current withholding and reporting procedures applicable to cross-border payment flows and have concluded that changes are necessary to accommodate the size and growth of international financial markets. The IRS and Treasury have concluded that allowing the benefit of the reduced rate at source, rather than through a refund procedure, continues to be desirable. A regime based on reduction of withholding at source avoids the administrative costs and delays that can occur when applying for a refund of overwithheld amounts. This regime, however, depends on withholding agents performing important compliance functions. They must obtain documentation substantiating claims of foreign status and of reduced rates of withholding and must provide information to the IRS.

One of the important objectives of the revisions is to eliminate unnecessary burdens that the lack of standardization and coordination of current procedures may impose on withholding agents. While it is unavoidable that different information be required for different types of income or recipients, the forms currently in use apply different standards of proof and are not uniform in the manner in which the information is furnished to withholding agents. The final regulations unify the documentation requirements and seek to facilitate compliance by clarifying uncertainties that may exist under current rules (e.g., the scope of due diligence standards imposed on withholding agents).

These regulations also address important issues relating to payments to intermediaries (e.g., nominees, agents, etc.), including whether intermediaries should certify status on behalf of beneficial owners and, if so, how. Intermediary procedures under current rules have proved difficult to implement in a number of cases. In particular, U.S. source interest on obligations in registered form do not qualify as portfolio interest under sections 871(h) and 881(c) unless the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person (see section 871(h)(2)(B)(ii)). When the payment is made to a foreign person acting as an intermediary on behalf of the beneficial owner or of other intermediaries, the current regulations require that the beneficial owner certification be passed up through the chain of intermediaries to the U.S. withholding agent. See § 35a.9999–5(b), A–9. The final regulations offer alternative procedures and respond to the concerns expressed by various representatives of the financial community regarding compliance costs.

The final regulations are also responsive to the Congressional mandate in section 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) that Treasury consider a range of options for replacing the address/self-certification method of administering income tax treaty benefits. The IRS and Treasury have studied several options for improving the withholding procedures to respond to this mandate, including a system of certification of residence in a treaty country and refund systems. At hearings held in February of 1985 on proposed regulations issued in 1984 under section 1441, comments from the public and several U.S. treaty partners made it apparent that certification requirements, as proposed, would create too many administrative problems for payments made through nominees. The final regulations reflect these comments. The procedures adopted for documenting eligibility for benefits under tax treaties are similar to those applicable to portfolio interest on obligations in registered form.

Streamlining the current procedures and implementing workable intermediary certification procedures

represent a substantial simplification and reduction of burden. The IRS and Treasury expect that this, in turn, should result in greater compliance and improve the ability of withholding agents and the IRS to detect abusive claims of foreign status or of benefits under U.S. income tax treaties or under the Code.

On December 21, 1995, at 60 FR 66243, a notice of proposed rulemaking (IA–33–95) was published proposing to add § 31.9999–0. This document finalizes the proposed regulations. The effective date of this addition is October 14, 1997.

Explanation of Provisions and Revisions

A. Comments and Changes to § 1.871–14 and Related Reporting Requirements Under Section 6049

Consistent with the proposed regulations, the final regulations incorporate without substantive changes the relevant provisions from the existing temporary regulations implementing the repeal of the 30-percent tax on portfolio interest (Questions and Answers Relating to the Repeal of 30-percent Withholding by Section 127 of the Tax Reform Act of 1984 and to the Application of Information Reporting and Backup Withholding in Light of such Repeal). These provisions deal with bearer obligations, convertible obligations, and pass-through certificates. Section 1.871–14(b)(1) incorporates the provisions in § 35a.9999–5(a), A–1 and the rules in § 5f.103–1(c) defining a bearer obligation. It also reflects the rules in § 5f.103–1(c) regarding obligations in registered form that are convertible into bearer form. At the request of commentators, the definition of an *obligation in registered form* contained in § 5f.103–1(c) is restated in § 1.871–14(c)(1)(i). The definition restates the rules in § 35a.9999–5(c), A–18, regarding the effect of convertibility features on the status of an obligation as an obligation in bearer or registered form. Further, at the request of commentators, the provisions in § 35a.9999–5(b), A–12 through 15 regarding obligations issued in registered form and targeted to foreign markets are retained without substantive changes. Comments received from U.S. agencies and instrumentalities indicate that they have relied on these procedures in the past and that they plan to do so again.

One commentator requested additional clarifications under § 1.165–12(c). In response to these comments, the $1 million minimum denomination requirement under § 1.165–12(c)(1)(ii) is eliminated in order to conform that provision to § 1.165–12(c)(3)(iii). In addition, in § 1.165–12(c), the term *United States* is replaced with the term *United States and its possessions* to coordinate the provisions with § 1.163–5(c)(2)(i) (C) and (D). In § 1.165–12(c)(1)(iii), a provision was added to explain that a holder delivering a bearer obligation to a financial institution or exempt organization may rely on a written statement furnished by the institution or organization. Further, although the commentator suggested adding a sentence to § 1.165–12(c)(1) to clarify that each of paragraphs (i) through (iii) must be satisfied in order to avoid holder sanctions, this change is unnecessary because the need to meet all of the requirements in each of these clauses is sufficiently clear. The commentator proposed various changes to the rules governing the foreign targeting of bearer obligations on original issuance. However, the final regulations do not address these changes which are outside the scope of this project.

The proposed regulations regarding the certification requirements for obligations in registered form are finalized without substantive changes. As in the proposed regulations, a TIN is not required to be stated on a Form W–8 used to claim the benefit of the portfolio interest exemption, regardless of whether the debt obligation is publicly traded.

Several commentators have asked that, in the case of portfolio interest on obligations in registered form, the provisions dealing with late-received documentation be conformed to similar provisions under proposed § 1.1441–1(f)(5). Under proposed §§ 1.871–14(c)(3) and 1.1441–1(f)(5), the failure to timely receive appropriate documentation (i.e., in most cases, a Form W–8) may be cured by obtaining the documentation later. Under the proposed regulations, the cure procedures apply for purposes of withholding under section 1441 and for purposes of meeting the requirement under sections 871(h) and 881(d) that the U.S. withholding agent receive a statement. However, proposed § 1.871–14(c)(3) requires that the documentation be received before the expiration of the limitations period of the *beneficial owner*. In contrast, proposed § 1.1441–1(f)(5) requires that the documentation be received before the expiration of the limitations period of the *withholding agent*. Commentators have asked that the relevant limitations period for qualifying interest as portfolio interest under sections 871(h) and 881(d) be that of the withholding agent and not of the beneficial owner. This comment is not adopted because of the special conditions for interest to qualify as portfolio interest. Under section 871(h)(2)(B)(ii), interest on an obligation in registered form is portfolio interest only if the U.S. withholding agent receives a statement that the beneficial owner of the obligation is not a U.S. person. The legislative history to the amended provisions (see section 1810(d)(3)(B) of the Tax Reform Act of 1986 (Public Law 99–514)) specifies that the statement may be received late, but no later than the expiration of the beneficial owner's statute of limitation. This indicates that, if the required statement is received after the beneficial owner's statute of limitation has expired, the interest can no longer qualify as portfolio interest. Although the withholding agent is permitted to receive documentation at any time within its own limitations period and establish an applicable reduction in the withholding rate after the fact (e.g., under an income tax treaty), such cure procedure is not effective to confer portfolio interest status to the interest if it occurs after the beneficial owner's statute of limitations has expired. A cross-reference to § 1.1441–1(b)(7) (i.e., proposed § 1.1441–1(f)(5) as renumbered under the final regulations) is included in § 1.871–14(c)(3) to clarify the difference between the two cure procedures.

B. Comments and Changes to § 1.1441–1

1. Coordination With Other Withholding and Information Reporting Provisions

Commentators noted that withholding and information reporting requirements applicable to payments to foreign persons are governed by a complex web of statutory provisions and that the relationship of these provisions among themselves may be difficult to understand. In response to these comments, a number of changes have been made to help payors and their advisers locate relevant guidance.

As suggested, the table of contents in § 1.1441–0 has been expanded. Section 1.1441–1(b) (4) and (5) has been added to provide an overview of how the withholding and reporting procedures under chapter 3 of the Code relate to the information reporting provisions under chapter 61 of the Code and other withholding regimes under sections 3402 (wage withholding), 3405 (withholding on pensions, annuities, etc.), and 3406 (backup withholding). Provisions explaining the interaction of

applicable withholding and reporting provisions in the case of payments to foreign intermediaries or foreign partnerships have been added also. See explanation of those rules, under the heading ''Clarification of Reporting and Withholding Obligations for Payments to and by Foreign Intermediaries'' of this preamble. Where appropriate, additional cross references to chapter 61 and to sections 3402, 3405, and 3406 have been added in § 1.1441–1 and cross-references in regulations under sections 3402, 3405 and 3406 have also been added.

As a general matter, a withholding agent (whether U.S. or foreign) must ascertain whether the payee is a U.S. or a foreign person. If the payee is a U.S. person, the withholding provisions under chapter 3 of the Code do not apply; however, information reporting under chapter 61 of the Code may apply; further, if a TIN is not furnished in the manner required under section 3406, backup withholding may also apply. If the payee is a foreign person, however, the withholding provisions under chapter 3 of the Code apply instead. To the extent withholding is required under chapter 3 of the Code, or is excused based on documentation that must be provided, none of the information reporting provisions under chapter 61 of the Code apply, nor do the provisions under section 3406. If, however, withholding under chapter 3 of the Code does not apply irrespective of documentation (e.g., in the case of foreign source income or gross proceeds dealt with under section 6045), documentation may nevertheless have to be furnished to the withholding agent under the provisions of chapter 61 of the Code in order to be excused from Form 1099 information reporting and, possibly, from backup withholding under section 3406. Determinations of payee's status are generally made at each level of the chain of payment, until, ultimately, the payment is made to the beneficial owner. The following example illustrates how these rules interact under the final regulations.

For example, assume that a U.S. bank acting as a paying agent of a U.S. issuer of an obligation pays interest to a U.S. brokerage firm. Chapter 3 withholding does not apply to that payment because the payee is a U.S. person. Form 1099 information reporting under section 6049 is not required because the brokerage firm is an exempt recipient (i.e., a securities dealer), meaning that it is exempt from having the payment reported on a Form 1099. See § 1.6049–4(c)(1)(i). The U.S. brokerage firm may or may not have to provide a Form W–9 to the U.S. bank to establish its exempt recipient status depending on whether it meets one of the ''eyeball'' tests under § 1.6049–4(c)(1)(ii). Assume further that the U.S. brokerage firm credits the interest to the account of a customer. If the brokerage firm does not hold a Form W–9 (or a Form W–8) and cannot otherwise ascertain the exempt recipient status of the customer under § 1.6049–4(c)(1)(ii), it is required to backup withhold 31-percent under section 3406. See § 31.3406(a)–1(b). If it determines that the customer is a U.S. person (e.g., the firm holds a Form W–9 for the customer), then chapter 3 does not govern the payment. Instead, the payment is governed by sections 3406 and 6049. If, however, the U.S. brokerage firm determines that the customer is a foreign person (e.g., it holds a valid Form W–8), then chapter 3 governs the payment and the payment is not reportable for purposes of section 6049, meaning that it is also not subject to backup withholding under section 3406. Thus, Form 1042 reporting and withholding at a 30-percent rate are required unless the income is exempt under the Code or an income tax treaty. For example, if the interest is of a kind that may qualify as portfolio interest, then withholding is excused if the brokerage firm holds a valid Form W–8 from the customer (but would still be reportable on Form 1042–S).

If the payment to the customer is an amount exempt from withholding under chapter 3 of the Code without the need to furnish documentation (e.g., foreign source interest income), documentation may nevertheless be required for purposes of chapter 61 of the Code. In this example, the U.S. brokerage firm must report the payment of foreign source interest on a Form 1099 unless the customer is an exempt recipient or is a foreign person. If the customer's status as an exempt recipient cannot be ascertained on an ''eyeball'' basis under § 1.6049–4(c)(1)(ii), the brokerage firm must obtain a Form W–9 or a Form W–8 from the customer. If the documentation that the brokerage firm receives reliably indicates an exempt recipient or foreign status, no information reporting or withholding is required. If documentation is not obtained or is not reliable, Form 1099 information reporting is required under section 6049 and backup withholding is required under section 3406.

Assume, however, that the customer is not the beneficial owner of the payment of U.S. and foreign source interest income. Instead, it is a foreign bank acting on behalf of the beneficial owner. With respect to the payment that is U.S. source interest, the brokerage firm would be permitted to pay the interest free of withholding (assuming it would qualify as portfolio interest if appropriate documentation were received) if it held a Form W–8 (or alternative documentary evidence) from the ultimate beneficial owner that is transmitted by the foreign bank or if it held a Form W–8 from the foreign bank as a qualified intermediary who, under the final regulations, is permitted to certify on behalf of its own customer. See § 1.1441–1(e)(5). In either case, the brokerage firm must report the payment on a Form 1042 and must also make an information return on Form 1042–S. The Form 1042–S must state the name of the beneficial owner as shown on the Form W–8 (or alternative documentary evidence) or the name of the foreign bank if the bank is a qualified intermediary.

Continuing with the same example, the foreign bank also has obligations under sections 1441, 6049, and 3406 when it, in turn, makes a payment to its own customer. However, to the extent it received a valid Form W–8 (or alternative documentary evidence) from the beneficial owner and furnished a copy to the U.S. brokerage firm (or complied with the documentation requirements as a qualified intermediary), it would meet its obligation under applicable withholding and reporting provisions and, accordingly, would be exempt from withholding any amount from the payment and from reporting the payment. See §§ 1.1441–1(b)(6) and 1.6049–5(b)(14).

With respect to the foreign source interest paid to the foreign bank acting as an intermediary, the only requirement imposed on the U.S. brokerage firm is to obtain the Form W–8 of the foreign bank (and not of the beneficial owner). Because the exemption sought by the foreign bank is an exemption from Form 1099 information reporting and backup withholding, the foreign bank may do so by establishing its foreign status with a Form W–8 or by establishing its status as an exempt recipient. Under the final regulations, a foreign bank's status as an exempt recipient can be established on an ''eyeball'' test basis if the bank s name reasonably indicates that it is a bank. However, as is the case for U.S. income subject to chapter 3 withholding, the foreign bank, acting as an agent for its own customer, may be required to report the foreign source payment under section 6049 and to backup withhold under 3406 when it, in turn, pays the amount to its customer if the foreign bank is a U.S. payor (e.g., it is a controlled foreign corporation). If it is not a U.S. payor or a U.S. middleman,

it has no withholding or reporting obligations under chapter 3 of the Code due to the nature of the payment (i.e., foreign source income), unless it makes the payment in the United States. If the foreign bank makes a payment to its customer in the United States, then the payment is reportable under section 6049 and the bank must obtain a Form W–8 or a Form W–9 from its customer, unless the exempt status of the customer can be established on an ''eyeball'' basis. If the customer is a U.S. person who is not an exempt recipient, the bank must report the payment on a Form 1099 and, if the customer has not provided a Form W–9 as required under section 3406, backup withholding is required. The provisions of § 1.6049–5(b)(14) do not apply to exempt the foreign bank from its reporting and withholding obligations because it has not provided the required documentation to the U.S. withholding agent or certified on behalf of the beneficial owner.

These examples are illustrative only. Different rules may apply depending upon a number of factors, the most significant being the nature of the payment (FDAP or not FDAP, U.S. source or foreign source), the status of the payor (U.S. or foreign), the status of the payee (U.S. or foreign, beneficial owner or intermediary), where the payment is made (in the U.S. or outside the U.S.), and where the account is held (on-shore or offshore).

2. U.S. Agent of Foreign Person

Under the proposed regulations, a payment to a U.S. person gives rise to withholding liability if the payor has actual knowledge that the U.S. person is acting as an agent for a foreign person. Commentators suggested that the withholding liability should be imposed on the last U.S. person who makes the payment to a foreign person. At a minimum, commentators asked that the final regulations limit the obligation to withhold to situations where the withholding would seem jeopardized. This comment is accepted. Under the final regulations, a U.S. person making a payment to a U.S. financial institution is not required to withhold even if it knows that the payee is collecting the payment for a foreign person, if the U.S. person has no reason to believe that the financial institution will not comply with its obligation to withhold when it makes the payment to the foreign person. See § 1.1441–1(b)(2)(ii).

3. Payments to Wholly-Owned Entities

The final regulations under § 1.1441–1(b)(2)(iii) provide guidance on applicable withholding procedures for payments to a domestic or foreign wholly-owned entity that is disregarded for federal tax purposes (i.e., treated as a branch of its single owner) under § 301.7701–1(c)(2). As a general rule, a payment to a disregarded wholly-owned entity is treated as a payment to its owner. Thus, for example, if a foreign person owns a domestic disregarded entity, a person making a payment to the disregarded entity is treated as the withholding agent because the owner is a foreign person. However, because the fact that the entity is disregarded for tax purposes generally may not be apparent to a person making a payment to the entity, the person making the payment can rely on documentation received from the recipient to determine its withholding and reporting obligations. Thus, if the person receives a Form W–9 from the entity representing that the recipient is a domestic corporation, the person may rely on the form to treat the entity as a U.S. person unless it has actual knowledge or reason to know that the representation is incorrect. If the entity is a wholly-owned entity disregarded for federal tax purposes, then it must furnish documentation representing the status of its owner. For example, if the disregarded domestic entity is owned by a foreign person, it must furnish a Form W–8 from its single owner. In that case, a person making a payment to the entity may rely on the Form W–8 that the entity provides for its foreign owner and comply with withholding and reporting requirements accordingly. A domestic disregarded entity that does not furnish a certificate is subject to Form 1099 information reporting on payments that are reportable and subject to backup withholding under section 3406 because, lacking the words ''inc.'', ''incorporated'', ''corp.'' or ''corporation'' in its name, it could not be treated as an exempt recipient on an ''eyeball'' basis. If the entity had one of these words in its name, it would be a per se corporation for U.S. tax purposes because any of these words would indicate that the entity is organized under a corporate statute; thus, it could not be a disregarded entity. The TIN to be stated on the Form W–9 or the Form W–8, if required, is that of the single owner and not that of the disregarded entity.

Different documentation procedures apply if the benefit of a reduced rate is claimed under an income tax treaty and the entity is not treated as fiscally transparent in the applicable treaty jurisdiction. See §§ 1.1441–6(b)(4) and 1.894–1T(d).

4. Payments to U.S. Branches of Foreign Institutions

Commentators also suggested that a payment to a U.S. branch of a foreign bank or other financial institution should not be subject to withholding. Instead, the U.S. branch should be responsible for withholding when it makes the payment to the foreign person. In addition, commentators have asked that the regulations eliminate the requirement for a U.S. branch to furnish a certificate representing that the payment it receives is effectively connected with the conduct of a U.S. trade or business. In response to these comments, the rules governing payments to the U.S. branch of certain foreign financial institutions have been modified to alleviate the certification burden for those U.S. branches that operate in a manner equivalent to U.S. companies.

Therefore, § 1.1441–4(a)(2)(ii) of the final regulations provides that a payment to a U.S. branch of either a foreign financial institution that is registered with the Federal Reserve Board or of a foreign insurance company that is required to file an annual ''NAIC'' statement with a State Insurance Commissioner is presumed to be a payment of effectively connected income for withholding purposes. Section 1.1441–1(b)(2)(iv) has been added to provide that a U.S. branch may rebut this presumption by furnishing a Form W–8 to the withholding agent certifying that the payment that it receives is not effectively connected with its conduct of a U.S. trade or business. For a description of the form that a U.S. branch must furnish, see § 1.1441–1(e)(3)(v). Under the final regulations, the U.S. branch that furnishes a Form W–8 may agree with the withholding agent to assume responsibility for all withholding and reporting obligations for the payments it receives from the withholding agent. In the absence of such an agreement, the withholding agent remains responsible for the withholding and reporting obligations associated with the payment. This means, for example, that, if the U.S. branch receives the payment on behalf of its home office and the home office is covered by a qualified intermediary agreement that the IRS has concluded with the foreign financial institution, the U.S. branch must give to the withholding agent the home office's Form W–8. If the branch receives the payment for its own customers, it must give to the withholding agent all of the required certificates for its customers.

Similar withholding procedures are available to other U.S. branches to the

extent permitted by the district director or the Assistant Commissioner (International). Procedures for obtaining such permission existed under prior regulations under § 1.1441–4(f). These provisions are restated in § 1.1441–1(b)(2)(iv)(E) of the final regulations.

The final regulations do not eliminate the requirement to report on a Form 1042 or 1042–S payments to these branches, including payments for which the branch has assumed withholding and reporting responsibility. In such a case, however, the reporting is made to the branch as recipient of the amount for which it has assumed withholding responsibility rather than to the beneficial owner. See § 1.1461–1(b)(2)(vi) and (c)(4)(v). Although commentators asked that these reporting requirements be eliminated for payments of effectively connected income, the IRS and Treasury believe that the reporting serves an important compliance function.

5. Beneficial Owner

The definition of the term *beneficial owner* is clarified to indicate that ownership is determined on the basis of existing principles governing the determination of tax ownership, including substance-over-form principles, such as those reflected in section 7701(l) dealing with conduit transactions. The special definition of beneficial owner in proposed § 1.1441–1(c)(6)(ii)(B) for purposes of tax treaties has been eliminated. See the explanation below under § 1.1441–6 for claims of tax treaty-reduced rates for payments to entities that are treated as fiscally transparent in the U.S. or in the applicable treaty jurisdiction, or both.

6. Forms

a. Format and Design. Many comments were received regarding the format and design of the revised Form W–8. In particular, several commentators suggested that the IRS retain separate forms for effectively connected income and payments to foreign governments. The IRS is considering these comments and agrees that it may be more convenient to keep certain forms separate from the basic beneficial owner Form W–8. The revised forms will be released for public comments before they are finalized.

b. Content of Forms. The final regulations are modified in several respects regarding the Form W–8. A Form W–8 furnished by the beneficial owner is generally payee-specific and applies to all income received from the withholding agent to whom furnished, except to the extent provided in forms and instructions (e.g., effectively connected income). See § 1.1441–1(e)(2)(i). Entitlement to different types of reduced rates may require different types of information or representations on a Form W–8. For example, entitlement to exemption from withholding on portfolio interest requires only proof of foreign status. Claims of treaty benefits may require a certified TIN (that is, a TIN that the IRS has certified as belonging to a person who is a resident of a country with which the U.S. has an income tax treaty in effect; see § 1.1441–6(c) for procedures to have a TIN certified by the IRS). A withholding agent is responsible for making sure that the information or representations relevant to a particular type of income or applicable rate appear on the form and for requesting a new form where an existing form fails to support a claim of reduced rate for a different type of income. For example, a beneficial owner who furnishes a Form W–8 for portfolio interest (and therefore, does not complete the information on the form relating to claims of treaty benefits) would be required to furnish a new form to the withholding agent if it receives from the same withholding agent other income for which it claims a reduced rate of withholding under a tax treaty. The new form could serve both for portfolio interest and the other income for which treaty benefits are claimed.

In response to comments, the final regulations clarify that, where a person, other than an individual, does not have a tax residence in any country, the required permanent residence address is the address of the person's principal office, even though the principal office is not in its country of incorporation (as was required in the proposed regulations). Because of this change, the final regulations require that the entity's country of organization or incorporation be stated on the form. See § 1.1441–1(e)(2)(ii).

c. Signature of Forms under Power of Attorney. Some commentators have asked that custodians be permitted to execute the Form W–8 on behalf of their customers, based upon a power of attorney. This suggestion is not adopted. Like a tax return, a Form W–8 must be signed under penalties of perjury. As such, the IRS and Treasury view the signature of a Form W–8 as governed by the same rules that govern the signature of a tax return. Therefore, the final regulations clarify in § 1.1441–1(e)(4)(i) that a withholding certificate may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person issuing the certificate as provided under section 6061 (for individuals), 6062 (for corporations), or 6063 (for partnerships).

d. Facsimile and Electronic Transmission. Commentators have asked that withholding agents be allowed to rely on a faxed copy or electronically transmitted Form W–8 as if they were original forms. The proposed regulations permit a faxed Form W–8 to indicate foreign status for purposes of the grace period under proposed § 1.1441–1(f)(2)(i)(B), but do not allow it to be used for other purposes. The question of whether and to what extent a faxed certificate ought to be allowed instead of an original certificate arises because, under current law, a faxed document (like a photocopy) has weaker evidentiary value than an original document. This question is not unique to the Form W–8 and is currently under study by the IRS. Pending completion of the study, the final regulations allow a withholding agent to rely on a faxed form only for purposes of presuming foreign status in order to reduce the rate of withholding during a 90-day grace period. However, an original form must be provided before the grace period expires.

On the other hand, the proposed regulations provide general authority for the electronic transmission of Forms W–8, subject to procedures issued by the IRS. The final regulations retain this rule and, regulations issued together with these final regulation propose to amend § 1.1441–1(e)(4)(iv) of the final regulations by prescribing the standards that electronic systems must meet in order to effect an acceptable transmission of Forms W–8. The IRS believes that the evidentiary value of documents transmitted with electronic systems meeting these standards would equate with that of an original document. See project REG–107872–97, published elsewhere in this issue of the **Federal Register.** The option to use electronic transmission systems should help alleviate the burden of having to mail original Forms W–8 in paper form.

e. Single Form for Related Withholding Agents. Commentators have asked that several withholding agents be allowed to rely on a single Form W–8. In response to this comment, a number of changes were made to the final regulations. First, under § 1.1441–1(e)(4)(ix)(A), a withholding agent may rely on the Form W–8 furnished for another account at the same branch location, at a different branch location of the same entity, or at a different branch location of a related person if the entity or group of entities uses a universal account system or uses another type of coordinated account

information system that allows the withholding agent to easily access information regarding the nature of the certificate furnished, the information on the certificate, and its validity status.

In addition, the system must allow the withholding agent to keep a record of how and when it accesses the information and, if applicable, of how and when it communicates relevant facts affecting the reliability of the certificate to the location where the certificate is kept. Second, the rule in proposed § 1.1441–1(e)(2)(i) allowing the beneficial owner to provide a single Form W–8 with respect to a family of mutual funds is extended to investors in affiliated partnerships and corporations under § 1.1441–1(e)(4)(ix)(B) of the final regulations. Further, the final regulations also adopt a suggestion that a withholding agent be able to rely on representations from a broker that it holds a valid withholding certificate from a beneficial owner. See § 1.1441–1(e)(4)(ix)(C). The final regulations clarify that a withholding agent has knowledge of all information in the system. See § 1.1441–7(b)(3).

f. Forms from Foreign Partnerships. In response to comments, the provisions under proposed § 1.1441–1(e)(3)(iii) dealing with withholding certificates furnished by a foreign partnership have been moved to § 1.1441–5(c), which contains most of the withholding provisions governing payments to foreign partnerships (see explanation of the changes under § 1.1441–5).

g. Forms from Non-Qualified Intermediaries. In response to comments, provisions have been added to clarify the manner in which a non-QI must transmit documentation to the withholding agent and the information that it must contain. Proposed § 1.1441–1(e)(3)(iv) (renumbered as § 1.1441–1(e)(3)(iii) in the final regulations) is expanded to explain the manner in which withholding certificates or other appropriate documentation is passed up a chain of non-QIs. The final regulations allow the intermediary to furnish copies of an original Form W–8 so as to avoid requesting multiple originals for different accounts that the intermediary may hold on behalf of the same beneficial owner. See § 1.1441–1(e)(3)(iii).

Also, proposed § 1.1441–1(e)(3)(iv) (C) and (D) (renumbered as § 1.1441–1(e)(3)(iii) (C) and (D) in the final regulations) has been modified and paragraph (e)(3)(iv) has been added in response to comments that the regulations should explain the information required from a non-qualified intermediary to insure proper withholding by a withholding agent making a payment to a non-qualified intermediary. In particular, if different withholding rates apply to different owners of the payment flowing through an intermediary, the withholding agent must know which rate applies to each portion of the payment. Where such information is necessary, the final regulations provide that the intermediary must, in a statement attached to the withholding certificate from the non-qualified intermediary, provide (and update as often as is necessary) sufficient information for the withholding agent or payor to determine the proportion of each payment subject to withholding that is attributable to each person to whom the intermediary certificate relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. Such statement is not necessary, however, if the allocation information is known to the withholding agent due to the account structure that it uses (for example, the withholding agent uses separate accounts for different categories of income and applicable withholding rates).

h. Validity Period. Comments were received under § 1.1441–1(e)(4)(ii) regarding the period of validity of a properly executed Form W–8. Commentators requested that, irrespective of whether a Form W–8 includes a TIN, all forms should be valid indefinitely, or at least those furnished for a claim of effectively connected income. Some commentators suggested that a Form W–8 should not expire where a payor continues to send all correspondence to a mailing address that is also the permanent address on a Form W–8. These suggestions are not adopted because the IRS and Treasury believe that it is important for taxpayers to re-certify status periodically. Similar re-certification is also important for effectively connected income, since income may cease to be effectively connected due to a change in the taxpayer's business structure, without the withholding agent becoming aware of such changes. However, the final regulations provide relief by presuming that payments made to certain U.S. branches are effectively connected income, thereby avoiding the need to provide a certificate in such a case. See § 1.1441–4(a)(2)(ii).

Also, § 1.1441–1(e)(4)(ii)(B) is modified to make all intermediary certificates and certificates for non-withholding foreign partnerships valid indefinitely. (The indefinite validity period does not apply to the withholding certificates or documentary evidence required to be attached to a certificate from a non-qualified intermediary, a U.S. branch of a foreign institution, or a foreign non-withholding partnership.) In addition, Forms W–8 furnished by an integral part of a foreign government, a foreign central bank of issue, or the Bank for International Settlements are valid indefinitely. For these certificates, the information required is likely to change only infrequently. What may change more frequently is the withholding rate information that an intermediary or foreign partnership may have to furnish to a withholding agent on a separate statement, which the intermediary or partnership must update as often as is necessary to insure that the withholding agent withholds at the proper rates. See § 1.1441–1(e) (3)(iv) and (5)(v) for a description of the statement and § 1.1441–1(e)(4)(ii)(D) for related validity rules.

i. Effect of Changes in Circumstances. Proposed § 1.1441–1(e)(4)(ii)(D), dealing with changes in circumstances affecting the validity of a Form W–8, is revised to clarify the due diligence imposed on a non-qualified intermediary who becomes aware of a change in the circumstances affecting the validity of a withholding certificate that it has received and transmitted to the U.S. withholding agent or another intermediary. The final regulations provide that, in such a case, the non-qualified intermediary must inform the person to whom it provided the affected withholding certificate (i.e., the U.S. withholding agent or the other intermediary). It must also obtain a new withholding certificate or other documentation to replace the certificate or documentation that is no longer valid due to changes in circumstances. The same rules apply to foreign partnerships that are not withholding foreign partnerships and to a U.S. branch that passes through documentation to a U.S. withholding agent.

The final regulations also clarify that a withholding agent does not have a duty to inquire into possible changes of circumstances. In other words, a withholding agent may assume that circumstances have not changed unless it knows of facts suggesting that changes in circumstances have occurred that may affect the validity of documentation. Changes in circumstances relevant to the information and certification provided on a withholding certificate, a statement, or in documentary evidence affect the validity of the certificate, statement, or documentary evidence as of the date that the withholding agent has actual knowledge or reason to know of the changes. The final regulations are

revised to clarify that point and give withholding agents the same 90-day period as is given for a new account for perfecting documentation (i.e., inquire into the change of circumstances and obtain a new certificate, if necessary). See §§ 1.1441–1(b)(3)(iv) and 1.6049–5(d)(2)(ii).

j. Acceptable Substitute Form. In addition, proposed § 1.1441–1(e)(4)(vi) is modified in response to comments that asked that the meaning of the cross-reference to § 31.3406(h)–3(c)(1) defining an *acceptable substitute* form be clarified. The revised provisions enumerate the type of information and certifications that must appear on any substitute form for purposes of the regulations under chapter 3 of the Code. The rules are similar to the rules contained in § 31.3406(h)–3(c)(1). Under the final regulations, a withholding agent must provide a copy of the instructions to the recipient only to the extent specified in the form and in the instructions to the official form. As is the case for the Form W–9, the IRS expects that the form instructions will waive the obligation to furnish the official Form W–8 instructions to customers. Further, withholding agents are also authorized to develop customized substitute Forms W–8 and incorporate them as part of account opening documents.

k. Guidance Regarding Reliance on Withholding Certificates. Several commentators asked for clearer guidance on the extent to which withholding agents may rely on forms and the extent of their duty to inquire into the truthfulness of information stated on forms. In response to these comments, the final regulations contain a number of clarifications. Section 1.1441–1(e)(4)(viii) has been added to provide that a withholding agent may rely on a foreign entity's certification of corporate (or other) status on a Form W–8. In the case of a withholding certificate by or for a foreign entity whose name is on the list of per se foreign corporations described in § 301.7701–2(b)(8)(i) that claims to be a partnership, the certificate must represent that the entity's partnership status was grandfathered under the regulations and has not been terminated. Further, a withholding agent that receives a beneficial owner certificate from a foreign financial institution may rely on such certificate to treat the institution as the beneficial owner unless it has information in its records that would indicate otherwise, or unless the certificate contains information that would contradict such claim (e.g., sub-account numbers or names). If a foreign intermediary receives payments both in its capacity as an intermediary and for its own account, it must furnish two certificates in order to allow the withholding agent to apply the proper withholding rate and report the amounts accordingly. Additional reliance guidance has been added regarding claims of benefits under a tax treaty (see explanation under § 1.1441–6, below). Further, the provisions dealing with a withholding agent's due diligence are also expanded and clarified (see explanation under § 1.1441–7, below).

7. Non-Qualified Intermediaries

Some commentators requested that the regulations eliminate the requirement that non-qualified intermediaries (non-QIs) pass through Forms W–8 to the U.S. withholding agent because investors and intermediaries will not disclose customer information to third parties. In particular, some commentators recommended that the regulations eliminate any reference to the intermediary procedures currently applicable under § 35a.9999–5(b), A–9, dealing with certification required in order for interest to qualify as portfolio interest. These suggestions are not adopted. The qualified intermediary regime is designed to provide these benefits, but only where the intermediary follows procedures to insure adequate withholding compliance. In addition, as explained in the preamble to the proposed regulations, the intermediary procedures provided in § 35a.9999–5(b), A–9 are retained because, if the qualified intermediary regime does not apply to the intermediary, these procedures may be useful.

The final regulations also do not adopt a suggestion that, for income for which no TIN needs to be provided, the intermediary only reports the aggregate amount on Form 1042 without having to report individual amounts for each beneficial owner on a Form 1042–S. Commentators have suggested that a financial institution acting as an intermediary should be required to indicate only the proportion of a payment subject to withholding and the applicable rate. Should the proportion change, the certificate furnished by the intermediary would have to be modified to reflect the change in circumstances. This suggestion is not adopted because permission to report aggregate amounts is limited to payments made to qualified intermediaries. In the case of a qualified intermediary, the IRS may rely on audit procedures in the qualified intermediary agreement described in § 1.1441–1(e)(5)(iii) to determine whether the intermediary has properly advised the U.S. withholding agent regarding each portion of a payment to which different withholding rates should apply. The IRS' ability to check the representations made by a non-QI is limited, particularly if the non-QI is not owned by U.S. persons. In that case, it must rely on reconciling the amounts paid as reported on Forms 1042–S, disclosure of the identity of beneficial owners (or further intermediaries), and exchanges of information under tax treaties. In that context, disclosure of the exact amounts allocated to each beneficial owner (or further intermediary) is important to the compliance regime applicable to non-QIs.

8. Qualified Intermediaries

a. Scope of Qualified Intermediary Provisions. Under the proposed regulations, a withholding agent may rely on the certification of a foreign person made on behalf of others to reduce the rate of withholding. If the foreign person has a qualified intermediary agreement with the IRS, the intermediary may certify without having to furnish the certificates or other documentation of the persons for whom it acts. Many comments were received regarding the proposal, which are discussed below.

In response to comments, the final regulations are modified to allow a foreign branch of a U.S. financial institution to be a qualified intermediary (QI) in the same manner as a foreign financial institution. However, U.S. branches of U.S. or foreign financial institutions are not permitted to obtain QI status. Such difference in treatment conforms to the distinction in the final regulations between accounts maintained outside the United States and accounts maintained on-shore. See § 1.1441–1(e)(5)(ii) (A) and (B). This distinction is appropriate because it reflects the policy that the Form W–8 (signed under penalties of perjury) is the preferred means of establishing foreign status for transactions in the United States. On the other hand, documentary evidence provides appropriate evidence of foreign status for transactions outside the United States, especially in those countries where financial institutions must document the identity of customers opening new accounts or for whom they process certain transactions.

At the request of commentators, the definition of a clearing organization for purposes of § 1.1441–1(e)(5)(ii)(A) is revised so that clearing organizations that, as members of other clearing organizations, do not hold physical securities, are nevertheless considered to hold obligations for members and,

therefore, qualify for QI status. Further, the final regulations allow QI status for foreign corporations that receive U.S. income for which the benefit of a reduced rate is claimed under an income tax treaty by their shareholders (because the shareholders derive the income as residents of an applicable treaty jurisdiction within the meaning of § 1.894–1T(d)(1)). By allowing these corporate entities to be QIs, the regulations intend to facilitate the processing of treaty benefits claims by reverse hybrid entities with large shareholdings. See discussion under § 1.1441–6, below. Also at the request of commentators, a transition rule is added to § 1.1441–1(e)(5)(i) whereby institutions that are otherwise eligible for QI status and that satisfy certain criteria (as will be published by the IRS) are permitted to act as QIs while awaiting confirmation of their QI status.

Commentators were divided on whether the regulations should allow a QI to assume primary withholding responsibility as proposed in § 1.1441–1(e)(5)(iv). In view of these comments, the final regulations retain the provisions that permit the shifting of primary responsibility for withholding and reporting under chapter 3 of the Code. However, because of IRS concerns regarding compliance and comments received from foreign institutions, the final regulations provide that the responsibility for Form 1099 information reporting and related backup withholding under section 3406 may not be assigned to a QI, unless the QI is a foreign branch of a U.S. bank or another U.S. person or establishes that the obligations related to information reporting and backup withholding can adequately be carried out by a U.S. branch of the QI (even though the branch itself cannot be a QI). Some commentators suggested that, if a QI is allowed to assume primary withholding responsibility, it should be allowed to do so only for all the payments that it receives from a payor with respect to a particular account. Permitting a QI to assume withholding responsibility with respect to some but not all payments to an account would make it difficult for payors to determine the correct amount of withholding on payments to a single account. This comment has been adopted and the final regulations are modified accordingly to provide that if a QI assumes primary withholding responsibility for an account, it must do so for all payments to the account. The decision to assume or not assume withholding responsibility may be made on an account-by-account basis. See § 1.1441–1(e)(5)(iv).

As is the case for non-QIs, the regulations describe in greater detail the information that must be provided by a QI in order for the withholding agent or payor to comply with applicable reporting and withholding obligations. Section 1.1441–1(e)(3)(ii)(C) requires an allocation statement to be attached to the intermediary withholding certificate, if necessary to provide sufficient information to allow the withholding agent to determine the applicable withholding rate or rates on payments to the QI. Such a statement may not be necessary if the withholding agent allocates the assets among separate accounts for each type of income and applicable withholding rates, as directed by the intermediary at the time that the assets are acquired. The assets with respect to which payments of reportable amounts are received must be allocated to one of the three categories described below. If the withholding agent maintains a system of separate accounts to keep track of different withholding rates for different classes of income or payees, it would maintain at least three separate accounts corresponding to the three categories of assets. For this purpose, a reportable amount is defined in § 1.1441–1(e)(3)(vi) as income subject to withholding under chapter 3 of the Code. For reasons explained under the heading ''U.S. Source Bank Deposit Interest and Short-term OID'' of this preamble, U.S. bank deposit interest and U.S. short-term OID amounts are also included in the definition of reportable amount. However, reportable amounts do not otherwise include amounts that are not subject to chapter 3 withholding (e.g., foreign source income, broker proceeds).

The three categories of assets are described in § 1.1441–1(e)(5)(v). They are (1) assets related to documented non-U.S. payees; (2) assets related to documented U.S. payees (whether or not exempt recipients); and (3) assets related to undocumented payees (i.e., payees for whom the QI holds no documentation or holds documentation that is unreliable). Reportable amounts paid with respect to assets in category 1 (documented non-U.S. payees) may benefit from a reduced rate of withholding under the Code (e.g., portfolio interest) or under a treaty (i.e., to the extent the QI further indicates subcategories of assets associated with different withholding rates under an applicable treaty).

Reportable amounts paid with respect to category 2 (documented U.S. payees) are not subject to withholding or reporting under chapter 3 of the Code. However, the payor must report the payment on a Form 1099 by treating the payment of a reportable amount as made directly to any U.S. person for whom it receives a Form W–9 to the extent the U.S. person is not an exempt recipient. The final regulations clarify that a QI must agree to disclose the identity of these U.S. persons, regardless of local secrecy laws. The identity of U.S. payees that are exempt recipients under an applicable provision of the regulations under chapter 61 of the Code need not be disclosed to the withholding agent. If a Form W–9 furnished by the QI to the payor on behalf of a U.S. payee that is not an exempt recipient is not reliable (e.g., missing information or obviously incorrect TIN), the U.S. payor must backup withhold under section 3406.

Reportable amounts paid with respect to assets in category 3 (undocumented owners) are treated as amounts paid to a foreign person if the payment is an amount subject to chapter 3 withholding. See § 1.1441–1(b) (2)(v) and (3)(v)(B). Therefore, withholding applies at the unreduced 30-percent rate. Reportable amounts that are U.S. bank deposit interest or U.S. short-term original issue discount paid with respect to asserts in category 3 are treated as paid to a U.S. person who is not an exempt recipient. Therefore, 31-percent backup withholding applies to those amounts and reporting on Form 1099 is required. See § 1.6049–5(d)(3)(iii) and explanation below under paragraph 10 (U.S. source bank deposit interest and short-term OID).

If a QI assumes primary withholding responsibility, it must also attach a statement to its withholding certificate if necessary for the U.S. withholding agent to determine how much of each payment is allocable to U.S. payees. All assets are presumed allocable to foreign persons unless the QI indicates that it is acting for U.S. persons. The QI must provide the same information about U.S. payees that are not exempt recipients as is required in the case of a QI that has not assumed primary withholding responsibility.

b. Agreements with Qualified Intermediaries. The IRS intends to finalize the revenue procedure published in Announcement 96–23 (1996–18 I.R.B. 7) dealing with agreements between the IRS and certain institutions that wish to be a qualified intermediary for purposes of the U.S. tax withholding and reporting provisions (including the provisions of the Announcement regarding the documentation of beneficial ownership or foreign payee status (section 4.03)). A preliminary review of applicable know-your-customer procedures in several countries indicates that these

procedures will generally provide adequate information regarding the nationality and residence status of account holders and their status as owners or intermediaries. The IRS intends that the documentation requirements imposed on QIs under their agreements with the IRS will not be more burdensome than those imposed on withholding agents, payors, or middlemen under applicable withholding and reporting regulations.

The Announcement provides that a QI would generally be subject to the same Form 1042 and 1042–S reporting requirements as apply to withholding agents under § 1.1461–1 (b) and (c). After further review, the IRS intends to finalize the rules so that a QI will be required to file an annual Form 1042 return with the IRS. Generally, a Form 1042–S will not be required if a schedule in the form described below is attached to the Form 1042.

Reporting on a Form 1042 would consist of providing the following information to the IRS: the amount of reportable U.S. source income received by the QI during the calendar year, identified by pool, listing each payor's name, address, EIN, income type and rate of withholding; information regarding overpayments or balance due; a statement regarding the audit conducted by the QI's internal auditor, providing a description of the audit conducted and including the auditor's opinion and summary of findings. The audit statement should define the scope and objective of the audit and report on the QI's compliance with the terms of the QI agreement.

In addition, the Form 1042 must attach a schedule providing information on payments of reportable U.S. source income made by the QI and allocated to specified pools. Under a pool reporting system, separate pools would generally be required for each type of income (e.g., interest, dividends, etc.). These pools may have to be further subdivided into pools consisting of income allocable to one of the three assets categories identified in the regulations under § 1.1441–1(e)(5)(v)(B). Additional pools may be required for other purposes, including differentiating among applicable withholding rates. For example, assume that a QI pays portfolio interest and U.S. source dividends in a calendar year. The rates applicable to portfolio interest are zero (interest allocable to pool of documented foreign owners), zero (interest allocable to pool of U.S. owners who are exempt recipients), and 30% (interest allocable to pool of undocumented owners), and the rates applicable to dividends are 30% (dividends allocable to pool of residents in non-treaty countries), 15% (dividends allocable to pool of residents in treaty country eligible for this rate), zero (dividends allocable to pool of U.S. owners that are exempt recipients), and zero (dividends allocable to pool of foreign pension fund owners claiming an exemption under a tax treaty). In such a case, the QI may have to report the interest and dividend income in seven different pools.

The IRS will not require a QI to report beneficial ownership information if this information is otherwise reasonably available in appropriate cases, either under exchange of information provisions, under income tax treaties or under other procedures stated in the agreement to verify compliance with conditions for benefits claimed under income tax treaties. Appropriate cases for which the IRS may require beneficial ownership information include cases in which the IRS needs to verify compliance with conditions under an applicable tax treaty for reduced rates. This includes, for example, whether an entity claiming benefits under a tax treaty is a resident of the applicable treaty country, derives the income (within the meaning of the regulations under § 1.894–1T(d)), and meets any applicable conditions imposed under limitation on benefits provisions in the treaty. The IRS intends to limit requests for beneficial owner s identity to cases where compliance concerns are significant due to the size of investments involved or the extent of bank secrecy laws in effect in the local jurisdiction.

The QI will not be required to provide a Form 1042–S to its account holders. In fact, providing such a form would not be consistent with the collective-type refund procedures which the IRS intends to develop. These procedures will allow QIs to request refunds of overwithheld amounts on behalf of their customers. In such a system, a Form 1042–S, which can also serve as proof of tax withheld at source, would have to be monitored by the IRS in order to insure that refunds are not claimed twice for the same amount. Collective-type refund procedures are intended to be the exclusive means by which taxpayers can obtain refund of overwithheld amounts that they have received through a QI. Special procedures will have to be developed in order to reconcile this regime with regular refund procedures applicable to U.S. taxpayers that receive U.S. source investment income in an account with a QI.

With respect to audits, the proposed regulations provide that the IRS may, in appropriate cases, agree to rely on an audit of a QI performed by an approved auditor where, for example, under an income tax treaty or local laws, the IRS would be given access to appropriate auditors records to verify compliance. Records may include workpapers of, reports prepared by, and methodology employed by, the approved external auditors. An auditor is approved if it is subject to regulatory supervision under the laws of the country in which a significant part of the QI s activities are expected to occur, its internal procedures must require it to verify that the financial institution complies with the terms of the QI agreement and to report non-compliance findings under the QI agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its relevant records (i.e., workpapers and reports) must be available to the IRS.

Several comments were received asking that audits be performed solely by internal auditors. The IRS, however, does not believe that it is appropriate to rely solely on internal auditors to perform compliance checks. The IRS intends to permit internal auditors to certify that appropriate procedures, internal controls, and systems are in effect and are sufficient to insure the QI's compliance with the agreement, such as procedures to obtain documentation upon opening of accounts, to monitor that the address on an account does not change to a U.S. address or to an address outside the treaty country (if treaty benefits are claimed), to organize and process such information in a way relevant to U.S. tax withholding and reporting, to communicate the information to withholding agents timely and updating the pool information when necessary; procedures by which underwithholding and overwithholding are identified and addressed; and the existence of adequate manuals and programs for training and advising appropriate personnel in standard operating procedures. However, it is important that compliance with these procedures be verified periodically by persons who are not also employed by the QI. The IRS does not believe that internal auditors provide sufficient assurances that audits will be performed with required impartiality, even if internal auditors are required to operate independently and to report exclusively to the QI's board of directors. However, the IRS intends to use external audits only periodically, either when it becomes aware (e.g., based on a Form

1042 or an internal audit report) that there may be compliance problems or as part of its regular audit program.

In addition, with respect to collection of taxes due, the IRS intends to waive the requirement of a bond in appropriate cases, particularly where the QI has assets in the United States from which tax can be collected or where occurrences of underwithholding are expected to be minimal due to the nature of the QI's established procedures.

In QI agreements, the IRS intends to address the manner in which a QI may pay to, or receive a payment from, another intermediary. A QI making a payment to another intermediary must normally obtain the underlying beneficial owner information from the intermediary, unless the intermediary is itself a QI. In the alternative, the QI may agree to a private arrangement with the intermediary that would be identical to a QI agreement, except that it would not be concluded with the IRS and the intermediary would have no reporting obligations to the IRS. Under this regime, similar to that described for authorized foreign agents in § 1.1441–7(c)(2), the QI assumes responsibility for failures by the intermediary to comply with the documentation and withholding procedures. The intermediary would agree, under its private arrangement with the QI, to be audited in the same manner as if it were a QI. Auditors reports would be furnished to the QI and be available for inspection by the IRS. A QI would normally obtain an indemnification from the intermediary as a protection against its own U.S. tax liability arising from failures by the intermediary.

Further, the IRS will permit QIs that assume primary withholding responsibility to be combined in a chain of payment with QIs that do not assume primary withholding responsibility. For example, a U.S. withholding agent may pay to a QI that assumes primary withholding responsibility (QI1) and withhold no amount. QI1 may, in turn, pay a customer that is a QI that does not assume primary withholding responsibility (QI2). In such a case, QI1 must withhold on payments to QI2 in the same manner that a U.S. withholding agent would have had to withhold if it were paying the amount to QI2. QI2 may also be dealing with a third tier, QI3, that assumes primary withholding responsibility. In such a case, QI2 would inform QI1 that the portion of the payment allocable to QI3 (without having to disclose QI3's identity to QI1) is allocable to a QI that has assumed primary withholding responsibility. Accordingly, neither QI1 nor QI2 would withhold on the portion of the payment allocable to QI3.

9. Clarification of Reporting and Withholding Obligations for Payments to and by Foreign Intermediaries

Commentators have asked for clarification of how the procedures applicable to payments to foreign intermediaries relate to the exempt recipient rules under chapter 61 and to a foreign intermediary's reporting and withholding obligations under chapter 61 of the Code and section 3406.

Under chapter 61 of the Code and section 3406, the reporting and backup withholding requirements depend, in part, upon the status of the payee as an exempt recipient. Generally, exempt recipients include corporations and financial institutions. See § 1.6049–4(c)(1)(ii). The category of persons treated as exempt recipients may vary depending upon the type of income being paid. For this purpose, the payee is generally identified as the person to whom the payment is actually made. This person is not necessarily the beneficial owner of the income. For example, a custodian receiving a payment may be a payee for purposes of chapter 61 of the Code, even though it is not the beneficial owner of the amounts that it receives on behalf of a customer. Under the final regulations, a payment to a nominee or agent is treated as a payment to an exempt recipient, which, as a result, is exempt from information reporting and backup withholding. See § 1.6049–4(c)(1)(ii)(O). Treating a U.S. intermediary as an exempt recipient avoids multiple information reporting and insures that the liability for information reporting and, if applicable, backup withholding, falls upon the last person in a chain of intermediaries, that is the intermediary that has the direct relationship with the customer.

When a payment is made to a foreign intermediary, however, the IRS may not be able to obtain information and, thus, collect the tax that may be due from the ultimate owner if the payment to the foreign intermediary is exempt from information reporting (assuming that the intermediary is an exempt recipient). If the payment to the foreign intermediary involves amounts subject to withholding under chapter 3 of the Code (e.g., U.S. source dividends, U.S. source interest on obligations in registered form, or U.S. source royalties), a U.S. tax is collected at source at a 30-percent rate (assuming that the intermediary has furnished no reliable information concerning the beneficial owners of those payments; see applicable presumptions rules, as revised). If, however, the payment is not subject to chapter 3 withholding (e.g., broker proceeds or foreign source income) and the beneficial owner is a U.S. person, the lack of information regarding the beneficial owner is of greater concern to the IRS.

The regulations proposed in 1988 and in 1996 set forth procedures for payments to intermediaries that are, in part, designed to address some of these concerns (see, for example, the 1996 proposal to apply 30-percent withholding to U.S. source bank deposit interest unless beneficial owner documentation is obtained). The final regulations clarify how withholding and reporting under chapter 3 of the Code interacts with Form 1099 reporting and backup withholding.

Under § 1.1441–1(b)(2)(v)(A), a payment to a foreign intermediary (if reliably identified as such by the payor) that has not assumed primary withholding responsibility, is treated as a payment made directly to the person or persons for whom the intermediary (whether or not a QI) collects the payment. If that person is undocumented (i.e., has not furnished a reliable withholding certificate or other appropriate documentation), the person is presumed to be foreign under § 1.144–1(b)(3)(v)(B) to the extent the payment consists of an amount subject to chapter 3 withholding. Therefore, for example, if a U.S. source dividend is paid to a foreign intermediary that furnishes a Form W–9 for another person and such U.S. person is not an exempt recipient, the payor must treat the U.S. person as the payee for purposes of the Form 1099 reporting provisions under section 6042 and backup withholding under section 3406. If the U.S. person is not an exempt recipient, the payment is reportable even though the person who actually receives the payment is the foreign intermediary. The foreign intermediary is an exempt person by virtue of being a foreign person and a nominee. However, as clarified under the final regulations, the fact that the intermediary may be an exempt person is not relevant because, under the final rules, it is not a payee with respect to a payment associated with underlying documentation attached to the certificate. See §§ 1.6049–5(d)(3)(i) and 1.1441–1(b)(3)(v)(B).

If, however, the amount paid to the person identified as a foreign intermediary is not of a type that is subject to chapter 3 withholding (e.g., foreign source income, broker proceeds), then § 1.6049–5(d)(3)(ii) provides that the amount is treated as paid to an exempt recipient and, as such, exempt from reporting and backup withholding

under section 3406. This rule is subject to two exceptions. First, a U.S. payor with actual knowledge that the person for whom the intermediary collects the payment (including broker proceeds and foreign source income) is a U.S. person is required to report the payment (and backup withhold in the absence of a TIN) if the U.S. person is not an exempt recipient. See § 1.6049–5(d)(3)(iv), *Example 7.* A second exception is made for U.S. source bank deposit interest and short-term OID. Because these amounts are not subject to withholding, this exception appears under § 1.6049–5(d)(3)(iii) and not under section 1441. As explained under the heading ''U.S. Source Bank Deposit Interest and Short-term OID'' of this preamble, a payment of such amounts to a foreign intermediary (or certain foreign partnerships) is reportable unless the intermediary establishes that the payee (other than an intermediary or a flow-through entity) is a foreign person or an exempt recipient.

Further, provisions have been added to explain how the U.S. withholding and reporting requirements apply to payments made *by* a foreign intermediary, certain U.S. branches, or certain foreign partnerships. A foreign intermediary that furnishes a valid intermediary withholding certificate to the withholding agent is considered to have complied with its own reporting and withholding obligations under chapters 3 and 61 of the Code and sections 3402, 3405, or 3406. See, for example, § 1.1441–1(b)(6) applicable to payments of amounts subject to chapter 3 withholding by a foreign intermediary or a U.S. branch and corresponding provisions in § 1.6049–5(b)(14) for interest and § 1.6042–3(b)(1)(vi) for dividends. Similar provisions are made under § 1.1441–5(c)(3)(v) for payments by foreign partnerships that are not withholding foreign partnerships. For example, a foreign custodian bank that is not a qualified intermediary and acts as an agent for a nonresident alien individual who holds U.S. publicly traded obligations in registered form is not required to withhold under section 1441 when it credits the customer's account if it has furnished the individual's Form W–8 (or alternative documentary evidence) to the U.S. withholding agent in compliance with § 1.1441–1(e)(3)(iii). If, however, the foreign custodian bank knows that the Form W–8 (or alternative documentary evidence) is not reliable and has not so informed the U.S. withholding agent who, as a result, has not withheld, then the bank is not relieved from its obligation to withhold under section 3406 because it has not acted in compliance with the regulations under section 1441.

These rules apply when the withholding agent/payor holds a valid intermediary withholding certificate. The final regulations add provisions to clarify applicable presumptions when the status of the intermediary is not reliably established or parts of the intermediary withholding certificate are not reliable. See a description of these provisions under the heading ''Presumptions—Payments to Foreign Intermediaries'' of this preamble.

10. U.S. Source Bank Deposit Interest and Short-Term OID

Some commentators objected to the requirement that eligibility for the exemption from U.S. tax on U.S. source bank deposit interest be subject to the same beneficial ownership documentation requirements that apply to portfolio interest, suggesting lack of statutory authority and an increase in burden in the context of interbank financing transactions.

In view of these comments, the final regulations do not require a withholding agent to withhold 30-percent on bank deposit interest under section 1441 in the absence of beneficial owner documentation. Instead, documentation regarding the beneficial owner is required under sections 6049 and 3406 for purposes of avoiding information reporting and backup withholding. This documentation requirement also applies to short-term OID. See § 1.6049–5(d)(3)(iii). Therefore, the final regulations provide that a payment to a foreign intermediary of U.S. source short-term OID or of U.S. source interest on deposits with U.S. banks and other financial institutions described in sections 871(i)(2)(A) and 881(d) is treated as made to a foreign payee or an exempt recipient only to the extent that the payor can treat the payment as made to a foreign beneficial owner under § 1.1441–1 (d)(4) or (e)(1)(ii) or if the payment is made to a qualified intermediary that has assumed primary withholding responsibility or to a withholding foreign partnership. In all other cases, the foreign intermediary is not treated as an exempt recipient and its certification that it is a foreign person is not sufficient to make the payment non-reportable under § 1.6049–5(b)(12). Under § 1.6049–5(d)(3)(iii), the payment is treated as made directly to the unidentified owners for whom the intermediary receives the payment and, as such, is treated as made to a U.S. payee who is not an exempt recipient.

The regulations provide special rules to help a payor determine whether the person to whom it makes the payment is a foreign or a U.S. person, and, if presumed to be a foreign person under these rules, whether it is an intermediary or is acting for its own account. These presumptions are helpful if the payment is to a foreign person that qualifies as an exempt recipient on an ''eyeball'' basis (e.g., a foreign bank with the word ''bank'' in its name). In such a case, no documentation is required to be provided by such person and the payor may have no ability to determine whether the person is U.S. or foreign and whether it is acting as an intermediary or for its own account. A person receiving a payment is presumed to be a foreign person for the purpose of these rules if the payor has actual knowledge of the payee's employer identification number and that number begins with the two digits ''98,'' if the payor's communications with the payee are mailed to an address in a foreign country, or if the name indicates that the payee is a per se corporation under § 301–7701–2(b)(8)(i), or the payment is made outside the United States. The final regulations under § 1.6049–5(d)(4)(iii) presume that a person receiving a payment of U.S. bank deposit interest or U.S. short-term OID is *not* acting for its own account (note that this presumption is different from the general presumption under § 1.1441–1(b)(3)(v)(A) that presumes a foreign person to be acting for its own account unless it furnishes certain documentation establishing its status as an intermediary). Thus, in the absence of documentation and any evidence that the foreign person is acting for its own account, a payor would presume that the payment is made to unidentified owners for whom the person receives the payment, required to be reported under section 6049 and subject to 31-percent backup withholding under section 3406.

A payee may rebut this presumption by furnishing an indication of beneficial ownership to the payor. Such indication may be provided in any manner as the parties may choose, but must be reflected in the payor's records. An indication by a foreign person that it is not an intermediary does not have to be made under penalties of perjury.

In order to minimize disruptions to high-volume wholesale banking transactions and to the sale and repurchase (repo) market, the final regulations exempt from these documentation requirements deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, and amounts of original issue discount

arising from any repo transaction that is completed within a period of two weeks or less. Further, amounts paid with respect to certain bearer obligations are also exempt.

11. Presumptions—In General

Proposed § 1.1441–1(f), dealing with presumptions of U.S. or foreign status in the absence of reliable documentation, is restated with a number of clarifications, in §§ 1.1441–1(b)(3) and 1.6049–5(d) (2) through (5). The presumptions in § 1.1441–1(b)(3) apply to amounts that are subject to chapter 3 withholding. The same presumptions apply under § 1.6049–5(d)(2) to payments that are not subject to chapter 3 withholding (e.g., foreign source income, sales proceeds), with a few differences. As under the proposed regulations, payments that a payor or withholding agent cannot reliably associate with documentation are presumed to be made to a U.S. payee who is not an exempt recipient, in which case 31-percent backup withholding applies if the payment is otherwise a reportable payment (within the meaning of the applicable information reporting provisions under chapter 61 of the Code). As an exception to this rule, a payee is presumed to be foreign if it is an exempt recipient for whom indicia of foreign status exist. Special rules are also provided for scholarships and pensions, for which no backup withholding applies under section 3406, and for certain payments to offshore accounts. See § 1.1441–1(b)(3)(iii).

In determining the extent to which the withholding agent can consider that it can rely on documentation to determine the extent of its withholding obligations, the final regulations rely on a concept of ''reliable association'' of a payment with withholding certificates or other documentation. This concept replaces the requirement under § 1.1441–1(f)(1)(ii) of the proposed regulations that the withholding agent hold required documentation. The definition of ''reliable association'' is set forth in § 1.1441–1(b)(2)(vii). As in the proposed regulations, a withholding agent cannot reliably associate a payment with documentation if the documentation is lacking or is unreliable. These provisions apply regardless of whether documentation is otherwise required. For example, a payment of U.S. source royalties to a corporation with the word ''Inc.'' in its name requires no documentation from the payee under section 6050N because the payee's status as an exempt recipient is inferred from its name (i.e., on an ''eyeball'' basis) under § 1.6049–4(c)(1)(ii)(A)(*1*). In such a case, the payor must consider that there is a per se lack of documentation. Therefore, under § 1.1441–1(b)(3)(iii)(A), a payment to such an exempt recipient is presumed made to a foreign person if certain indicia of foreign status are present. If these indicia are present, the payor, if also a withholding agent, must withhold 30-percent from the payment under section 1441.

The final regulations modify the presumptions for certain payments to offshore accounts. Under the proposed regulations, a payment to a foreign account is presumed to be made to a U.S. person. Thus, the payor must file a Form 1099 for the payee, but the payment is not subject to backup withholding. See proposed §§ 1.1441–1(f)(2)(ii) and 31.3406(g)–1(e). The final regulations provide that, in the case of a payment to a foreign account of an amount subject to chapter 3 withholding, the payment is presumed to be made to a foreign person and not to a U.S. person. Thus, the withholding agent must withhold on the payment at a 30-percent rate. In that case, the foreign status presumption insures that a tax is paid on such amounts since, under § 31.3406(g)–1(e), no backup withholding would apply to an undocumented account if the account holder were presumed to be a U.S. person. See § 1.1441–1(b)(3)(iii)(D). The final regulations adopt the rule in the proposed regulations for payments involving amounts that are not subject to chapter 3 withholding (i.e., payee is presumed to be a U.S. person who is not an exempt recipient, subject to Form 1099 reporting but not to backup withholding). See §§ 1.1441–1(b)(3)(iii) and 1.6049–5(d)(2)(i).

The final regulations include presumptions regarding the characteristics of a payee so that a payor or withholding agent may determine whether to treat the payee as an owner of an account or as an intermediary (see § 1.1441–1(b)(3)(v)(A)), and as an individual, a trust, an estate, a corporation or a partnership. See § 1.1441–1(b)(3)(ii). The final regulations also make a number of clarifications to the presumption provisions in response to comments. First, the revised rules clarify that the presumptions are mandatory. A payor that withholds a lesser amount or does not report a payment contrary to what the presumptions would require may be liable for the amount of the tax in addition to interest and penalties, even if the withholding agent acted on the basis of actual knowledge. Although the liability for the tax may be eliminated if the withholding agent establishes that it withheld the proper amount (based on its actual knowledge or otherwise), liability for interest and penalties may be assessed. This rule is consistent with the requirement under the regulations to provide documentation before a payment is made so that a withholding agent may not rely on actual knowledge to reduce a withholding or reporting obligation. Treating the presumptions as mandatory rather as mere safe harbors is necessary to avoid undermining the requirement that withholding agents obtain documentation prior to the time of a payment.

On the other hand, a withholding agent or payor may not rely on the presumptions if it has actual knowledge (or, in the case of amounts subject to chapter 3 withholding, reason to know) of facts that would require it to withhold an amount greater than would otherwise be required based upon an applicable presumption or to report a payment that would be exempt from reporting under an applicable presumption. See § 1.1441–1(b)(3)(ix) and (b)(7).

The final regulations clarify that if, under the rules, a payment is presumed to be made to a U.S. payee, the determination of whether to report on a Form 1099 or backup withhold is governed by the provisions under chapter 61 of the Code and section 3406 and not by chapter 3 of the Code. See § 1.1441–1(b)(3)(i). Also, the final regulations clarify that a withholding agent that withholds in accordance with an applicable presumption is not liable under another withholding provision for that payment, even if the payee is subsequently determined to have a status different from its presumed status. See § 1.1441–1(b)(3)(ix)(A).

12. Presumptions—Grace Period

Several comments were received regarding the grace period provisions under proposed § 1.1441–1(f)(2)(ii). Under the proposed rules, a withholding agent or payor may presume that an account holder for whom specified indicia of foreign status exist at the time that a payment is first credited to the account may be treated as a foreign person, even if no documentation has been received before the account is first credited. This presumption has two consequences: first, backup withholding is deferred until the end of the grace period (and may never be required if foreign status documentation is provided when or before the grace period terminates); second, an amount must be withheld under chapter 3 of the Code without the benefit of a reduced rate under the Code or an income tax treaty if the amount is

income subject to chapter 3 withholding. At the expiration of the grace period, the account holder is treated as a U.S. or foreign person, depending upon whether documentation is furnished, and, if so, what type of documentation is furnished.

Commentators argued that a withholding agent should be allowed to rely on the apparent status of the beneficial owner to grant a reduced rate of withholding for payments made during the grace period. They point to the prohibition against depleting the account below 31-percent of the amounts paid and argue that this prohibition protects the government's interest that the proper amount of tax be collected upon expiration of the grace period if entitlement to a reduced rate is not confirmed. This comment is accepted but only if the withholding agent has received a faxed Form W–8. Thus, for example, a reduced rate of withholding for portfolio interest or under a tax treaty can apply to amounts credited during the grace period based on a faxed Form W–8.

Commentators also argued that any backup withholding should not be retroactively imposed after the expiration of the 90-day grace period when documentation is still lacking at that time, because of the difficulty to deduct and deposit a tax after the fact. In response to these comments, the final regulations are revised to impose backup withholding only to payments credited to the account after the expiration of the grace period if, at that time, documentation is still lacking or unreliable. The presumption that the account holder was a foreign person during the grace period is not reversed. Thus, if amounts credited during the grace period were subject to withholding at less than the full 30-percent rate, and, at the end of the grace period, the documentation is still lacking or unreliable, then the payor must make an adjustment in order to correct the underwithholding, so that all amounts credited during the grace period are withheld upon at the full 30-percent rate (to the extent they are amounts subject to chapter 3 withholding). Under the final regulations, amounts credited to the account during the grace period could be subject to no or reduced withholding if the withholding agent receives a faxed Form W–8. Consistent with the 30-day grace period under § 31.3406(d)–3(c), the provisions are revised to treat reinvestment as withdrawals. The grace period is terminated if withdrawals or other events leave a balance in the account that is insufficient to cover potential backup withholding liability. See § 1.6049–5(d)(2)(ii) and § 1.1441–1(b)(3)(iv) of the final regulations, as renumbered.

For purposes of withholding under chapter 3 of the Code, the 90-day grace period applies to all payments that are exempted from the TIN requirement under § 1.1441–6(b)(2)(ii). For purposes of information reporting on amounts not subject to withholding, the 90-day grace period applies to all payments reportable as dividends, interest, royalties, and broker proceeds. Although comments were received asking that the grace period be extended to existing accounts, the final regulations do not do so. A grace period should not be necessary for existing accounts where the expiration of withholding certificates is a predictable event for which withholding agents and payors can plan accordingly. On the other hand, the grace period is extended to situations where the validity of documentation expires because of a change of circumstances. In such a case, it is reasonable to allow time to obtain new or corrected documentation to account for changes affecting the validity of documentation in an unexpected manner. The final regulations also extend the availability of a grace period for purposes of payments for which a Form 8233 is required (i.e., claim of treaty benefits for compensation to nonresident alien for personal services). This benefit is intended to facilitate withholding on these payments to beneficial owners who are awaiting their social security number or ITIN. The final regulations clarify that the grace period provisions apply at the option of the payor or withholding agent. Therefore, a payor or withholding agent is not required to implement procedures offering a grace period to its customers.

13. Presumptions—Payments to Foreign Intermediaries

At the request of commentators, the final regulations clarify how the presumptions apply to payments to foreign intermediaries in the absence of reliable documentation both for purposes of chapter 3 and chapter 61 information, and sections 3402, 3405, and 3406. Under § 1.1441–1(b)(3)(v)(A), a payee who has not provided a valid intermediary withholding certificate or whose intermediary withholding certificate is defective because, for example, the information on the certificate regarding the intermediary is lacking or unreliable, must generally be treated as an undocumented owner of the payment. Under § 1.1441–1(b)(3)(ii), an undocumented owner is presumed to be an individual, a trust, or an estate, if the payee appears to be such a person. In the absence of reliable indication that the payee is an individual, a trust, or an estate, the payee is presumed to be a corporation if it can be treated as a corporation under the ''eyeball'' test described in § 1.6049–4(c)(1)(ii)(A)(*1*) or is presumed to be one of the persons enumerated under § 1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under an ''eyeball'' test basis. If it cannot be so treated, then it is presumed to be a partnership.

If the payee is presumed to be an individual, a trust, an estate, or a partnership, it is presumed under § 1.1441–1(b)(3)(iii) to be a U.S. person who is not an exempt recipient and the information reporting provisions under chapter 61 of the Code and section 3406 would govern the payor's reporting and withholding obligations with respect to the payment. If the payee is presumed to be a corporation or another exempt recipient under § 1.6049–4(c)(1)(ii) (B) through (Q), then it is also presumed to be a U.S. person. However, if the amount paid consists of an amount that is subject to withholding under chapter 3 of the Code (e.g., U.S. source interest or dividends), the payee is presumed to be a foreign person if there are indicia of foreign status, in which case withholding at the 30-percent rate is required under chapter 3 of the Code. See § 1.1441–1(b)(3)(iii)(A).

If the payment can be treated as made to a foreign intermediary but the intermediary's withholding certificate is unreliable either because the withholding agent or payor has not been given sufficient information to determine the proper amount of withholding or because some or all of the underlying certificates that are required to be attached are lacking or are unreliable, the payment is presumed made to a foreign nominee acting for an undocumented owner. Therefore, the payment is subject to withholding under chapter 3 of the Code at the unreduced 30-percent rate to the extent it consists of income subject to such withholding under chapter 3 of the Code. See § 1.1441–1(b)(3)(v)(B). Additional presumptions are provided under § 1.1441–1(b)(3)(v) (C) and (D) to deal with lacking or unreliable information regarding the allocation of a payment among beneficial owners or other payees and lacking or unreliable information regarding whether the intermediary's certificate identifies all of the persons to whom the payment relates. Section 1.6049–5(d)(3)(ii) clarifies, however, that if the payment is not an amount subject to chapter 3 withholding, then the payment is

presumed to be made to an exempt recipient not reportable under section 6042, 6045, or 6049 (except for certain payments of U.S. bank deposit interest or U.S. short-term OID under § 1.6049–5(d)(3)(iii)).

The lack of reliable information regarding beneficial owners or the allocation of the payments among them raise an issue as to how the amounts should be reported on a Form 1099 (if, for example, the withholding agent has a Form W–9 from a beneficial owner but has no or unreliable information regarding how much the payment is allocable to such person) or on a Form 1042–S. The final regulations under § 1.1461–1(c)(4)(iv) provide that payments to an intermediary or foreign partnership for the account of undocumented owners or partners are reportable on a single Form 1042–S made out to the intermediary, and bearing the mention ''unknown owners.'' The final regulations, however, do not contain guidance for situations where the withholding agent or payor is lacking reliable allocation information. This matter is under consideration by the IRS and comments are solicited regarding appropriate procedures before guidance is issued.

The final regulations contain similar provisions for payments to foreign partnerships under § 1.1441–5(d). See the explanation under § 1.1441–5, below.

15. Late-Received Form W–8—Cure Procedures

Generally, a Form W–8 or other applicable documentation must be furnished to the withholding agent or payor prior to the time of payment. The proposed regulations in § 1.1441–1(f)(5) prescribe procedures allowing a Form W–8 or other documentation to be furnished late (i.e., after the 90-day grace period), subject to interest and penalties. They also contemplate the possibility that, upon examination, the IRS might require the withholding agent or payor to furnish additional proof in support of the claim of foreign status or eligibility for a reduced rate of withholding under the Code or a tax treaty. Commentators asked for an exemption from interest and penalties when it is determined that there is no underlying tax liability once the documentation has been provided or, at least, that the liability be abated where the withholding agent has acted in good faith.

The final regulations do not eliminate the possibility that interest and penalties may apply because the liability for those items is clearly contemplated under section 1463. However, several revisions are made to relieve liability in certain cases. See § 1.1441–1(b)(7), restating the provisions of proposed § 1.1441–1(f)(5). First, in order to eliminate the possibility of a double interest charge when the respective unsatisfied tax liabilities of the withholding agent and of the beneficial owner run concurrently, the regulations are modified to limit collection to one amount of interest only. In that regard, interest will not be assessed against the withholding agent if it otherwise is assessed or collected against the beneficial owner. Next, in order to clarify that the cure rules apply to all cases for which documentation must be provided to the withholding agent, cross references have been added under §§ 1.1441–4(f), 1.1441–5(f), 1.1441–6(f), 1.1441–8(e), 1.1441–9(c), and 1.1443–1(b)(3). In addition, the final regulations make this relief available on a retroactive basis for all open years. This action is intended to eliminate any ongoing controversy with the IRS regarding an issue that is unclear under current law. The final regulations clarify that the period for calculating penalties and interest is limited to the time that the liability remains outstanding, i.e., starting with the due date for filing the return under section 6601 (i.e., March 15 of the year following the year in which the payment was made) and ending with the date that the tax is considered paid (i.e., the time that the documentation is furnished establishing the proper amount of tax due or that the tax is actually paid, whichever is earlier). Also, commentators asked for a clarification of how late deposit penalties would apply when the withholding agent fails to withhold. This issue remains under consideration.

16. Due Diligence With Respect to Information Returns Required Under Chapter 61 of the Code

The Interest and Dividend Tax Compliance Act of 1983 provided that the penalty for the failure to file an information return, furnish a copy of it to a payee, or supply a TIN can be waived if it is shown that the filer exercised due diligence in filing the return, furnishing it to a payee, or supplying the payee's TIN. The due diligence standard applied to failures on information returns reporting dividends under section 6042, patronage dividends under section 6044, and interest or OID under section 6049. The IRS issued regulations in question and answer form providing the prerequisites to establish due diligence. See §§ 35a.9999–1 through 35a.9999–5.

The Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2393, repealed sections 6676 and 6678 with the enactment of uniform information reporting penalties under sections 6721 through 6724 and replaced due diligence with a reasonable cause standard under newly enacted section 6724. However, Congress provided that the separate and higher due diligence waiver standard for returns filed under sections 6042, 6044, and 6049 be considered to meet reasonable cause. H. Rep. No. 247, 101st. Cong., 1st. Sess., at 1385 (1989).

These final regulations remove the Q/As under Part 35a, effective January 1, 1999. Because due diligence will remain in effect, the IRS will retain the relevant Q/As set forth in Part 35a. These final regulations redesignate the relevant Q/As under § 301.6724–1(g).

17. Effective Dates

Many comments were received regarding the effective dates of the final regulations. Commentators argued that the January 1, 1998 effective date in the proposed regulations should be extended because of the anticipated time required to complete QI agreements and for withholding agents to make the administrative and operating systems changes that will be necessary to comply with the regulations. However, commentators have argued that provision should also be made for a financial institution to elect earlier adoption of the new requirements where possible.

The final regulations accommodate these concerns. The effective date is changed to January 1, 1999. In view of the later effective date and comments that staggered effective dates make system adjustments more difficult and costly, all special delayed effective dates rules are eliminated. Also, transition rules are modified for existing certificates. Valid withholding certificates that are held on December 31, 1998, remain valid until the earlier of December 31, 1999 or the due date of expiration of the certificate under rules currently in effect (unless otherwise invalidated due to changes in the circumstances of the person whose name is on the certificate). Further, certificates dated prior to January 1, 1998 that are valid as of January 1, 1998, remain valid until the end of 1998, irrespective of the fact that their validity expires during 1998 (other than by reason of changes in the circumstances of the person whose name is on the certificate).

The final regulations do not accelerate the effective date of certain provisions as had been requested by several commentators. Although doing so would provide relief to a number of

taxpayers, it would also complicate the many system adjustments that withholding agents, particularly financial institutions with large volume of cross-border payments, must implement before the effective date of these regulations. The IRS and Treasury feel that the benefits of accelerating certain provisions would not sufficiently outweigh the added costs and burdens to many withholding agents.

C. Comments and Changes to § 1.1441–2

1. Amounts Subject to Withholding

Under § 1.1441–1 of current regulations, an amount is subject to withholding only if it is from sources within the United States. The final regulations under § 1.1441–2(a) clarify that an amount can be sourced within the United States irrespective of the fact that the source is undetermined at the time of payment. This clarification addresses the Tax Court's ruling in *Albert J. Miller* v. *Commissioner,* T.C. Memo 1997–134, 73 T.C.M. (CCH) 2319, that an amount whose source cannot be determined at the time paid is sourced outside the United States for purposes of sections 871(a) or 881(a) and the withholding provisions of chapter 3 of the Code.

2. Fixed or Determinable Annual or Periodical Income

The definition of the term *fixed or determinable annual or periodical* (FDAP) income under existing regulations under section 1441 is retained in the final regulations and clarified. In particular, § 1.1441–2(b)(1)(iii) addresses three types of uncertainties that a withholding agent may encounter: (1) The proportion of the payment that constitutes income cannot be determined when a payment is made (e.g., a payment made on an obligation that may include interest, but the exact amount of interest cannot be determined because the determination is contingent upon future events); (2) the proportion of the payment that constitutes U.S. source income cannot be determined at the time of payment; or (3) the fact that the payment may be income in the future cannot be anticipated at the time of payment. Only in the third case would the payment not constitute FDAP income. In the first two cases, income is actually being paid. The only uncertainty is the amount that the recipient should include in income and this uncertainty does not prevent the payment from constituting fixed or determinable annual or periodical income for purposes of section 871(a) or 881(a) and the withholding provisions of chapter 3 of the Code. See also the additional provisions under §§ 1.1441–2(b)(1)(iii) and 1.1441–3(d)(1) dealing with determinability and rules of withholding for items whose source cannot be determined at the time of payment.

3. Original Issue Discount

In response to comments, the final regulations regarding withholding on original issue discount (OID) are simplified. As a general principle, withholding is required on a payment that is treated as taxable OID under section 871(a)(1)(C) or 881(a)(3)(A) to the extent the withholding agent knows the amount that is OID. That amount is known to the withholding agent if it knows how long the beneficial owner has held the obligation on which a payment is made, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent has knowledge if the information is obtainable upon exercising reasonable efforts. The information is not considered obtainable in the case of payments with respect to publicly traded securities where the withholding agent, consistent with normal industry practices, does not have a direct customer relationship with the person who has actual knowledge of the relevant information or has no access to this information in the normal course of its business due to the manner in which the obligation is held (e.g., in street name or through intermediaries). In the case of a withholding agent maintaining a direct customer relationship with the beneficial owner, knowledge regarding the owner's holding period and acquisition premium is considered to be reasonably available to the withholding agent. Because of the complexities that may be involved in calculating the amount taxable to the owner and, thus, subject to withholding, withholding agents may rely on the most recently published ''List of OID Instruments'' or similar list published by the IRS (currently contained in IRS Publication 1212 (available from the IRS Forms Distribution Centers)).

Notwithstanding the rules described in the preceding paragraph, withholding is required with respect to OID that would qualify as portfolio interest except for the fact that documentation required under section 871(h)(5) is not furnished to the withholding agent. In the absence of information regarding the amount of OID, the withholding agent may rely on IRS Publication 1212. The final regulations clarify that no withholding applies to amounts that are not otherwise subject to chapter 3 withholding (e.g., OID on obligations in bearer form that qualifies as portfolio interest).

3. Securities Lending Transactions

The final regulations add paragraph (b)(4) to cross-reference the regulations under sections 871 and 881 dealing with securities lending transactions and equivalent transactions. Thus, the character of the income arising from these transactions applies for purposes of determining the amount of withholding under chapter 3 of the Code. Similar rules apply for purposes of information reporting and backup withholding on interest and dividends. See §§ 1.6042–3(a)(2) and 1.6049–5(a)(5). See § 1.1441–1(b)(4)(i) for documenting interest equivalent amounts for which the beneficial owner claims a portfolio interest exemption.

4. Relief for Deemed Payments of Income

Several comments were received regarding the difficulty for a withholding agent to withhold on an amount of income that is not represented by cash or property (i.e., deemed payments of income). The final regulations in § 1.1441–2(d) provide relief in cases in which the withholding agent does not have custody of, or control over, property of the taxpayer who is deemed to receive income under section 871(a) or 881(a) or does not have knowledge of the events that give rise to the deemed payment. Relief, however, does not apply for deemed payments arising between related parties or as part of a pre-arranged plan to avoid withholding. Therefore, a withholding obligation arising out of a deemed payment resulting from an allocation of income under section 482 is not eliminated because the parties are related. Examples are provided for cancellation of debt and constructive income arising from correcting prior underwithholding by paying the amount of tax due to the IRS. Withholding on deemed distributions with respect to stock is not excused under these rules. For these amounts, the IRS and Treasury believe that an exemption from withholding would be inappropriate in view of the ongoing investment or business relationship between the parties. Under the final regulations, withholding is required at the time of the deemed distribution even if the income from the distribution is prorated over time (such as a redemption premium under section 305(c)). The IRS and Treasury considered comments asking that withholding be deferred until income is includable in the

shareholder's income but concluded that the withholding procedures necessary to implement such an exception and insure proper withholding would be too complex.

D. Comments and Changes to § 1.1441–3

1. Withholding on Interest Payments

No obligation to withhold is imposed under current law on the payment of stated interest on an obligation that was purchased between interest payment dates. Under § 1.61–7(c), interest received on the interest payment date is treated as a return of basis to the extent it represents accrued unpaid interest as of the date of purchase as reflected in the new holder's basis for the obligation. Therefore, when the new holder receives a payment of the stated interest, the holder s tax liability is limited to the amount of interest accrued after the date of purchase (subject to additional adjustments reflecting possible acquisition premiums or market discounts). Because of the difficulty for a withholding agent to determine the amount accrued to the holder and other adjustments affecting the actual amount taxable to the holder, withholding on the entire amount of stated interest is permitted under the regulations. Although commentators have asked that the withholding agent be permitted to withhold on the amount that it knows is taxable, the final regulations do not modify the proposed regulations on this point because the IRS and Treasury consider that withholding on the entire amount is justified to the extent that, under existing rules, withholding on sales of obligations between interest payment dates is not required.

This comment is taken into account, however, in regulations that are proposed together with these final regulations to require withholding on sales of obligations between interest payment dates. These proposed regulations are intended to conform the withholding regime for sale of bonds between interest payment dates to that implemented for OID obligations under the final regulations. See project REG–114000–97 published elsewhere in this issue of the **Federal Register**.

2. Withholding on Distributions

The proposed regulations regarding withholding on corporate distributions are expanded and clarified in view of comments. Section 1.1441–3(c)(1) and (2)(i) are revised to clarify that the withholding procedures are elective. In other words, a distributing corporation or the custodian or nominee may choose to withhold on the entire amount distributed and, thus, to not take advantage of the election to limit withholding to the estimated earnings and profits amount. An election by the distributing corporation to determine withholding based on the estimated earnings and profits amount for distributions it makes directly to a foreign person does not mean that a custodian or nominee who receives payments of distributions for the account of foreign investors must do the same when it makes a payment of these distributions to the foreign investors. Instead, the custodian may choose to disregard the estimate of earnings and profits and to withhold on the entire distribution. The revisions reflect the fact that each withholding agent must be able to make this decision independently because of its own potential tax liability under section 1461 in the event of underwithholding. The final regulations clarify that the amounts of tax that the withholding agent pays to satisfy the tax liability under section 1461 if underwithholding has occurred is not subject to withholding even if it constitutes a constructive dividend. This rule applies irrespective of the fact that the satisfaction of the tax liability may be additional income to the shareholder unless the additional payment results from a contractual arrangement between the parties regarding the shareholder's satisfaction of its tax liability by the distributing corporation. With this rule, the final regulations eliminate, for this situation, the question as to whether a taxpayer realizes income when the withholding agent satisfies a tax liability under section 1461.

Further, proposed § 1.1441–3(c)(2)(iii) (renumbered as § 1.1441–3(c)(2)(ii)(C) in the final regulations) is revised so that an erroneous estimate by the distributing corporation is imputed to an intermediary not only in situations in which the IRS challenges the estimate but also in situations in which the distributing corporation unilaterally determines that its estimate is in error. Some commentators questioned whether a reference to interest in § 1.1441–3(c)(3)(ii)(B) regarding consequences in the event of underwithholding had been omitted in error. Interest is not mentioned in the provision because, to the extent underwithholding is corrected by the due date of filing the annual return under § 1.1461–1(b), no interest charge applies. On the other hand, if the withholding agent corrects the underwithholding as part of an amended return filed after the due date for filing the annual return, then an interest charge would apply, as reflected in § 1.1441–3(c)(3)(ii)(B)(*2*)(*ii*).

In response to another comment, § 1.1441–3(c)(3)(ii) is added to allow custodians and nominees to rely on estimates made by mutual funds regarding their capital gain dividends and exempt interest dividends. Some commentators also asked that § 1.1441–3(c)(3)(ii) be revised to provide that an adjustment to the amount of withholding is not a distribution for all purposes and not just for purposes of section 562(c). This comment is not accepted because there are circumstances in which the adjustment may constitute a distribution—such would be the case, if, for example, the adjustment cannot be made by adjusting the withholding on a subsequent distribution because the affected shareholder is no longer a shareholder or the adjustment occurs after the end of the taxable year.

Finally, § 1.1441–3(c)(4) has been added to coordinate the general distribution provisions with the regulations under section 1445. Under § 1.1445–5(b)(1), no withholding is required under section 1445 on a distribution from a U. S. real property holding corporation (USRPHC) if the distribution is subject to withholding under section 1441 or 1442. Given the change in the withholding procedures applicable to corporate distributions, the exemption from withholding under section 1445 may now lead to underwithholding on distributions from a USRPHC. In order to correct this situation, the final regulations give taxpayers a choice between two withholding regimes. A USRPHC may choose to withhold under section 1441, provided it withholds on the entire amount of the distribution, regardless of estimated earnings or profits. However, the rate of withholding may be reduced under income tax treaty provisions, although not below the 10-percent rate applicable under section 1445 (unless the treaty provides otherwise for distributions from USRPHCs). For purposes of applying the treaty, the entire amount of the distribution is treated as a dividend. Alternatively, the USRPHC may withhold under a mixed regime. Under this regime, withholding applies under section 1441 on the portion of the distribution that represents estimated earnings and profits and under section 1445 on the remainder of the distribution. The mixed withholding regime is mandatory for distributions from publicly-traded real estate investment trusts (REITs). In other words, a REIT may not, with respect to its distributions, choose to apply the withholding regime of section

1441 to the entire distribution. Instead, the REIT must withhold under section 1441 on the portion of the distribution that is not designated as a capital gain dividend or a return of basis. Withholding under section 1445 is also required on the portion of the distribution that the REIT designates as a capital gain dividend in accordance with § 1.1445–8.

3. Withholding on Undetermined Amounts

The final regulations also address the practical difficulties of withholding on an amount when, at the time of payment, there is not sufficient information to calculate which portion, if any, is taxable or to determine the source of the income. For these purposes, provisions have been added under § 1.1441–3(d)(1) that require a withholding agent to withhold on the entire amount when such uncertainties exist. This requirement in part reflects the policy that withholding generally should apply to payments that leave the U.S. taxing jurisdiction. The requirement to withhold in the event of uncertainty is similar to the provisions under existing regulations under § 1.1441–3(d)(1) (restated as § 1.1441–3(d)(2) of the final regulations) requiring withholding of an amount sufficient to assure that the tax withheld is no less than 30 percent of the recognized gain. In order to minimize overwithholding, the final regulations provide an alternative to withholding on the entire amount when uncertainties exist. Instead, the withholding agent may make a reasonable estimate of the amount from U.S. sources or of the taxable amount and set aside a corresponding portion in escrow until the amount subject to withholding can be determined. Under this alternative, setting aside an amount is not an event of withholding for purposes of § 1.1461–1(a) that would give rise to the requirement to pay the tax. Instead, the payment of the tax can be postponed until a determination can be made of the amount of withholding liability under this section. The provisions under § 1.1441–1(d)(1) do not apply to uncertainties that are specifically addressed under other provisions of the regulations, such as lack of information regarding the identity or status of the beneficial owner or payee (see § 1.1441–1(b)(3) for applicable presumptions in those cases and the grace period provisions set forth in § 1.1441–1(b)(3)(iv)) or withholding on original issue discount amounts (see § 1.1441–2(b)(3)).

E. Comments and Changes to § 1.1441–4

1. Notional Principal Contracts

Commentators have questioned whether it is appropriate to treat income from notional principal contracts as FDAP income, particularly since it is unclear at the outset whether the arrangement will generate any income. The IRS and Treasury believe that the statute contemplates very few exceptions to the concept of FDAP, and the only clear exception is for gain from the disposition of property. Income from notional principal contracts is not gain from the disposition of property, nor is it the equivalent of gain. However, the final regulations minimize the burden associated with characterizing the income as FDAP because the liability for withholding under chapter 3 of the Code is eliminated for such income. See § 1.1441–4(a)(3). Reporting under section 1461 or 6041, however, continues to be required under the final regulations. However, in response to comments, the reporting burden has been reduced and clarified (see §§ 1.1441–4(a)(3), 1.1461–1(c)(2)(i)(C) and (ii)(D), 1.6041–1(d)(5) and 1.6041–4(a)(4) of the final regulations).

Under the final regulations, notional principal contract payments are exempt from withholding. However, if paid to a foreign person, they are presumed effectively connected income and, as such, are required to be reported on a Form 1042–S. The effectively connected income presumption under § 1.1441–4(a)(3) can be rebutted by providing to the withholding agent a valid withholding certificate representing that the payments are not effectively connected with the conduct of a U.S. trade or business. In such a case, no reporting is required on a Form 1042–S for these amounts. A financial institution (as defined in § 1.165–12(c)(1)(iv)) may, instead of a withholding certificate, represent in a master agreement that governs the transactions in notional principal contracts between the parties (such as an International Swaps and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction, that the counterparty is a U.S. person or is a non-U.S. office of a foreign person. These representations are not required to be made under penalties of perjury.

In the final regulations, swap payments include payments on notional principal contracts described in § 1.988–2(e), dealing with foreign currency swaps. Also, income on notional principal contracts does not, for purposes of these rules, include amounts characterized as embedded interest under § 1.446–3(g)(4). Such amounts, if not effectively connected with the conduct of a U.S. trade or business and from U.S. sources, are subject to chapter 3 withholding and are reportable on a Form 1042 and 1042–S.

Under § 1.6041–1(d)(5), a payment on a notional principal contract, including embedded interest, is a reportable payment, unless paid to an exempt recipient (i.e., a person described in § 1.6049–4(c)(1)(ii)), paid outside the United States (unless the payor has actual knowledge that the payee is a U.S. person), treated as effectively connected with a U.S. trade or business under § 1.1441–4(a)(3), or paid by a non-U.S. payor or a non-U.S. middleman. If none of these exceptions applies, and the payor does not hold a Form W–9, then a payment is presumed under § 1.6049–5(d)(2)(i) to be made to a U.S. person that is not an exempt recipient, in which case backup withholding would be required under section 3406.

The final regulations under §§ 1.6041–1(d)(5) and 1.1461–1(c)(2)(i)(C) adopt the suggestion that nonperiodic payments are reportable only at the time that an actual payment is made. The final regulations require reporting of net income rather than gross amounts from notional principal contracts. Further, in response to comments, the final regulations in §§ 1.1441–4(a)(3) and 1.6041–1(d)(5) specify that the reporting requirements apply only prospectively, i.e., to payments made after December 31, 1998.

2. Form 8233 Procedures

The current regulations prescribe a procedure by which a withholding agent may grant a reduced rate under an income tax treaty on payments to nonresident aliens for services rendered in the U.S., generally in connection with a sporting, cultural, scientific, or artistic event. The procedure involves submitting a Form 8233 to the IRS for review and approval as instructed under § 1.1441–4(b)(2). The regulations provide, in effect, that the withholding agent may not grant an exemption from withholding until after a 10-day period beginning with the date that the Form 8233, as reviewed and approved by the withholding agent, is mailed by the withholding agent to the IRS. The proposed regulations extend the 10-day period to 20 days.

Commentators objected to the 20-day period and asked for the retention of the 10-day period. In addition, they suggested that, instead of making the treaty exemption effective only after the

submission of Form 8233, the exemption should be retroactive to the date of first payment covered by the certificate if the completed Form 8233 contains the nonresident alien's TIN, and if the withholding agent is not subsequently notified by the IRS within the 20-day period that the exemption is not valid. After further consideration, the comments are adopted. The 10-day waiting period is continued and the approval of the Form 8233 is made retroactive to the date of first payment covered by the certificate. However, the final regulations clarify that the IRS review process does not exonerate the withholding agent from liability for underwithholding. In its review, the IRS simply insures that the form contains all of the requested information, that the country of residence stated on the form is a country with which the U.S. has an income tax treaty, that the reduced rate that the withholding agent plans to apply is the proper rate under the applicable treaty, and that, based solely on information contained on the form, the reduced rate appears applicable. The IRS approval of the form makes no determination regarding whether the withholding agent's reliance on the form is reasonable, based on facts that the withholding agent knows or has reason to know at the time of the payment and that are not disclosed to the IRS as part of the review process. In addition, the final regulations allow the 90-day grace period to apply to payments covered by a Form 8233, in order to allow time for foreign persons who come to the United States for the first time and must complete a Form 8233 shortly after arrival to apply for and obtain an individual taxpayer identifying number. See § 1.1441–1(b)(3)(iv).

The final regulations modify the proposed rule under § 1.1441–1(b)(6) reducing the amount of certain compensation income by the personal exemption under section 151. The proposed regulations allowed a reduction for the full amount of the exemption. Commentators noted that allowing a reduction for the full amount of the allowable personal exemption may lead to inappropriate claims of multiple exemptions for nonresident aliens who come to the U.S. frequently for short-term events or assignments with different organizations. Commentators were concerned that they would have no ability to keep track of prior claims of the personal exemption. For this reason, the proration rule now currently in effect, is continued in the final regulations.

3. Reimbursed Expenses

Commentators asked that the regulations provide an exemption from withholding for reimbursed expenses paid to a nonresident alien individual in relation to performance of services in the U.S. as an independent contractor. A change to the regulations is not necessary, however. If the payments are exempt from tax under the Code, they are exempt from withholding under § 1.1441–4(b)(1)(iv). If, on the other hand, those payments are not exempt under the Code, then it would be inappropriate to provide for an exemption from withholding under section 1441.

F. Comments and Changes to § 1.1441–5

In response to comments, many partnership provisions have been consolidated in this section. A new paragraph (a) has been added to describe the steps necessary to determine the status of the payee for withholding purposes. The withholding procedures applicable to domestic partnerships are stated in paragraph (b). The withholding procedures applicable to foreign partnerships are stated in paragraph (c). Paragraph (d) describes applicable presumptions in the absence of documentation. Paragraph (e) is reserved for rules applicable to estates and trusts. Paragraph (f) contains the effective date provisions. Corresponding provisions have been added in § 1.6049–5(d)(4), dealing with payments of reportable amounts under chapter 61 of the Code to address reporting of payments of amounts that are not subject to chapter 3 withholding.

Paragraph (c)(1) provides guidance for identifying the payee in the case of a payment to a foreign partnership. As a general rule, a payment to a foreign partnership is treated as a payment directly to the partners, whether or not documentation has been provided for the partners, with two exceptions: a payment to a ''withholding foreign partnership'' and a payment to a foreign partnership that has furnished a certificate upon which the withholding agent can rely to treat the payment as effectively connected with the conduct of a U.S. trade or business are treated as a payment to the foreign partnership and not to the partners.

Paragraph (c)(2) restates the rule proposed under § 1.1441–1(e)(5), dealing with qualified intermediaries, for foreign partnerships that are withholding foreign partnerships. In order to avoid confusion, a withholding foreign partnership is no longer named a qualified intermediary.

Paragraph (c)(3) deals with foreign partnerships that are not withholding partnerships. Paragraph (c)(3)(iii) incorporates the withholding certificate provisions that were in proposed § 1.1441–1(e)(3)(iii). Those rules parallel the rules applicable to non-QIs under § 1.1441–1(e)(3)(iii) of the final regulations. In particular, the regulations require that a statement be attached to the withholding certificate if necessary to provide information sufficient for the withholding agent to determine each partner's distributive share of income subject to withholding. The rules governing the statement are stated in paragraph (c)(3)(iv) and parallel similar rules in § 1.1441–1(e)(3)(iv) of the final regulations applicable to non-QIs. At the request of commentators, paragraph (c)(3)(iii) clarifies that a foreign partnership receiving income that is effectively connected with the conduct of a U.S. trade or business is not required to furnish separate certificates for each of its partners. Instead, it may furnish one single withholding certificate, even though the partnership is not a withholding foreign partnership. See also paragraph (c)(1)(ii)(C). This procedure is reasonable because, in such a case, the partnership is subject to withholding procedures under section 1446.

Paragraph (d) describes the presumptions upon which a withholding agent can rely when making payments to a partnership for which certain documentation is lacking or unreliable. First, under paragraph (d)(2), a recipient that is presumed to be a partnership (based on presumptions set forth in § 1.1441–1(b)(3)(ii)) is presumed to be a foreign partnership if certain indicia of foreign status are present. If, based on such a presumption, the withholding agent has determined that the payment is made to a foreign partnership (presumably acting for the account of its partners since intermediary status generally cannot be presumed in the absence of valid documentation), uncertainties may remain regarding the status of the partners, the allocation of a payment among them, or whether all the partners have been accounted for. Under the final regulations, a payment that cannot be reliably associated with a withholding certificate from a partner is presumed made to a foreign payee. As a result, the withholding agent is required to withhold 30-percent from the payment, without a reduction. Also, any part of a payment that it is not reliably allocated to a partner is presumed allocable to the partner with

the highest withholding rate or the highest U.S. tax liability (as the withholding agent can best estimate) if the withholding rates are equal. Third, if the withholding agent does not have a reliable certification that all the partners are accounted for, and, as a result, the withholding agent cannot reliably determine the distributive share of any one or more partners, then none of the payment can be reliably associated with any one partner and the entire payment is presumed made to a foreign payee.

These procedures parallel those applicable to foreign intermediaries under § 1.1441–1(b)(3)(v). They differ from the presumptions stated in the proposed regulations under § 1.1441–1(f)(4)(ii) which provided that the amounts were paid to a U.S. payee that is not an exempt recipient. Thus, the final regulations, by presuming that the amounts are paid to a foreign payee, require that a 30-percent amount be withheld on amounts subject to withholding under chapter 3 of the Code rather than a 31-percent amount under the backup withholding provisions of section 3406. However, for amounts that are not subject to chapter 3 withholding, § 1.16049–5(d)(4) retains the provisions in the proposed regulations that the payments are presumed made to a non-exempt recipient U.S. payee. In such a case, 31-percent backup withholding applies instead of 30-percent withholding.

The final regulations under § 1.1441–5(d)(3)(iv) clarify that a foreign partnership that is a withholding foreign partnership determines who the payee is and the status of the payee, based on the provisions of § 1.1441–1(b)(2) and § 1.1441–5 (c) and (d) in the same manner as if it were making payments directly to the partners other than in their capacity as partners. In the absence of documentation regarding the partners, the partners are presumed to be foreign persons rather than U.S. persons, including for amounts that are not subject to chapter 3 withholding. A presumption of U.S. status for amounts not subject to chapter 3 withholding would not be meaningful because a foreign partnership is not a payor for purposes of chapter 61 of the Code and backup withholding under section 3406 when making payments to its partners. Therefore, payments made by a foreign partnership to its partners are not reportable under chapter 61 and are not subject to backup withholding. Instead, a foreign partnership must file an annual return on Form 1065 and report each partner's distributive share on Forms K–1, which forms are filed with the IRS with a copy to each partner. Such filing requirements apply in all cases in which the foreign partnership derives U.S. income, irrespective of whether the tax liability has been satisfied by withholding at source or whether all the partners are foreign. See section 6031 and §§ 1.6031–1(c) and 1.6031(b)–1T. However, in order to reduce the burden on foreign partnerships that are not withholding foreign partnerships, the IRS and Treasury are planning to issue regulations under section 6031 that would eliminate the filing requirement under section 6031 for foreign partnerships that are not engaged in a U.S. trade or business, that furnish appropriate documentation for each of their partners, and whose partners' U.S. tax liability has been fully satisfied at source.

Commentators asked that foreign partnerships be allowed to certify under penalties of perjury that all the partners are foreign and to use the same sub-accounting procedures that qualified intermediaries may use. In particular, where a partner is entitled to reduced withholding under the regulations without providing a TIN, commentators argue that there should not be a requirement that the partnership's intermediary withholding certificate specify that partner's distributive share of the item of income paid to the partnership. Also, they argue that there should not be a requirement that a separate Form 1042–S be filed under the partner's name. Instead, the partnership's intermediary withholding certificate should indicate the aggregate distributive shares of all members entitled to a single rate, and reporting should be done on the aggregate amount under the partnership's account. These comments are similar to those received for non-QIs and are not adopted for the same reasons that they are rejected for non-QIs. It is important to retain the distinction between foreign partnerships that qualify as withholding agents (i.e., those that are withholding foreign partnerships or are subject to section 1446) and those that are not qualified to act as withholding agents. If a foreign partnership is not a withholding foreign partnership, it should not be permitted to certify the status of its partners on their behalf.

Commentators asked that a foreign entity holding a passive investment for its own account be allowed to use the withholding procedures applicable to foreign corporate entities, irrespective of its actual classification for tax purposes. It is argued that, in many cases, investments are structured using organizations that, under the default classification rules of the check-the-box regulations would be classified as partnerships. In order to avoid more onerous withholding procedures, these entities would normally prefer a corporate classification. It is argued that the need to make an election for this purpose is an unnecessary step that should be eliminated. This comment is not accepted because the election procedure to insure corporate classification is simple and serves an important compliance role.

At the request of commentators, the final regulations in § 1.1441–7(a) clarify that, if a nominee holds an interest in a domestic or foreign partnership on behalf of a partner and provides the partnership with the information required under § 1.6031(c)–1T(a) with respect to the partner, the nominee is deemed to have satisfied its obligations as a withholding agent under chapter 3 of the Code and has no liability for underwithholding on the partner's distributive share of the amounts to which the furnished information pertains. This rule reflects the fact that a custodian holding a partnership interest for an investor often lacks the information needed to determine which withholding regime applies to income from the partnership. The necessary information to correctly withhold on partnership income is often only known to the partnership and is not easily accessible to the custodian. On the other hand, the partnership, which is also a withholding agent, or has withholding responsibilities, has the information necessary to determine how withholding should apply. It is also responsible for filing the partnership return and furnishing the Forms K–1 to the partners.

Some commentators requested that a withholding agent should be permitted to rely on a withholding certificate provided directly by a partner, without a withholding certificate from the partnership. The commentators argue that this reliance rule would permit partners to claim a reduced rate of withholding even though the partnership refuses to cooperate and to submit the proper documentation. This suggestion is not accepted because it would, in effect, read the partnership withholding certification rules out of the regulations. It may also become a source of confusion for withholding agents who would not always know how reliable the partner's information is. The IRS and Treasury believe that the partnership withholding certificate provides important information to the withholding agent, such as each partner's distributive share of the payment. In addition, in the absence of a partnership withholding certificate,

the withholding agent would lack information required to be stated on the Form 1042–S (e.g., the partnership's EIN) and compliance may be weakened as a result.

G. Comments and Changes to § 1.1441–6

1. Address Rule

Comments were received asking reconsideration of the proposal to eliminate the address rule for dividends. The IRS and Treasury believe, however, that there is no longer a justification for the address rule as in effect under current law. When the payment is made directly to a foreign beneficial owner, there is no justification for not requiring a Form W–8 from the owner in the same manner that is required for payments on debt obligations. In the case of payments of dividends to foreign intermediaries, the proposed and final regulations provide for new intermediary procedures that are more adapted to the monitoring of abusive claims of treaty benefits than is the address rule. For these reasons, the address rule is not reinstated.

2. Reliance on Withholding Certificate

In response to comments, § 1.1441–6(b)(1) clarifies, by cross-reference to § 1.1441–1(e)(4)(viii) dealing with reliance on withholding certificates, that a withholding agent may rely on information and certifications in a certificate without having to inquire into the truthfulness thereof, absent actual knowledge or reason to know otherwise. Therefore, absent actual knowledge or reason to know that such claims are false, a withholding agent may rely on claims on a Form W–8 of beneficial ownership and residence by a person claiming benefits under a tax treaty. Under these principles, a withholding agent may rely on representations from a foreign person regarding the application of foreign tax laws or certifications regarding the circumstances of the recipient or of the transaction. In particular, a withholding agent may rely on the recipient's representation made by furnishing a beneficial owner withholding certificate that it is a beneficial owner of the income. If the address on a withholding certificate comports with a claim of residence in a particular country, a withholding agent may also rely on such address as indicative of residence, even though the determination of residence for tax treaty purposes may be far more complex than establishing an address in the treaty country and is likely to involve the application of foreign tax laws, particularly in the case of a person other than an individual. However, if the withholding agent knows that the representations on a Form W–8 are inconsistent with foreign laws or with the recipient's or the transaction's circumstances, then the withholding agent must question the basis for the representations.

3. Requirement of a TIN

Commentators have suggested that the final regulations require a TIN only for related party transactions subject to treaty rate withholding. This would eliminate the need to provide a specific list of payments exempt from a TIN requirement. This suggestion is not adopted because the IRS and Treasury believe that the TIN requirement is useful in monitoring claims of reduced rates under tax treaties for all transactions. Because the procedures for obtaining a TIN are simple, the TIN requirement for non-market based transactions is not viewed as overly burdensome relative to the compliance benefits.

Section 1.1441–1(e)(4)(vii) enumerates the instances in which a TIN must be furnished on a withholding certificate. Under the proposed rules, a TIN is required to obtain the benefit of reduced withholding under an income tax treaty, unless the payment consists of dividends paid on publicly traded stocks. Commentators have requested that the exemption from having to furnish a TIN be extended to other securities, including pre-1984 bonds and other debt obligations, payments on any mutual fund investment (e.g., an open-end mutual fund), interests in publicly-traded grantor trusts generating royalty income, interest- and dividend-equivalent payments on the loan of exempted publicly traded stocks or securities, income from repurchase agreements involving exempted publicly traded stocks or securities, dividends on non-publicly traded stocks, interest on syndicated or bank loans, income from publicly-traded grantor trusts, contingent interest, and amounts paid on private placements of stocks or securities.

In response to these comments, the final regulation are amended to expand the categories of income for which a TIN is not required to be furnished. Under the final regulations, the categories are dividends and interest on publicly traded securities, dividends on redeemable securities issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), income related to loans of publicly traded securities, and dividends, interest, or royalties from units of beneficial interest in a publicly offered and registered unit investment trusts. See § 1.1441–6(b)(2)(ii). The covered securities extend to foreign securities as well as U.S. securities. Also, in response to comments that the regulations should provide a reliable source to determine whether or not a stock (or other security) is publicly traded, the regulations clarify that section 1092(d) and § 1.1092(d)–1 apply to determine whether a stock or security is publicly traded for this purpose. An exception is not made for other securities because the IRS and Treasury believe that the TIN exemptions should be limited to income arising from securities that are publicly traded and should not extend to securities held and transacted as part of a private business relationship. Also, an exception is not made for sale-repurchase transactions (repos) because repos completed within a 6-month period give rise to income that is treated as short-term OID for tax purposes. Such income, if earned by a foreign person, is exempt from chapter 3 withholding. Because the type of repo transaction that would be equivalent to the type of TIN-exempted market transactions would generally be of substantially shorter duration, the IRS and Treasury believe that it is not appropriate to provide an exemption for more than 6-month repo transactions.

Comments suggested that requiring TINs on intermediary certificates is an undue compliance burden when reporting is not done to the intermediary's account, especially if the Form W–8 of any underlying beneficial owner is not required to bear a TIN. Commentators argue that any IRS compliance concerns can be met without the requirement for a TIN from a non-qualified intermediary since U.S. withholding agents would, in any event, supply the identification and address of the beneficial owners to the IRS on Form 1042–S. The final regulations eliminate the need for a TIN on a non-qualified intermediary certificate and on a certificate from a foreign partnership that is not a withholding foreign partnership. However, a TIN continues to be required in the case of a qualified intermediary certificate or in the case of a certificate from a foreign partnership.

Some commentators asked that the TIN requirement be made optional. They argue that this would provide a reasonable accommodation to foreign investors who only occasionally or rarely enter into financial transactions involving U.S. securities. This comment is not adopted; instead, the final regulations broaden the types of transactions exempt from the requirement to provide a TIN. This change should alleviate the concern

expressed by these commentators. Also, commentators asked that the final regulations provide an exemption for intermediaries with a small number of foreign accounts (500 or less). This suggestion is also not adopted in light of the fact that the burden of manually processing account information for complying with these regulations should be outweighed by the substantial compliance benefits.

With regard to documentary evidence required to validate a TIN used to support a claim of treaty benefits, commentators asked that the documentary evidence remain valid indefinitely rather than expire after three years as provided in the proposed regulations. See § 1.1441–6(c). This comment is not adopted. The withholding certificates, and the TIN showing on that certificate, are used to represent many facts, including the foreign status of the owner and his residence for tax treaty benefit purposes. These facts may change frequently, particularly for individuals, and it is important that beneficial owners recertify their status periodically to the IRS. This recertification is also important because withholding agents cannot monitor the continued validity of the original residence claim, since the TIN on the certificate does not indicate which country of residence has been represented to the IRS as part of the certification process.

The final regulations do not adopt a comment that some organizations claiming tax-exempt status under section 501(c) should be exempt from the requirement to obtain and furnish a TIN if the organization is a universally recognized charitable organization, such as a church or religious order. As previously stated, TINs are used by the IRS to electronically process and match tax information. Any exception to the TIN requirement precludes such electronic processing. In light of the ease with which such organizations can obtain an EIN, the IRS and Treasury believe that no change to the proposed regulations is justified. However, the regulations clarify that a TIN is required from a foreign exempt organization or foreign private foundation only to the extent it claims a reduced rate of withholding solely based upon its exempt status or if a TIN is otherwise required from non-tax exempt taxpayers in order to claim a reduced rate of withholding (e.g., under an income tax treaty). Also, a foreign private foundation is not required to furnish a TIN for income subject to the 4-percent tax under section 4948(a) if such income would otherwise be exempt from tax under the Code if paid to a foreign person that is not a private foundation.

4. Certification and Electronic Matching of TINs

The final regulations are revised to specify that a taxpayer must provide the IRS with a certificate of residence to enable it to certify a TIN if that procedure is available in the country of residence. Documentary evidence is permitted as an alternative means of establishing residence in a treaty country only if a certificate of residence is not reasonably available from the tax administration in the country of residence. This change reflects the view that a certificate of residence is more reliable evidence of tax residence in a treaty country than is documentary evidence. The obligation to furnish a certificate of residence if one is available does not apply to corporate bodies who may, instead, furnish incorporation documents establishing their status as a corporate body in the applicable treaty jurisdiction.

The final regulations retain the provision in the proposed regulations regarding the electronic confirmation by a withholding agent of a TIN under procedures to be prescribed by the IRS. The IRS has undertaken a TIN-matching prototype in the past. See 60 FR 66243 (December 21, 1995). More recently, the IRS and Treasury issued a regulation under § 31.3406(j)–1 (1997–26 I.R.B. 4) and Rev. Proc. 97–31 (1997–26 I.R.B. 6) making a TIN-matching program available to Federal agency payors of reportable payments under section 3406. TIN-matching, however, will not apply for chapter 3 withholding purposes until specifically implemented by the IRS.

5. Treaty Benefits for Payments to Hybrids

The proposed regulations provide guidance on procedures for claiming reduced withholding rates under an income tax treaty. For this purpose, the proposed regulations define the term *beneficial owner* under foreign law principles. See proposed §§ 1.1441–1(c)(6)(i)(B) and 1.1441–6(b)(4). Commentators were divided on whether the proposed rule is a correct interpretation of the treaty. In particular, several commentators noted that the term *beneficial owner* is meant to be defined under the source country's domestic law. Also, commentators asked whether the proposed rules were solely for withholding purposes or were meant to define a foreign beneficial owner's eligibility for treaty benefits for purposes of section 894.

In part in response to these comments, temporary regulations have been issued under section 894 (62 FR 35673, published July 2, 1997) that are largely consistent with the principles contained in the proposed withholding regulations. Under these temporary regulations, a reduced withholding rate applies under an income tax treaty only to the extent that the income is treated as derived by a resident of the applicable treaty jurisdiction. Income is treated as being so derived only to the extent it is taxed in the hands of the resident as income of a resident of the applicable treaty jurisdiction. The final withholding regulations have been modified to reflect these temporary regulations.

The regulations under § 1.1441–6(b)(4)(ii) finalize the rules regarding the type of withholding certificates that must be furnished in situations involving hybrid entities where the payment is made to the entity but the benefit is determined by the status of the interest holder. Generally, a partnership Form W–8 would have to be provided by the interest holder, which form must be presented by the entity on behalf of the interest holder. In order to reduce the burden in the case of reverse foreign hybrid entities (e.g., foreign mutual funds treated as corporations for U.S. tax purposes but as fiscally transparent entities for foreign countries' law purposes), the final regulations allow those entities to become qualified intermediary, so that, like foreign partnerships and entities acting as intermediaries for others, they may present a global Form W–8 to a U.S. withholding agent instead of furnishing individual forms for each of their shareholders who claim a benefit under an income tax treaty. See § 1.1441–1(e)(5)(ii)(C).

The preamble to the temporary regulations under section 894 indicates that withholding agents should consider the effect of the regulations on their withholding obligations, including the need to obtain new withholding certificates to confirm claims of treaty benefits for payments made on or after the effective date of § 1.894–1T(d). Until the final regulations under section 1441 are effective (i.e., until 1999), withholding agents may continue to rely on Forms 1001 regarding claims of reduced rates under income tax treaties. In addition, with respect to dividends, no Form 1001 is generally required due to the alternative ''address'' rule. However, withholding agents that are making payments in 1998 should require new Forms 1001 for payments that they believe are affected by the provisions of § 1.894–1T(d) in order to

insure that representations regarding entitlement to a reduced rate under an income tax treaty are given in light of the provisions of § 1.894–1T(d). For this purpose, withholding agents may rely on Forms 1001 that are prepared and furnished in accordance with the procedures described in § 1.1441–6(b)(4)(ii), even though these procedures are not effective until 1999. Thus, for example, if the withholding agent pays to a foreign reverse hybrid entity, it may rely on a Form 1001 furnished by the entity even though the name of the beneficial owner is that of the entity's interest holder. Implicit in the entity's presentation of a Form 1001 from its interest holder is a representation that the interest holder is a resident of an applicable treaty country and derives the income paid to the entity within the meaning of § 1.894–1T(d)(1). A Form 1001 obtained in 1998 is valid until December 31, 1999 (except to the extent that circumstances change affecting its validity). Payments made after 1998 to persons for whom the withholding agent does not hold a certificate will require a new Form W–8.

In view of the temporary regulations under § 1.894–1T(d), several commentators have asked for guidance on how to apply the ''reason-to-know'' standard to self-certifications of entitlement to treaty benefits in situations involving hybrid entities. The regulations do not include special guidance on this point, because the IRS and Treasury believe that the due diligence issues in this context are not different from those arising in other contexts. Therefore, withholding agents may rely on the general principles in § 1.1441–1(e)(4)(viii) (that, absent actual knowledge or reason to know otherwise, a withholding agent may rely on information and certifications without having to inquire into the truthfulness thereof) and in § 1.1441–6(b)(4)(ii) (that a withholding agent may rely on representations that the beneficial owner derives the income within the meaning of § 1.894–T(d) and is a resident of the treaty country without inquiring into the truthfulness thereof or researching foreign law). For example, if a withholding agent knows that a person whose name is on a Form 1001 or a Form W–8 is an interest holder in an entity and that the treaty country where the person claims residence generally treats the entity as a non-fiscally transparent entity, the withholding agent would have reason to know that a claim of reduced rate by such person may not be reliable and should make further inquiries. Generally, any claim of treaty benefits by interest holders in a U.S. LLC should be scrutinized based on many published indications that foreign countries generally regard U.S. LLC's as corporate entities.

6. Certification of Entitlement to Benefits Under an Income Tax Treaty

The proposed regulations do not contain special procedures regarding the manner in which a foreign person can establish that it satisfies the conditions under applicable limitation on benefits provisions of an income tax treaty. This matter is indirectly addressed in § 1.1441–6(b)(1) for foreign persons claiming benefits under an income tax treaty that are required to file a disclosure statement under section 6114 if they are related to the withholding agent and the amounts received during the calendar year that exceed $500,000.

After further consideration, the IRS and Treasury have determined that certification procedures, as had been suggested in Notice 94–85 (1994–2 CB 511), issued under the U.S.-Dutch tax treaty, are not procedures that could realistically be extended to all tax treaties within a reasonable time frame, if at all. Instead, the IRS and Treasury believe that an approach relying on self-certification and proper disclosure to the IRS is more practical. Therefore, the final regulations provide in § 1.1441–6(c)(5)(i) that those persons who are required to furnish an IRS-certified TIN must, as part of the TIN certification process, certify that they satisfy the conditions of an applicable limitation on benefits provision. For this purpose, the person must attach an affidavit to the request for certification, describing sufficient facts for the IRS to determine the basis upon which such conditions are satisfied. The IRS review of a foreign person's affidavit does not constitute an audit of the taxpayer on this issue. In view of these new procedures, Notice 94–85 is withdrawn.

The final regulations also provide under § 1.1441–6(c)(5)(ii) that a taxpayer (other than an individual) applying for IRS certification of its TIN must certify to the IRS that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself within the meaning of § 1.894–1T(d)(1).

7. Reporting Under Section 6114

Under proposed § 1.1441–6(b)(1), a taxpayer receiving income benefitting from a reduced rate under an income tax treaty is required to file an information return under section 6114 if it is related to the withholding agent and the amounts ''paid'' during the taxable year exceed $500,000. The final regulations modify the $500,000 condition by providing that the requirement to file an information return applies only to amounts ''received'' during the calendar year that, in the aggregate, exceed $500,000. The revision clarifies that the test is not intended to be applied on a per-withholding agent basis. Rather, the $500,000 threshold is intended to measure the total amount received by the taxpayer, whether from one or several related withholding agents.

The final regulations under section 6114 are also revised to allow the IRS to eliminate duplicate reporting requirements for payments received by a foreign taxpayer that must be reported both on a Form 5472 under section 6038A and under section 6114. See § 301.6114–1(c)(6). Such change is to be reflected in the applicable forms and instructions.

8. Joint Owners

One commentator suggested that since a joint owner can get a separate Form 1042–S, the final regulations under § 1.1441–6 should let each joint owner claim its own treaty rate (if different) on its pro-rata share of the income. This suggestion is not adopted because of the difficulties, generally, for each joint owner to present reliable representation of its pro-rata share of the income being paid.

9. Claim of Treaty Benefits by U.S. Taxpayer

A commentator noted that the existing regulations under § 1.1441–4(b)(2) fail to address the situation of a foreign national who is a resident alien of the United States under section 7701(b) and under a treaty tie-breaker rule, but who is entitled to treaty benefits under a treaty saving clause exception. The commentator indicated that procedures are needed to allow such persons to submit proper forms and documentation. According to the commentator, such persons entitled to treaty benefits often are not currently residents of a treaty country, do not have a permanent residence address in the foreign country of which they are claiming benefits, and are not able to obtain certification or documentation to satisfy the three-year rule under § 1.1441–6(c)(4). Further, the commentator argued that the regulations should specify which form such persons can file to claim treaty benefits (under the proposed regulations neither Form W–8 nor W–9 would accommodate this claim). In response to this suggestion, paragraph (b)(5) is added to allow a U.S. taxpayer to claim benefits under an income tax treaty on a Form W–9 or

such other form as the IRS may prescribe.

H. Comments and Changes to § 1.1441–7

1. Withholding Agent's Due Diligence Standards

Section 1.1441–7(b)(1) is restated to clarify that a withholding agent is under a general due diligence standard to determine its withholding obligations based on its actual knowledge or reason to know, if based on such knowledge or reason to know, it appears that the obligation to withhold or report the payment is greater than would otherwise be the case. This due diligence standard applies generally, not just in the context of determining the extent to which a withholding agent can rely on a withholding certificate. Therefore, for example, if a withholding agent has reasons to believe that a foreign beneficial owner of interest income is related to the debtor, so that the portfolio interest exemption may not be available, the withholding agent should make an inquiry in order to ascertain whether the portfolio interest, in fact, applies. The fact that the Form W–8 is not required to certify lack of relationship does not mean that the withholding agent can ignore what it knows or otherwise suspects if such knowledge or reason to know affects the tax liability of the beneficial owner which withholding under chapter 3 of the Code is intended to satisfy.

2. Due Diligence Safe Harbors

Some commentators asked that the standard of care governing the withholding agent's liability should be actual knowledge rather than reason to know, especially in the context of high-volume commercial transactions where there is not necessarily a pre-existing client relationship. In response to this comment, the final regulations define *reason to know* so that certain circumstances described in paragraphs (b)(2)(ii) (A) through (F) are the only circumstances that require the withholding agent to exercise due diligence (other than actual knowledge). Further, examples are added regarding the documentation that a withholding agent may rely on in order to correct a defective Form W–8. This limitation only applies to payments made by a financial institution with which a customer may open an account that consists of portfolio interest, payments on publicly traded securities described in § 1.1441–6(b)(2)(ii), deposit interest with banks or other financial institutions as described in sections 871(i)(2)(a) and 881(d), or original issue discount (or interest) on obligations with a maturity of 183 days or less from the date of original issue.

The final regulations eliminate the need to inquire further when the customer directs the financial institution to make a payment to another U.S. financial institution. While such direction may indicate that the account holder is, in fact, residing in the U.S., the burden of this due diligence requirement outweighs the compliance benefits.

However, the final regulations impose a duty to inquire when a payment is directed to a P.O. box or an in-care-of address where the withholding agent has a permanent address on file for the payee that is neither a P.O. box or an in-care-of address. Contrary to the comments, the IRS and Treasury believe that how a payment is directed may indicate that the beneficial owner wishes not to disclose his or her place of residence. As stated above, the beneficial owner may be treated as a foreign person despite a P.O. box address; however, such treatment would require that the withholding agent obtain evidence of foreign status in addition to the Form W–8.

The final regulations add a due diligence item. A withholding agent may not rely on a claim of partnership status on a Form W–8 if the name of the person on the form indicates that the entity may be the type of entity that is on the per se list of foreign corporations included in § 301.7701–2(b)(8)(i), unless the form explains that the entity is a grandfathered partnership.

2. Authorized Foreign Agents

The proposed regulations would modify the current rules governing foreign agents of U.S. withholding agents by allowing a foreign agent to file Forms 1042 and 1042–S returns on behalf of the U.S. withholding agent. Some commentators have pointed out that the inability to tier authorized foreign agents limits the usefulness of the procedure. However, after further consideration, the IRS and Treasury have decided to leave the proposed rules unchanged. The authorized foreign agent procedure relies on the IRS' ability to audit the agent. Any compliance failure of the agent is imputed to the U.S. withholding agent. If the U.S. withholding agent acts through several layers of agents, the IRS would have to audit all of the agents in the chain of payment to determine the compliance of the U.S. withholding agent. Such audits are impractical. The procedure is retained, however, because it may still be useful in its proposed form in cases not involving tiers of intermediaries.

I. Comments and Changes to § 1.1441–8

The final regulations are revised to take into account comments that the proposed documentation requirements for payments to foreign governments and international organizations are unnecessarily cumbersome. The documentation requirement is eliminated entirely for payments to international organizations and for interest on bankers' acceptances paid to central banks of issue. This exception is appropriate because the withholding exemption is not conditioned on any representation of the beneficial owner, other than its status as such (see § 1.6049–4(c)(1)(ii) (G) and (H) for an ''eyeball'' test for ascertaining the status of the payee as an international organization or a foreign central bank of issue). Payments to foreign governments and to the Bank for International Settlements must be documented, however, because a withholding exemption applies only if the government's or the Bank's income is not associated with a commercial activity. However, if a person represents that it is an integral part of a foreign government, the documentation remains valid permanently. If, on the other hand, the person claiming to be a foreign government represents that it is a controlled entity, then the certificate must be renewed every three years. A certificate furnished by the Bank for International Settlements is also valid permanently. In view of these simplified documentation requirements, the final regulations require that all payments to foreign governments, international organizations, and the Bank for International Settlements be reported on a Form 1042 and 1042–S, to the extent reportable if paid to a foreign person.

J. Comments and Changes to §§ 1.1441–9 and 1.1443–1

1. Foreign Tax-exempt Organization and Foreign Private Foundations

Several comments were received regarding withholding on the income of foreign tax-exempt organizations and applicable procedures for documenting the foreign organization's exempt status. The commentators questioned whether section 1443(a) should apply to items of passive income that would not be unrelated business income but for section 514 (relating to debt-financed property), and whether section 4948 should apply to impose a 4-percent tax on U.S. source portfolio interest and bank deposit interest so that a 4-percent withholding applies under section

1443(b) to payments of such income to foreign foundations.

Commentators argued that a foreign organization meeting the description of section 501(c)(3) should be permitted to claim tax-exempt status even if it has not first obtained an IRS determination. They argued that the IRS determination letter is required for domestic organizations because contributions to a domestic section 501(c)(3) organization are deductible. No such deduction is permitted for a contributions to a foreign organization and, therefore, a foreign organization described in section 501(c)(3) should be treated like any other organization described under section 501(c). Also, commentators argued that the regulations should not require an opinion of counsel to be attached to the withholding certificate. The final regulations, however, do not accept most of these comments. As in the proposed regulations, foreign organizations that are required to obtain an IRS determination letter in order to qualify as a tax-exempt organization under section 501(c)(3) (i.e., those organizations that obtain a substantial portion of their support from U.S. sources) must obtain such a determination letter and attach it to the Form W–8. Other foreign organizations that may qualify for tax-exempt status under section 501(c)(3) without an IRS determination letter (i.e., organizations that receive substantially all of their support from sources outside the United States; see section 4948(b)) may establish their exempt status on the basis of an opinion of counsel. Also, they clarify that the opinion must be from U.S. counsel, meaning an attorney admitted to, and in good standing with, the bar in one of the fifty States or the District of Columbia. In addition, the final regulations under § 1.1441–9(b)(2) provide that tax-exempt organizations that claim that they are tax-exempt under section 501(c)(3) and not private foundations and do not have an IRS determination letter must attach an affidavit to their Form W–8 in addition to the opinion of counsel. Thus, the final regulations relieve those organizations from the obligation under the proposed regulations to provide an opinion of counsel regarding their non-private foundation status. The IRS and Treasury view the IRS certification procedure for section 501(c)(3) organizations as an important compliance measure. They do not believe that self-certification procedures should be substituted where the Code clearly requires an IRS determination letter.

The final regulations under § 1.1441–9(a) also clarify that a foreign organization that does not rely on its tax-exempt qualification to claim reduced withholding on a payment need not comply with the special procedures in § 1.1441–9. Instead, it may follow the same procedures that apply to taxable entities. In particular, the final regulations clarify that a foreign tax-exempt organization or foreign private foundation that claims a benefit under an income tax treaty must follow the procedures described under § 1.1441–6 rather than rely on the procedures described under §§ 1.1441–9 or 1443–1.

The final regulations do not make a special exception for debt-financed income that, under section 512, is treated as unrelated business income. In addition, the final regulations do not eliminate the 4-percent tax imposed under section 4948(a) on any items of investment income of a private foreign foundation and required to be withheld under section 1443(b). The IRS and Treasury believe that they have no authority to eliminate a tax that is clearly imposed by statute. Therefore, it would be inappropriate to eliminate the requirement to withhold such tax. A foreign private foundation claiming a reduced rate of 4-percent is subject to the same documentation requirements as apply to tax-exempt foreign organizations, meaning that a Form W–8 must be furnished, to which the appropriate determination letter or opinion of U.S. counsel must be attached. The final regulations restate the existing regulations under section 1443 in an effort to eliminate unnecessary provisions. The elimination of several provisions does not indicate that the procedures do not apply (e.g., requirement to file Forms 1042 and 1042–S), but, simply that these provisions are not necessary.

K. Comments and Changes to §§ 1.1461–1 and 1.1461–2

1. Form 1042–S Reporting

In response to comments, the deadline for filing Forms 1042 and 1042–S has been moved from February 28 to March 15. Regarding joint accounts, the final regulations do not adopt the suggestion that only one Form 1042–S be required for a joint account even where the other joint owner requests another statement. Commentators argued that subdividing payments made to a single account and providing multiple Forms 1042–S would significantly increase administrative burden. However, joint owners should be able to obtain a proof of tax payment in case one of them wishes to apply for a refund of tax or needs to substantiate the payment of tax for any reason and it does not have access to the form issued to one of the joint owners. The fact that the obligation to issue more than one Form 1042–S is only on request by one of the joint owners should minimize the burden on withholding agents.

The proposed regulations require that a financial institution with actual knowledge of the payee's TIN report the TIN on Form 1042–S even though a TIN did not have to be provided in connection with the payment. In response to comments, the final regulations clarify in § 1.1461–1(c)(3)(v) that, in the case of a financial institution dealing with customers through a system of accounts, actual knowledge exists only if such TIN was reported on a Form W–8 provided with respect to another payment made through the same account or through another account, the information with respect to which can be retrieved through a centralized account information system (including a universal account system) containing both accounts.

Commentators requested a clarification that Form 1042–S reporting is not required with respect to interest on deposits paid by any U.S. bank (including its foreign branches or subsidiaries), except in the limited situation where the interest is paid to a Canadian resident. This point is clarified under § 1.1461–1(c)(2)(i), which limits reporting to amounts subject to withholding, as defined in § 1.1441–2(a). However, § 1.1461–1(c)(2)(i)(D) contains an exception for interest paid to Canadian residents. In addition, § 1.1461–1(c)(2)(ii)(F) is added to clarify that interest or OID accrued on an obligation is not required to be reported on a Form 1042–S to the extent the interest or OID is not required to be withheld upon under § 1.1441–2(b)(3) due to the lack of knowledge by the withholding agent. On the other hand, § 1.1461–1(c)(2)(i)(E) clarifies that, as is the case under existing regulations, amounts representing interest on an obligation sold between interest payment dates is reportable on a Form 1042 and 1042–S, even though it is not subject to withholding.

2. Adjustments for Overwithholding or Underwithholding of Tax

Commentators asked that withholding agents be permitted to process refund claims for nonresident alien payees. Since refund claims will now require TINs, duplication of claims can be avoided. Commentators point to the fact that this procedure should be more efficient as it may require the IRS to process only a single refund claim from a withholding agent for all of its foreign

clients rather than dealing with claims filed by each individual foreign client. This comment is accepted in the context of qualified intermediary arrangements. However, in other situations, a procedure allowing refunds on behalf of customers is impractical because of the risk that customers would independently file for refunds based on their form 1042–S.

Withholding agents also made a number of points regarding authority to rectify any underwithholding situation discovered after the due date for filing Form 1042 but before actual filing, streamlining current refund procedures by, for example, providing for a ''quickie'' refund form, and the reporting of adjustments to withholding during the calendar year. Those points, however, should be addressed in the context of forms and administrative procedures, rather than in the regulations. The IRS will continue to work with the industry to find ways to improve and streamline the information and return filing procedures.

L. Comments and Changes to Information Reporting Provisions Under Chapter 61 and Section 3406 of the Code

1. Information Reporting—Exempt Recipient

Commentators asked that the proposed changes to the exempt recipient rules for corporations be eliminated. Under § 1.6049–4(c)(1)(ii)(A) of the proposed regulations, the ''eyeball'' test for corporations with an account relationship with the payor would be required to be supplemented by an EIN or a corporate resolution. Commentators suggested that, instead, payors should be allowed to rely on the per se list provided in the check the box regulations under § 301.7701–3.

In response to these comments, the final regulations eliminate the proposed corporate resolution requirement and, therefore, reinstate the ''eyeball'' test for corporate payees. Foreign corporations are able to establish their corporate payee status based on the per se list in § 301.7701–2(b)(8)(i). In addition, a payee may establish corporate status with a copy of the Form 8832, if the entity has filed one with the IRS in order to elect corporate classification. See § 1.6049–4(c)(1)(ii)(A) (*1*) and (*2*).

Section 1.6049–4(c)(1)(ii) of the 1988 proposed regulations delete nominees, custodians, and brokers from the list of exempt recipients. Some commentators objected to this change. The final regulations re-instate nominees, custodians, and brokers as exempt recipients. Additionally, swap dealers are included in the list of exempt recipients, and the description of financial institutions that are exempt recipients has been clarified to include clearing organizations.

Comments were received requesting that the list of international organizations be re-instated in the regulations. The final regulations do not contain such a list because frequent changes in the status of such organizations would make it too burdensome for the IRS to keep current. Instead, the IRS intends to issue guidance indicating that withholding agents and payors may rely on the list published by the Department of State.

Commentators asked that the list of exempt recipients under sections 6041 and 6045 be conformed to that under section 6049 and, in the case of section 6041, be extended to banks and financial institutions. The final regulations apply the same exempt recipient rules to interest under section 6049, dividends under section 6042, and notional principal contracts under section 6041. The exempt recipient rules under section 6045 remain unchanged, except that a foreign central bank of issue is added to the list for substitute payments under § 1.6045–2(b)(2)(i)(G).

2. Information Reporting for Offshore Accounts—Documentary Evidence

The proposed regulations make a number of changes to the existing procedures applicable to deposits with foreign branches of U.S. banks. The proposed regulations modify the documentary evidence standard in § 35a.9999–3, A–34, as part of an effort to subject all off-shore accounts to a uniform documentary evidence standard, whether the account is with a foreign branch of a U.S. bank, with a foreign branch of a domestic institution other than a bank, or with a foreign branch of a foreign financial institution. As a result, foreign branches of U.S. banks would become subject to more stringent documentary evidence requirements to the extent they would no longer be able to rely on an indication of foreign status from a customer. Instead, the proposed regulations require a foreign banking branch to obtain actual documentary evidence from the customer and keep a record of it. Some commentators questioned whether the proposed regulations eliminate the possibility of relying on a statement of foreign status incorporated in the account opening form. In addition, the proposed regulations impose a three-year renewal of the documentary evidence, a requirement that does not currently apply to foreign banking branches. Further, the proposed regulations eliminate the $600 threshold under the current regulations (by making foreign branch bank deposit interest subject to reporting under section 6041 rather than section 6049). They impose new backup withholding requirements for accounts actually known to the branch as being owned by a U.S. person. In addition, the provisions under § 1.1441–1(f) create a presumption of U.S. status for undocumented accounts. Although a presumption of U.S. status is not sufficient for triggering an obligation to backup withhold (because the bank has no actual knowledge), it is sufficient to require the interest to be reported on a Form 1099.

After further consideration, and based on comments received, the final regulations are revised. Consistent with the regulations proposed in 1988 and in 1996, the requirement to document owners of accounts maintained at offshore branches of U.S. banks is imposed under section 6049 rather than section 6041. Therefore, the $600 limit will no longer apply to those accounts. On the other hand, the documentation requirements are substantially simplified. If the customer's address is in the country where the branch is located and it is not customary in that location that banks request documentary evidence from customers when opening an account, then the bank or other financial institution may rely on a declaration of foreign status, contained in an account opening form, that does not have to be signed under penalties of perjury. The declaration does not expire unless circumstances change that would indicate that the account holder has become a U.S. person or the payor is so notified. The payor must send a year-end reminder to the account holder to notify the payor of change of status, if applicable.

These alternative documentary evidence procedures are extended to all offshore accounts for payments that are not subject to withholding under chapter 3 of the Code and are not U.S. source bank deposit interest. These amounts include foreign source income and gross proceeds.

The alternative documentary evidence rules apply to accounts opened on or after the effective date of the regulations (i.e., on or after January 1, 1999). However, existing accounts as of that date are required to comply with the due diligence requirements, including inserting a negative confirmation statement in the annual year-end statement provided to the customer.

In response to comments, the final regulations under § 1.6049–5(b)(10) are revised to incorporate a waiver from the certification requirement of regulations § 1.163–5(c)(2)(i)(D)(3) for debt instruments with a maturity of 183 days or less from the date of issue. In addition, § 1.6049–4(d)(3) is modified to clarify that the same conversion rules are applicable to all foreign currency-denominated obligations for purposes of section 6049.

3. Reporting Obligations of Non-U.S. Payors or Middlemen

Under the regulations under section 6045, dealing with broker proceeds, non-U.S. payors are exempt from reporting if the payment is made outside the United States. See § 1.6045–1(a)(1). In contrast, non-U.S. payors and middlemen making payments of U.S. source interest or dividends are required to report these payments on a Form 1099, unless they receive documentation supporting the payee's foreign status (or the payee is an exempt recipient). Commentators requested that non-U.S. payors of U.S. interest and dividends be similarly exempt from information reporting if the payments are made outside the United States. This change is not appropriate, at least for amounts that are subject to withholding under chapter 3 of the Code. To the extent the U.S. interest or dividends are subject to U.S. 30-percent withholding, and documentation is received for reducing the withholding rate, the foreign payee exemption would apply under sections 6042 and 6049 and the payment would not be reportable. Under the final regulations, however, a payor making a payment of U.S. source dividends or interest (whether inside or outside the U.S.) to a payee who has provided no documentation is not exempt from Form 1099 information reporting, even if another payor ''upstream'' has withheld an amount under chapter 3 of the Code. However, a payor is exempt from backup withholding on the payment if an ''upstream'' withholding agent has withheld a full 30-percent amount from the payment. The payor, however, is not relieved from making a return on Form 1099 under section 6042 or 6049 if it has actual knowledge that the payee is a U.S. person who is not an exempt recipient. See § 31.3406(g)–1(e). These rules also apply to U.S. source royalties reportable under section 6050N.

Further, the regulations under section 3406 are amended to authorize the IRS to establish procedures by which an amount backup withheld under section 3406 from a payee that subsequently establish that it is a foreign person exempt from information reporting and backup withholding can be credited toward amounts required to be withheld under chapter 3 of the Code. Such ''cross-crediting'' procedures are not available at present and would require the IRS to modify its systems.

4. Information Reporting for Capital Gain Dividends

Under the proposed regulations, capital gain dividends as defined under section 852(b)(3)(C) would no longer be reportable on Form 1099–DIV. Commentators objected that, absent such reporting, shareholders could not easily ascertain the amount of capital gain dividends paid for the calendar year for purposes of calculating their income tax liability. Accordingly, the final regulations eliminate the proposed exclusion of capital gain dividends under § 1.6042–3(b)(3).

Effect on Other Documents

The following publications are obsolete as of October 14, 1997:

Rev. Rul. 55–106, 1955–1 CB 102.
Rev. Rul. 57–391, 1957–2 CB 606.
Rev. Rul. 60–288, 1960–2 CB 265.
Rev. Rul. 65–86, 1965–1 CB 538.
Rev. Rul 68–173, 1968–1 CB 626.
Rev. Rul. 68–237, 1968–1 CB 391.
Rev. Rul. 68–333, 1968–1 CB 390.
Rev. Rul. 69–41, 1969–1 CB 214.
Rev. Rul. 69–244, 1969–1 CB 215.
Rev. Rul. 70–175, 1970–1 CB 184.
Rev. Rul. 70–250, 1970–1 CB 182.
Rev. Rul. 70–251, 1970–1 CB 183.
Rev. Rul. 70–616, 1970–2 CB 174.
Rev. Rul. 72–87, 1972–1 CB 274.
Rev. Rul. 80–222, 1980–2 CB 211.
Rev. Rul. 83–175, 1983–2 CB 109.
Rev. Rul. 84–158, 1984–2 CB 262.
Rev. Rul. 85–61, 1985–1 CB 355.
Rev. Rul. 89–17, 1989–1 CB 268.
Rev. Rul. 89–33, 1989–1 CB 269.
Rev. Rul. 89–91, 1989–2 CB 129.
Rev. Proc. 65–2, 1965–1 CB 715.
Rev. Proc. 67–24, 1967–1 CB 625.
Notice 94–85, 1994–2 CB 511.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

This Treasury decision finalizes notices of proposed rulemaking published February 29, 1988 (53 FR 5991), December 21, 1995 (60 FR 66243), and April 15, 1996 (61 FR 17614), respectively. It has been determined that a final regulatory flexibility analysis is required under 5 U.S.C. § 604 for the collections of information contained in this Treasury decision with respect to the notice of proposed rulemaking published on April 15, 1996. An initial regulatory flexibility analysis was not required because the notice of proposed rulemaking was issued prior to the effective date (June 27, 1996) of the amendments to the Regulatory Flexibility Act (5 U.S.C. chapter 6) made by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (Public Law 104–121). It also has been determined that a regulatory flexibility analysis is not required for the notice of proposed rulemaking published on (1) December 21, 1995 because the notice does not impose any collection of information on a small entity, and was published prior to the March 29, 1996 enactment date of SBREFA, and (2) on February 29, 1988 because the notice was published prior to the enactment of SBREFA.

Final Regulatory Flexibility Act Analysis

The major objective of the final regulations is to prescribe new procedures to eliminate unnecessary burdens created by the lack of standardization and coordination of the current withholding and information reporting procedures with respect to amounts paid to foreign persons. To this effect, the regulations facilitate compliance and reduce taxpayer burden by simplifying the documentation requirements, unifying the certification procedures and clarifying reliance standards in an effort to streamline the processing of U.S. source payments to foreign persons.

The economic impact of collection of information contained in these regulations on any small entity would result primarily from the entity being required either (1) to provide a Form W–8 as the beneficial owner or payee of U.S. source income, or (2) to receive a Form W–8 as the withholding agent or payor (and eventually, file a Form 1042 and Forms 1042–S). In both situations, these regulations generally impose minimal additional reporting or recordkeeping requirements beyond those already imposed under current law. In fact, the regulations significantly reduce the withholding and reporting burdens associated with Form W–8 by, for example, consolidating the current withholding certificates (Forms 1001, 1078, 4224, 8709 and W–8) into a Form W–8 format, permitting certain foreign intermediaries to certify on behalf of their customers, permitting the electronic transmission of the form (subject to IRS prescribed procedures),

clarifying the standards for an acceptable substitute form, permitting a 90-day grace period for actual receipt of the form, and providing cure procedures for a late-received form.

For a small entity in the role of the beneficial owner, the new collection of information contained in these regulations is the extension of the Form W–8 requirement to claims for a treaty-based reduction in the withholding rate with respect to dividend income; thereby, subjecting dividends to the same documentation requirements as other income types. This change imposes no recordkeeping requirements beyond those necessary (and currently required for all other income types) to ensure proper entitlement to treaty benefits, and is illustrative of IRS efforts to eliminate unnecessary procedural differences in order to reduce the burden on withholding agents. Although there is no estimate of the number of beneficial owners or payees of U.S. source income payments, the number of cross border payments have steadily increased over the years (over 80 billion dollars paid in 1995). The IRS and Treasury believe that most of these payments are made to individuals, large financial institutions and large corporations.

For a small entity in the role of the withholding agent, the most significant change of the regulations that impacts the collection of information is the establishment of the wholly-elective qualified intermediary regime which will impose, but only pursuant to an agreement with the IRS, additional reporting and recordkeeping requirements in exchange for the benefit of furnishing a single Form W–8 for multiple beneficiary owners or payees. The IRS and Treasury believe that this alternative will be adopted primarily by large foreign financial institutions that maintain numerous accounts for large numbers of customers, and it is unlikely that a substantial number of small entities would find it necessary or useful to agree to act as a qualified intermediary. Of the approximately 25,000 tax returns (Form 1042) filed by withholding agents per year, the IRS estimates that 95 percent of such returns are filed by large financial institutions.

A summary of the significant issues raised by the public comments in response to the proposed regulations and IRS' views on such issues, and changes made as a result of the comments is set forth above in the section of the preamble to the regulations entitled ''Explanation of Provisions and Revisions.''

The IRS and Treasury Department are not aware of any federal rules that duplicate, overlap, or conflict with the regulations.

These regulations will affect small entities such as small banks, small businesses paying interest and dividends, small private foundations, and small tax-exempt organizations (including colleges and charities). The IRS and Treasury believe that most of these small entities will have a direct relationship with the foreign person and therefore, will not act as, or have transactions through, an intermediary (i.e., nominee, custodian, or agent). The professional competence necessary to comply with these regulations is no greater than that already necessary to handle the day-to-day business operations of a small entity because much of the recordkeeping and reporting requirements under the regulations can be easily (if not already done under the existing regulations) incorporated into the existing or customary recordkeeping and reporting obligations of the small entity (e.g., an account opening form of a bank, the registration form of a college, etc.).

None of the significant alternatives considered in drafting these regulations would have significantly altered the economic impact of these regulations on small entities. A detailed description of the measures taken to minimize the economic impact of the collections of information on small entities, consistent with the stated objectives of applicable statutes is set forth above in the section of the preamble to the regulations entitled ''Explanation of Provisions and Revisions.'' In considering alternatives, the IRS and Treasury have concluded that a withholding system (based on reduction of withholding at source) rather than a refund system avoids the administrative burdens (including costs and delays) that can occur when applying for a refund of overwithheld amounts. Ensuring compliance under a withholding system, however, requires documentation substantiating claims of foreign status and of exemptions from, or reduced rates of, withholding, and submission of proper information to the IRS.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 502

Greece, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 503

Germany, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 509

Switzerland, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 513

Ireland, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 514

France, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 516

Austria, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 517

Pakistan, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 520

Sweden, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 521

Denmark, Reporting and recordkeeping requirements, Tax treaties.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.1441–4T, revising the entries for Sections 1.1441–3, 1.1441–4, 1.1441–5, 1.1441–7, 1.6049–4 and 1.6049–5 adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1441–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–3 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(l).

Section 1.1441–4 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–5 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(b)(11).

Section 1.1441–6 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1441–7 also issued under 26 U.S.C. 1441(c)(4), 26 U.S.C. 3401(a)(6) and 26 U.S.C. 7701(l).

Section 1.1443–1 also issued under 26 U.S.C. 1443(a). * * *

Section 1.1461–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1461–2 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6).

Section 1.1462–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Section 1.6042–3 also issued under 26 U.S.C. 6045. * * *

Section 1.6049–4 also issued under 26 U.S.C. 6049 (a), (b), and (d).

Section 1.6049–5 also issued under 26 U.S.C. 6049 (a), (b), and (d). * * *

§ 1.163–5 [Amended]

Par. 2. In § 1.163–5, paragraph (c)(2)(i)(B)(*5*) is amended by removing the language ''subdivision (iii) of A–5 of § 35a.9999–4T'' in the last sentence and adding ''§ 1.6049–5(c)(1)'' in its place.

Par. 3. Section 1.165–12 is amended by:

1. Adding a sentence at the end of paragraph (a).

2. Removing the language ''(c)(1)(v)'' and adding ''(c)(1)(iv)'' in its place in paragraph (c)(1)(i).

3. Removing paragraph (c)(1)(iii) and redesignating paragraphs (c)(1)(iv) and (c)(1)(v) as paragraphs (c)(1) (iii) and (iv).

4. Revising paragraphs (c)(1)(ii) and newly redesignated paragraph (c)(1)(iii).

5. Removing the language (c)(1) (ii) and (iv) and adding (c)(1) (ii) and (iii) in its place in paragraphs (c)(2)(iv) and (c)(3)(iv).

The addition and revisions read as follows:

§ 1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.

(a) * * * For purposes of this section, the term *United States* means the United States and its possessions within the meaning of § 1.163–5(c)(2)(iv).

* * * * *

(c) * * *

(1) * * *

(ii) The holder must offer to sell, sell and deliver the obligation in bearer form only outside of the United States except that a holder that is a registered broker-dealer as described in paragraph (c)(1)(i) of this section may offer to sell and sell the obligation in bearer form inside the United States to a financial institution as defined in paragraph (c)(1)(iv) of this section for its own account or for the account of another financial institution or of an exempt organization as defined in section 501(c)(3).

(iii) The holder may deliver an obligation in bearer form that is offered or sold inside the United States only if the holder delivers it to a financial institution that is purchasing for its own account, or for the account of another financial institution or of an exempt organization, and the financial institution or organization that purchases the obligation for its own account or for whose account the obligation is purchased represents that it will comply with the requirements of section 165(j)(3) (A), (B), or (C). Absent actual knowledge that the representation is false, the holder may rely on a written statement provided by the financial institution or exempt organization, including a statement that is delivered in electronic form. The holder may deliver a registration-required obligation in bearer form that is offered and sold outside the United States to a person other than a financial institution only if the holder has evidence in its records that such person is not a U.S. citizen or resident and does not have actual knowledge that such evidence is false. Such evidence may include a written statement by that person, including a statement that is delivered electronically. For purposes of this paragraph (c), the term *deliver* includes a transfer of an obligation evidenced by a book entry including a book entry notation by a clearing organization evidencing transfer of the obligation from one member of the organization to another member. For purposes of this paragraph (c), the term *deliver* does not include a transfer of an obligation to the issuer or its agent for cancellation or extinguishment. The record-retention provisions in § 1.1441–1(e)(4)(iii) shall apply to any statement that a holder receives pursuant to this paragraph (c)(1)(iii).

* * * * *

Par. 4. Section 1.871–6 is revised to read as follows:

§ 1.871–6 Duty of withholding agent to determine status of alien payees.

For the obligation of a withholding agent to withhold the tax imposed by this section, see chapter 3 of the Internal Revenue Code and the regulations thereunder.

§ 1.871–7 [Amended]

Par. 5. In § 1.871–7, paragraph (b), the third sentence is amended by removing the words ''see paragraph (a) of § 1.1441–2'' and adding ''see § 1.1441–2(b)'' in its place.

Par. 6. Section 1.871–14 is added to read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

(a) *General rule.* No tax shall be imposed under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) on any portfolio interest as defined in sections 871(h)(2) and 881(c)(2) received by a foreign person. But see section 871(b) or 882(a) if such interest is effectively connected with the conduct of a trade or business within the United States.

(b) *Rules concerning obligations in bearer form*—(1) *In general.* Interest (including original issue discount) with respect to an obligation in bearer form is portfolio interest within the meaning of section 871(h)(2)(A) or 881(c)(2)(A) only if it is paid with respect to an obligation issued after July 18, 1984, that is described in section 163(f)(2)(B) and the regulations under that section and an exception under section 871(h) or 881(c) does not apply. Any obligation that is not in registered form as defined in paragraph (c)(1)(i) of this section is an obligation in bearer form.

(2) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (b), see § 1.1441–1(b)(4)(i). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(ii) for the redemption, retirement, or sale of an obligation in bearer form.

(c) *Rules concerning obligations in registered form*—(1) *In general*—(i) *Obligation in registered form.* For purposes of this section, an obligation is in registered form only as provided in this paragraph (c)(1)(i). The conditions for an obligation to be considered in registered form are identical to the conditions described in § 5f.103–1 of this chapter. Therefore, an obligation

that would be an obligation in registered form except for the fact that it can be converted at any time in the future into an obligation that is not in registered form shall not be an obligation in registered form. An obligation that is not in registered form by reason of the preceding sentence may nevertheless be in registered form, but only after the possibility of conversion is terminated. An obligation that is not in registered form and can be converted into an obligation that would meet the requirements of this paragraph (c)(1)(i) for being in registered form shall be considered in registered form only after the conversion is effected. For purposes of this section, an obligation is convertible if the obligation can be transferred by any means not described in § 5f.103–1(c) of this chapter. An obligation is treated as an obligation in registered form if—

(A) The obligation is registered as to both principal and any stated interest with the issuer (or its agent) and transfer of the obligation may be effected only by surrender of the old instrument, and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder;

(B) The right to the principal of, and stated interest on, the obligation may be transferred only through a book entry system maintained by the issuer (or its agent) described in this paragraph (c)(1)(i)(B). An obligation shall be considered transferable through a book entry system if the ownership of an interest in the obligation, is required to be reflected in a book entry, whether or not physical securities are issued. A book entry is a record of ownership that identifies the owner of an in interest in the obligation; or

(C) It is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred by way of either of the methods described in paragraph (c)(1)(i) (A) or (B) of this section.

(ii) *Requirements for portfolio interest qualification in the case of an obligation in registered form.* Interest (including original issue discount) received on an obligation that is in registered form qualifies as portfolio interest only if—

(A) The interest is paid on an obligation issued after July 18, 1984;

(B) The interest would be subject to tax under section 871(a)(1)(A), 871(a)(1)(C), 881(a)(1) or 881(a)(3) but for section 871(h) or 881(c);

(C) A United States (U.S.) person otherwise required to deduct and withhold tax under chapter 3 of the Internal Revenue Code (Code) receives a statement that meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a U.S. person; and

(D) An exception under section 871(h) or 881(c) does not apply.

(2) *Required statement.* For purposes of paragraph (c)(1)(ii)(C) of this section, a U.S. person will be considered to have received a statement that meets the requirements of section 871(h)(5) if either it complies with one of the procedures described in this paragraph (c)(2) and does not have actual knowledge or reason to know that the beneficial owner is a U.S. person or it complies with the procedures described in paragraph (d) or (e) of this section.

(i) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii). See § 1.1441–1(b)(2)(vii) for rules regarding reliable association with documentation.

(ii) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(2)(iv) from a person claiming to be withholding foreign partnership and the foreign partnership can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii).

(iii) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(c)(3)(ii) from a person representing to be a qualified intermediary that has assumed primary withholding responsibility in accordance with § 1.1441–1(e)(5)(iv) and the qualified intermediary can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with its agreement with the Internal Revenue Service (IRS).

(iv) The U.S. person (or its authorized foreign agent described in § 1.1441–7(c)(2)) can reliably associate the payment with a withholding certificate described in § 1.1441–1(e)(3)(v) from a person claiming to be a U.S. branch of a foreign bank or of a foreign insurance company that is described in § 1.1441–1(b)(2)(iv)(A) or a U.S. branch designated in accordance with § 1.1441–1(b)(2)(iv)(E) and the U.S. branch can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii).

(v) The U.S. person receives a statement from a securities clearing organization, a bank, or another financial institution that holds customers' securities in the ordinary course of its trade or business. In such case the statement must be signed under penalties of perjury by an authorized representative of the financial institution and must state that the institution has received from the beneficial owner a withholding certificate described in § 1.1441–1(e)(2)(i) (a Form W–8 or an acceptable substitute form as defined § 1.1441–1(e)(4)(vi)) or that it has received from another financial institution a similar statement that it, or another financial institution acting on behalf of the beneficial owner, has received the Form W–8 from the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this statement must be given by each financial institution to the one above it in the chain. No particular form is required for the statement provided by the financial institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–8 provided by the beneficial owner must be attached. The statement is subject to the same rules described in § 1.1441–1(e)(4) that apply to intermediary Forms W–8 described in § 1.1441–1(e)(3)(iii). If the information on the Form W–8 changes, the beneficial owner must so notify the financial institution acting on its behalf within 30 days of such changes, and the financial institution must promptly so inform the U.S. person. This notice also must be given if the financial institution has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple financial institutions between the beneficial owner and the U.S. person, this notice must be given by each financial institution to the institution above it in the chain.

(vi) The U.S. person complies with procedures that the U.S. competent authority may agree to with the competent authority of a country with which the United States has an income tax treaty in effect.

(3) *Time for providing certificate or documentary evidence*—(i) *General rule.* Interest on a registered obligation shall qualify as portfolio interest if the withholding certificate or documentary evidence that must be provided is furnished before expiration of the beneficial owner's period of limitation for claiming a refund of tax with respect

to such interest. See, however, § 1.1441–1(b)(7) for consequences to a withholding agent that makes a payment without withholding even though it cannot reliably associate the payment with the documentation prior to the payment. If a withholding agent withholds an amount under chapter 3 of the Code because it cannot reliably associate the payment with the documentation for the beneficial owner on the date of payment, the beneficial owner may nevertheless claim the benefit of an exemption from tax under this section by claiming a refund or credit for the amount withheld based upon the procedures described in §§ 1.1464–1 and 301.6402–3(e) of this chapter. For this purpose, the taxpayer must attach a withholding certificate described in § 1.1441–1(e)(2)(i) to the income tax filed for claiming a refund of tax. In the alternative, adjustments to any amount of overwithheld tax may be made under the procedures described in § 1.1461–2(a) (for example, if the beneficial owner furnishes documentation to the withholding agent before the due date for filing the return required under § 1.1461–1(b) with respect to that payment).

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(3) and their coordination with § 1.1441–1(b)(7):

Example. A is a withholding agent who, on October 12, 1999, pays interest on a registered obligation to B, a foreign corporation. B is a calendar year taxpayer, engaged in the conduct of a trade or business in the United States, and is, therefore, required to file an annual income tax return on Form 1120F. The interest, however, is not effectively connected with B's U.S. trade or business. On the date of payment, B has not furnished, and A cannot associate the payment with documentation for B. However, A does not withhold under section 1442, even though, under § 1.1441–1(b)(3)(iii)(A), A should presume that B is a foreign person, because A's communications with B are mailed to an address in a foreign country. Assuming that B files a return for its taxable year ending December 31, 1999, and that its statute of limitations period with regard to that year expires on June 15, 2003, the interest paid on October 12, 1999, may qualify as portfolio interest only if B provides appropriate documentation to A on or before June 15, 2003. If B does not provide the documentation on or before June 15, 2003, and does not pay the tax, A is liable for the tax under section 1463, even if B provides the documentation to A after June 15, 2003. Therefore, the provisions in § 1.1441–1(b)(7), regarding late-received documentation would not help A avoid liability for tax under section 1463 even if the documentation is furnished within the statute of limitations period of A. This is because, in a case involving interest, the documentation received within the limitations period of the beneficial owner serves as a condition for the interest to qualify as portfolio interest. When documentation is received after the expiration of the beneficial owner's limitations period, the interest can no longer qualify as portfolio interest. On the other hand, A could rely on documentation that it receives after the expiration of B's limitations period to establish B's right to a reduced rate of withholding under an applicable income tax treaty (since, in such a case, a claim of treaty benefits is not conditioned upon providing documentation prior to the expiration of the beneficial owner's limitations period).

(4) *Coordination with withholding and reporting rules.* For an exemption from withholding under section 1441 with respect to obligations described in this paragraph (c), see § 1.1441–1(b)(4)(i). For rules applicable to withholding certificates, see § 1.1441–1(e)(4). For rules regarding documentary evidence, see § 1.6049–5(c)(1). For application of presumptions when the U.S. person cannot reliably associate the payment with documentation, see § 1.1441–1(b)(3). For standards of knowledge applicable to withholding agents, see § 1.1441–7(b). For rules relating to an exemption from Form 1099 reporting and backup withholding under section 3406, see section 6049 and § 1.6049–5(b)(8) for the payment of interest and § 1.6045–1(g)(1)(i) for the redemption, retirement, or sale of an obligation in registered form. For rules relating to reporting on Forms 1042 and 1042–S, see § 1.1461–1 (b) and (c).

(d) *Application of repeal of 30-percent withholding to pass-through certificates*—(1) *In general.* Interest received on a pass-through certificate qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1), or (e) of this section without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. This paragraph (d)(1) applies only to payments made to the holder of the pass-through certificate from the trustee of the pass-through trust and does not apply to payments made to the trustee of the pass-through trust. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in paragraph (b)(1) of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in paragraph (b)(1), (c)(1)(ii), or (e) of this section. However, for purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984, only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(2) *Interest in REMICs.* Interest received on a regular or residual interest in a REMIC qualifies as portfolio interest under section 871(h)(2) or 881(c)(2) if the interest satisfies the conditions described in paragraph (b)(1), (c)(1)(ii), or (e) of this section. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a regular interest in a REMIC is not considered interest on any mortgage obligations held by the REMIC. The foregoing rule, however, applies only to payments made to the holder of the regular interest from the REMIC and does not apply to payments made to the REMIC. For purposes of paragraph (b)(1), (c)(1)(ii), or (e) of this section, interest on a residual interest in a REMIC is considered to be interest on or with respect to the obligations held by the REMIC, and not on or with respect to the residual interest. For purposes of paragraphs (b)(1), (c)(1)(ii), and (e) of this section and section 127 of the Tax Reform Act of 1984, a residual interest in a REMIC will be considered as issued after July 18, 1984, only to the extent that the obligations held by the REMIC are issued after July 18, 1984, but a regular interest in a REMIC will be considered as issued after July 18, 1984, if the regular interest was issued after July 18, 1984, without regard to the date on which the mortgage obligations held by the REMIC were issued.

(3) *Date of issuance.* In general, a mortgage pass-through certificate will be considered to have been issued after July 18, 1984, if all of the mortgages held by the fund or trust were issued after July 18, 1984. If some of the mortgages held by the fund or trust were issued before July 19, 1984, then the portion of any interest payment which represents interest on those mortgages shall not be considered to be portfolio interest. The preceding sentence shall not apply, however, if all of the following conditions are satisfied:

(i) The mortgage pass-through certificate is issued after December 31, 1986;

(ii) Payment of the mortgage pass-through certificate is guaranteed by, and a guarantee commitment has been issued by, an entity that is independent from the issuer of the underlying obligation;

(iii) The guarantee commitment with respect to the mortgage pass-through certificate cannot have been issued more than 14 months prior to the date on

which the mortgage pass-through certificate is issued; and

(iv) The fund or trust to which the mortgage pass-through certificate relates cannot contain mortgage obligations on which the first scheduled monthly payment of principal and interest was made more than twelve months before the date on which the guarantee commitment was made.

(e) *Foreign-targeted registered obligations*—(1) *General rule.* The statement described in paragraph (c)(1)(ii)(C) of this section is not required with respect to interest paid on a registered obligation that is targeted to foreign markets in accordance with the provisions of paragraph (e)(2) of this section if the interest is paid by a U.S. person, a withholding foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv) (A) or (E) to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(5)(B). In that case, the U.S. person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in paragraph (e)(3)(i) of this section from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in paragraph (e)(3)(ii) of this section from the beneficial owner, in accordance with the procedures described in paragraph (e)(4) of this section.

(2) *Definition of a foreign-targeted registered obligation.* An obligation is considered to be targeted to foreign markets for purposes of paragraph (e)(1) of this section if it is sold (or resold in connection with its original issuance) only to foreign persons (or to foreign branches of United States financial institutions described in section 871(h)(5)(B)) in accordance with procedures similar to those prescribed in § 1.163–5(c)(2)(i) (A), (B), or (D). However, the provisions of that section that require an obligation to be offered for sale or resale in connection with its original issuance only outside the United States do not apply with respect to registered obligations offered for sale through a public auction. Similarly, the provisions of that section that require delivery to be made outside the United States do not apply to registered obligations offered for sale through a public auction if the obligations are considered to be in registered form by virtue of the fact that they may be transferred only through a book entry system. The obligation, if evidenced by a physical document other than a confirmation receipt, must contain on its face a legend indicating that it has been sold (or resold in connection with its original issuance) in accordance with those procedures.

(3) *Documentation.* A certificate described in paragraph (e)(3)(i) of this section is required if the United States person otherwise required to deduct and withhold tax (the withholding agent) pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentation described in paragraph (e)(3)(ii) of this section is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization.

(i) *Interest paid to a financial institution or a member of a clearing organization*—(A) *Requirement of a certificate*—(*1*) If the withholding agent pays interest to a financial institution described in section 871(h)(5)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this paragraph (e)(3)(i) was provided and while the financial institution or clearing organization member has held the obligation, with respect to each foreign-targeted registered obligation which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(*i*) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(*ii*) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of paragraph (e)(4) of this section.

(*2*) The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this paragraph (e)(3)(i).

(B) *Additional representations.* Whether or not a previous certificate has been required to be provided with respect to the obligation, each certificate furnished pursuant to the provisions in this paragraph (e)(3)(i) must further state that, for each foreign-targeted registered obligation held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by this paragraph (e)(3) to furnish the clearing organization with a statement) in accordance with paragraph (e)(4) of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) *Obligation must be identified.* The certificate described in paragraph (e)(3)(ii)(A) of this section must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (e.g., $5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, $3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify

and provide the address of the person furnishing the certificate.

(D) *Payment to a depository of a clearing organization.* If the withholding agent pays interest to a depository of a clearing organization, then the clearing organization must provide the certificate described in this paragraph (e)(3)(i) to the withholding agent. Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with the provisions of this paragraph (e)(3)(i) and of paragraph (e)(4) of this section (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(5)(B)).

(E) *Statement in lieu of Form W–8.* Subject to the requirements set out in paragraph (e)(4) of this section, a certificate or statement in the form described in this paragraph (e)(3)(i), in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W–8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(F) *Electronic transmission.* The certificate described in this paragraph (e)(3)(i) may be provided electronically under the terms and conditions of § 1.163–5(c)(2)(i)(D)(*3*)(*ii*).

(ii) *Payment to a person other than a financial institution or member of a clearing organization.* If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(5)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a statement described in paragraph (c)(1)(ii)(C) of this section.

(4) *Applicable procedures regarding documentation*—(i) *Procedures applicable to certificates required under paragraph (e)(3)(i) of this section*—(A) *Time for providing certificate.* Where no previous certificate for foreign-targeted registered obligations has been provided to the withholding agent by the person providing the certificate under paragraph (e)(3)(i) of this section, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the certificate is not received by the date 30 days prior to the interest payment. Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this paragraph (e)(4)(i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then no other certificate need be provided during such period in such year.

(B) *Change of status notification on Form W–9.* If, on any interest payment date after the obligation was acquired by the person making the certification, the beneficial owner of the obligation is a U.S. person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a U.S. beneficial ownership notification within 30 days after such interest payment date. A U.S. beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a U.S. person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) *Alternative notification statement.* Where the person providing the notification described in paragraph (e)(4)(i)(B) of this section is neither a controlled foreign corporation within the meaning of section 957(a), nor a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the U.S. beneficial ownership notification does not attach to it a copy of such Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50-percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) must send a copy of such form to the IRS, at such address as the IRS shall indicate, within 30 days after receiving it and must attach a statement that the Form W–9 or substitute form was provided pursuant to this paragraph (e)(4) with respect to a U.S. person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) *Failure to provide notification.* If either a Form W–9 (or a substitute form that is substantially similar to a Form W–9 and completed under penalties of perjury) or the statement described in paragraph (e)(4)(i)(C) of this section is not attached to the U.S. beneficial ownership notification provided pursuant to paragraph (e)(4)(i)(B) of this section, the withholding agent is required to withhold under section 1441, 1442, or 1443 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a U.S. person) is received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in paragraph (e)(3)(i) of this section (subject to paragraph (e)(3)(i)(A)(*2*) of this section) then the withholding agent is not required to withhold during the year following such certification (unless such person again provides a U.S. beneficial ownership notification without attaching a Form W–9 or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury or the statement described in paragraph (e)(4)(i)(C) of this section).

(E) *Procedures for clearing organizations.* Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent) relying on annual certificates or statements from its member organizations, as set forth in paragraph (e)(3)(i) of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a U.S. beneficial ownership

notification in the circumstances described in paragraph (e)(4)(i)(B) of this section.

(F) *Retention of certificates.* The certificate described in paragraph (e)(3)(i) of this section must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in paragraph (e)(3)(i) of this section that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received.

(G) *No reporting requirement.* The withholding agent who receives the certificate described in paragraph (e)(3)(i) of this section is not required to file Form 1042S to report payments under § 1.1461–1 (b) or (c) of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii) *Procedures regarding certificates required under paragraph (e)(3)(ii) of this section*—(A) *Time for providing certificate.* The statement described in paragraph (e)(3)(ii) of this section must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold under section 1441(a), 1442(a), or 1443 if the statement is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the statement described in paragraph (e)(3)(ii) of this section is not required to report payments of interest under § 1.1461–1(b) or (c) if the payments are made with respect to foreign-targeted registered obligations held by the person who provides the statement and are made within the period beginning with the date on which the statement is provided and ending on the last date for confirming the validity of the statement. The statement received for purposes of paragraph (e)(3)(ii) of this section is subject to the applicable procedures set forth in § 1.1441–1(e)(4).

(B) *Change of status notification on Form W–9.* If on any interest payment date after the obligation was acquired by the person providing the statement described in paragraph (e)(3)(ii) of this section, the beneficial owner of the obligation is a U.S. person, then the beneficial owner must so inform the withholding agent within 30 days after such interest payment date and must provide a Form W–9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W–9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) *Disqualification of documentation.* In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to 30-percent withholding under section 1441(a), 1442(a), or 1443.

(iv) *Special effective date.* Notwithstanding the foregoing requirements of this section—

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on January 15 and ending on January 31, 1986, is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of this paragraph (e), as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in paragraph (e)(4)(iv)(A) of this section, except that the provisions of paragraph (e)(3) of this section relating to which persons are required to receive certificates or statements and paragraph (e)(3)(ii) or (4)(ii) of this section shall become effective with respect to each interest payment after September 20, 1985.

(5) *Information reporting.* See § 1.6049–5(b)(7) for special information reporting rules applicable to interest on foreign-targeted registered obligations. See § 1.6045–1(g)(1)(ii) for information reporting rules applicable to the redemption, retirement, or sale of foreign-targeted registered obligations.

(f) *Securities lending transactions.* For applicable rules regarding substitute interest payments received pursuant to a securities lending transaction or a sale-repurchase transaction, see §§ 1.871–7(b)(2) and 1.881–2(b)(2).

(g) *Definitions.* For purposes of this section, the terms *U.S. person* and *foreign person* have the meaning set forth in § 1.1441–1(c)(2), the term *beneficial owner* has the meaning set forth in § 1.1441–1(c)(6), the term *withholding agent* has the meaning set forth in § 1.1441–7(a); the term *payee* has the meaning set forth in § 1.1441–1(b)(2); and the term *payment* has the meaning set forth in § 1.1441–2(e).

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 1998.

(2) *Transition rule.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form W–8 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under these regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W–8 that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 6. Section 1.1441–0 is added to read as follows:

§ 1.1441–0 Outline of regulation provisions for section 1441.

This section lists captions contained in §§ 1.1441–1 through 1.1441–9.

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) Purpose and scope.
(b) General rules of withholding.

(1) Requirement to withhold on payments to foreign persons.
(2) Determination of payee and payee's status.
(i) In general.
(ii) Payments to a U.S. agent of a foreign person.
(iii) Payments to wholly-owned entities.
(A) Foreign-owned domestic entity.
(B) Foreign entity.
(iv) Payments to a U.S. branch of certain foreign banks or foreign insurance companies.
(A) U.S. branch treated as a U.S. person in certain cases.
(B) Consequences to the withholding agent.
(C) Consequences to the U.S. branch.
(D) Definition of payment to a U.S. branch.
(E) Payments to other U.S. branches.
(v) Payments to a foreign intermediary.
(A) Payments treated as made to persons for whom the intermediary collects the payment.
(B) Payments treated as made to foreign intermediary.
(vi) Other payees.
(vii) Rules for reliably associating a payment with documentation.
(3) Presumptions regarding payee's status in the absence of documentation.
(i) General rules.
(ii) Presumptions of status as individual, corporation, partnership, etc.
(iii) Presumption of U.S. or foreign status.
(A) Payments to exempt recipients.
(B) Scholarships and grants.
(C) Pensions, annuities, etc.
(D) Certain payments to offshore accounts.
(iv) Grace period in the case of indicia of a foreign payee.
(v) Special rules applicable to payments to foreign intermediaries.
(A) Reliance on claim of status as foreign intermediary.
(B) Beneficial owner documentation is lacking or unreliable.
(C) Information regarding allocation of payment is lacking or unreliable.
(D) Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.
(vi) U.S. branches and foreign flow-through entities.
(vii) Joint payees.
(viii) Rebuttal of presumptions.
(ix) Effect of reliance on presumptions and of actual knowledge or reason to know otherwise.
(A) General rule.
(B) Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.
(x) Examples.
(4) List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.
(5) Establishing foreign status under applicable provisions of chapter 61 of the Code.
(6) Rules of withholding for payments by a foreign intermediary or certain U.S. branches.
(7) Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions.
(i) General rule.
(ii) Proof that tax liability has been satisfied.
(iii) Liability for interest and penalties.
(iv) Special effective date.
(v) Examples.
(8) Adjustments, refunds, or credits of overwithheld amounts.
(9) Payments to joint owners.
(c) Definitions.
(1) Withholding.
(2) Foreign and U.S. person.
(3) Individual.
(i) Alien individual.
(ii) Nonresident alien individual.
(4) Certain foreign corporations.
(5) Financial institution and foreign financial institution.
(6) Beneficial owner.
(i) General rule.
(ii) Special rules for flow-through entities and arrangements.
(A) General rule.
(B) Trusts and estates.
(C) Definition of a flow-through entity or arrangement.
(7) Withholding agent.
(8) Person.
(9) Source of income.
(10) Chapter 3 of the Code.
(11) Reduced rate.
(d) Beneficial owner's or payee's claim of U.S. status.
(1) In general.
(2) Payments for which a Form W–9 is otherwise required.
(3) Payments for which a Form W–9 is not otherwise required.
(4) Other payments.
(e) Beneficial owner's claim of foreign status.
(1) Withholding agent's reliance.
(i) In general.
(ii) Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner.
(A) General rule.
(B) Additional requirements.
(2) Beneficial owner withholding certificate.
(i) In general.
(ii) Requirements for validity of certificate.
(3) Intermediary, flow-through, or U.S. branch withholding certificate.
(i) In general.
(ii) Intermediary withholding certificate from a qualified intermediary.
(iii) Intermediary withholding certificate from an intermediary that is not a qualified intermediary.
(iv) Information to the withholding agent regarding assets owned by beneficial owners, etc.
(A) General rule.
(B) Updating the information.
(C) Examples.
(v) Withholding certificate from certain U.S. branches.
(vi) Reportable amounts.
(4) Applicable rules.
(i) Who may sign the certificate.
(ii) Period of validity.
(A) Three-year period.
(B) Indefinite validity period.
(C) Withholding certificate for effectively connected income.
(D) Change in circumstances.
(iii) Retention of withholding certificate.
(iv) Electronic transmission of information.
(v) Electronic confirmation of taxpayer identifying number on withholding certificate.
(vi) Acceptable substitute form.
(vii) Requirement of taxpayer identifying number.
(viii) Reliance rules.
(A) Classification.
(B) Status of payee as an intermediary or as a person acting for its own account.
(ix) Certificates to be furnished for each account unless exception applies.
(A) Coordinated account information system in effect.
(B) Family of mutual funds.
(C) Special rule for brokers.
(5) Qualified intermediaries.
(i) General rule.
(ii) Definition of qualified intermediary.
(iii) Withholding agreement.
(A) In general.
(B) Terms of the withholding agreement.
(iv) Assignment of primary withholding responsibility.
(v) Information to withholding agent regarding applicable withholding rates.
(A) General rule.
(B) Categories of assets.
(C) Updating the information.
(f) Effective date.
(1) In general.
(2) Transition rules.
(i) Special rules for existing documentation.
(ii) Lack of documentation for past years.

§ 1.1441–2 Amounts subject to withholding.

(a) In general.
(b) Fixed or determinable annual or periodical income.
(1) In general.
(i) Definition.
(ii) Manner of payment.
(iii) Determinability of amount.
(2) Exceptions.
(3) Original issue discount.
(i) General rule.
(ii) Amounts actually known to the withholding agent.
(iii) Amounts for which certain documentation is not furnished.
(iv) Exceptions to withholding.
(4) Securities lending transactions and equivalent transactions.
(c) Other income subject to withholding.
(d) Exceptions to withholding where no money or property is paid or lack of knowledge.
(1) General rule.
(2) Cancellation of debt.
(3) Satisfaction of liability following underwithholding by withholding agent.
(e) Payment.
(1) General rule.
(2) Income allocated under section 482.
(3) Blocked income.
(4) Special rules for dividends.
(5) Certain interest accrued by a foreign corporation.
(6) Payments other than in U.S. dollars.
(f) Effective date.

§ 1.1441–3 Determination of amounts to be withheld.

(a) Withholding on gross amount.
(b) Withholding on payments on certain obligations.
(1) Withholding at time of payment of interest.
(2) No withholding between interest payment dates.
(i) In general.
(ii) Anti-abuse rule.
(c) Corporate distributions.
(1) General rule.
(2) Exception to withholding on distributions.
(i) In general.
(ii) Reasonable estimate of accumulated and current earnings and profits on the date of payment.
(A) General rule.
(B) Procedures in case of underwithholding.
(C) Reliance by intermediary on reasonable estimate.
(D) Example.
(3) Special rules in the case of distributions from a regulated investment company.
(i) General rule
(ii) Reliance by intermediary on reasonable estimate.
(4) Coordination with withholding under section 1445.
(i) In general.
(A) Withholding under section 1441.
(B) Withholding under both sections 1441 and 1445.
(C) Coordination with REIT withholding.
(ii) Intermediary reliance rule.
(d) Withholding on payments that include an undetermined amount of income.
(1) In general.
(2) Withholding on certain gains.
(e) Payments other than in U.S. dollars.
(1) In general.
(2) Payments in foreign currency.
(f) Tax liability of beneficial owner satisfied by withholding agent.
(1) General rule.
(2) Example.
(g) Conduit financing arrangements
(h) Effective date.

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) Certain income connected with a U.S. trade or business.
(1) In general.
(2) Withholding agent's reliance on a claim of effectively connected income.
(i) In general.
(ii) Special rules for U.S. branches of foreign persons.
(A) U.S. branches of certain foreign banks or foreign insurance companies.
(B) Other U.S. branches.
(3) Income on notional principal contracts.
(i) General rule.
(ii) Exception for certain payments.
(b) Compensation for personal services of an individual.
(1) Exemption from withholding.
(2) Manner of obtaining withholding exemption under tax treaty.
(i) In general.
(ii) Withholding certificate claiming withholding exemption.
(iii) Review by withholding agent.
(iv) Acceptance by withholding agent.
(v) Copies of Form 8233.
(3) Withholding agreements.
(4) Final payments exemption.
(i) General rule.
(ii) Final payment of compensation for personal services.
(iii) Manner of applying for final payment exemption.
(iv) Letter to withholding agent.
(5) Requirement of return.
(6) Personal exemption.
(i) In general.
(ii) Multiple exemptions.
(iii) Special rule where both certain scholarship and compensation income are received.
(c) Special rules for scholarship and fellowship income.
(1) In general.
(2) Alternate withholding election.
(d) Annuities received under qualified plans.
(e) Per diem of certain alien trainees.
(f) Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.
(g) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

(a) Rules of withholding applicable to payments to partnerships.
(b) Domestic partnerships.
(1) Exemption from withholding on payment to domestic partnerships.
(2) Withholding by a domestic partnership.
(i) In general.
(ii) Determination by the domestic partnership of partners' status.
(iii) Reliance on a partner's claim for reduced withholding.
(iv) Rules for reliably associating a payment with documentation.
(v) Coordination with chapter 61 of the Internal Revenue Code and section 3406.
(c) Foreign partnerships.
(1) Determination of payee.
(i) Payments treated as made to partners.
(ii) Payments treated as made to the partnership.
(iii) Rules for reliably associating a payment with documentation.
(iv) Example.
(2) Withholding foreign partnerships.
(i) Reliance on claim of withholding foreign partnership status.
(ii) Withholding agreement.
(A) In general.
(B) Terms of withholding agreement.
(iii) Withholding responsibility.
(iv) Withholding certificate from a withholding foreign partnership.
(3) Other foreign partnerships.
(i) Reliance on claim of foreign partnership status.
(ii) Reliance on claim of reduced withholding by a partnership for its partners.
(iii) Withholding certificate from a foreign partnership that is not a withholding foreign partnership.
(iv) Information to withholding agent regarding each partner's distributive share.
(v) Withholding by a foreign partnership.
(d) Presumptions regarding payee's status in the absence of documentation.
(1) In general.
(2) Determination of partnership's status as domestic or foreign in the absence of documentation.
(3) Determination of partners' status in the absence of certain documentation.
(i) Documentation regarding the status of a partner is lacking or unreliable.
(ii) Information regarding the allocation of payment is lacking or unreliable.
(iii) Certification that the foreign partnership has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.
(iv) Determination by a withholding foreign partnership of the status of its partners.
(4) Examples.
(e) Trusts and estates. [Reserved]
(f) Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.
(g) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) In general.
(b) Reliance on claim of reduced withholding under an income tax treaty.
(1) In general.
(2) Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income.
(i) General rule.
(ii) Income to which special rules apply.
(3) Competent authority agreements.
(4) Eligibility for reduced withholding under an income tax treaty in the case of a payment to a person other than an individual.
(i) General rule.
(ii) Withholding certificates.
(A) In general.
(B) Certification by qualified intermediary.
(iii) Multiple claims of treaty benefits.
(iv) Examples.
(5) Claim of benefits under an income tax treaty by a U.S. person.
(c) Proof of tax residence in a treaty country and certification of entitlement to treaty benefits. (1) In general.
(2) Certification of taxpayer identifying number.
(i) In general.
(ii) IRS-certified TIN.
(iii) Special rules for qualified intermediaries.
(3) Certificate of residence.
(4) Documentary evidence establishing residence in the treaty country.
(i) Individuals.
(ii) Persons other than individuals.
(5) Certifications regarding entitlement to treaty benefits.
(i) Certification regarding conditions under a Limitation on Benefits Article.
(ii) Certification regarding whether the taxpayer is deriving the income.
(d) Joint owners.
(e) Related party dividends under U.S.-Denmark income tax treaty.

(f) Failure to receive withholding certificate timely.
(g) Effective date.
(1) General rule.
(2) Transition rules.

§ 1.1441–7 General provisions relating to withholding agents.

(a) Withholding agent defined.
(b) Standards of knowledge.
(1) In general.
(2) Reason to know.
(i) In general.
(ii) Limits on reason to know in certain cases.
(3) Coordinated account information systems.
(c) Authorized agent.
(1) In general.
(2) Authorized foreign agent.
(3) Notification.
(4) Liability of U.S. withholding agent.
(5) Filing of returns.
(d) United States obligations.
(e) Assumed obligations.
(f) Conduit financing arrangements.
(g) Effective date.

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

(a) Foreign governments.
(b) Reliance on claim of exemption by foreign government.
(c) Income of a foreign central bank of issue or the Bank for International Settlements.
(1) Certain interest income.
(2) Bankers' acceptances.
(d) Exemption for payments to international organizations.
(e) Failure to receive withholding certificate timely and other applicable procedures.
(f) Effective date.
(1) In general.
(2) Transition rules.

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

(a) Exemption from withholding for exempt income.
(b) Reliance on foreign organization's claim of exemption from withholding.
(1) General rule.
(2) Withholding certificate.
(3) Presumptions in the absence of documentation.
(4) Reason to know.
(c) Failure to receive withholding certificate timely and other applicable procedures.
(d) Effective date.
(1) In general.
(2) Transition rules.

Par. 7. Sections 1.1441–1 and 1.1441–2 are revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

(a) *Purpose and scope.* This section, §§ 1.1441–2 through 1.1441–9, and 1.1443–1 provide rules for withholding under sections 1441, 1442, and 1443 when a payment is made to a foreign person. This section provides definitions of terms used in chapter 3 of the Internal Revenue Code (Code) and regulations thereunder. It prescribes procedures to determine whether an amount must be withheld under chapter 3 of the Code and documentation that a withholding agent may rely upon to determine the status of a payee or a beneficial owner as a U.S. person or as a foreign person and other relevant characteristics of the payee that may affect a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder. Special procedures regarding payments to foreign persons that act as intermediaries are also provided. Section 1.1441–2 defines the income subject to withholding under section 1441, 1442, and 1443 and the regulations under these sections. Section 1.1441–3 provides rules regarding the amount subject to withholding. Section 1.1441–4 provides exemptions from withholding for, among other things, certain income effectively connected with the conduct of a trade or business in the United States, including certain compensation for the personal services of an individual. Section 1.1441–5 provides rules for withholding on payments made to flow-through entities and other similar arrangements. Section 1.1441–6 provides rules for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–7 defines the term *withholding agent* and provides due diligence rules governing a withholding agent's obligation to withhold. Section 1.1441–8 provides rules for relying on claims of exemption from withholding for payments to a foreign government, an international organization, a foreign central bank of issue, or the Bank for International Settlements. Sections 1.1441–9 and 1.1443–1 provide rules for relying on claims of exemption from withholding for payments to foreign tax exempt organizations and foreign private foundations.

(b) *General rules of withholding*—(1) *Requirement to withhold on payments to foreign persons.* A withholding agent must withhold 30-percent of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold where the foreign person assumes responsibility for withholding on the payment under chapter 3 of the Code and the regulations thereunder as a qualified intermediary (see paragraph (e)(5) of this section), as a U.S. branch of a foreign person (see paragraph (b)(2)(iv) of this section), as a withholding foreign partnership (see § 1.1441–5(c)(2)(i)), or as an authorized foreign agent (see § 1.1441–7(c)(1)). This section (dealing with general rules of withholding and claims of foreign or U.S. status by a payee or a beneficial owner), and §§ 1.1441–4, 1.1441–5, 1.1441–6, 1.1441–8, 1.1441–9, and 1.1443–1 provide rules for determining whether documentation is required as a condition for reducing the rate of withholding on a payment to a foreign beneficial owner or to a U.S. payee and if so, the nature of the documentation upon which a withholding agent may rely in order to reduce such rate. Paragraph (b)(2) of this section prescribes the rules for determining who the payee is, the extent to which a payment is treated as made to a foreign payee, and reliable association of a payment with documentation. Paragraph (b)(3) of this section describes the applicable presumptions for determining the payee's status as U.S. or foreign and the payee's other characteristics (i.e., as an owner or intermediary, as an individual, partnership, corporation, etc.). Paragraph (b)(4) of this section lists the types of payments for which the 30-percent withholding rate may be reduced. Because the treatment of a payee as a U.S. or a foreign person also has consequences for purposes of making an information return under the provisions of chapter 61 of the Code and for withholding under other provisions of the Code, such as sections 3402, 3405 or 3406, paragraph (b)(5) of this section lists applicable provisions outside chapter 3 of the Code that require certain payees to establish their foreign status (e.g., in order to be exempt from information reporting). Paragraph (b)(6) of this section describes the withholding obligations of a foreign person making a payment that it has received in its capacity as an intermediary. Paragraph (b)(7) of this section describes the liability of a withholding agent that fails to withhold at the required 30-percent rate in the absence of documentation. Paragraph (b)(8) of this section deals with adjustments and refunds in the case of overwithholding. Paragraph (b)(9) of this section deals with determining the status of the payee

when the payment is jointly owned. See paragraph (c)(6) of this section for a definition of beneficial owner. See § 1.1441–7(a) for a definition of withholding agent. See § 1.1441–2(a) for the determination of an amount subject to withholding. See § 1.1441–2(e) for the definition of a payment and when it is considered made. Except as otherwise provided, the provisions of this section apply only for purposes of determining a withholding agent's obligation to withhold under chapter 3 of the Code and the regulations thereunder.

(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). A foreign payee is a payee who is a foreign person. A U.S. payee is a payee who is a U.S. person. Generally, the determination by a withholding agent of the U.S. or foreign status of a payee and of its other relevant characteristics (e.g., as a beneficial owner or intermediary, or as an individual, corporation, or flow-through entity) is made on the basis of a withholding certificate that is a Form W–8 or a Form 8233 (indicating foreign status of the payee or beneficial owner) or a Form W–9 (indicating U.S. status of the payee). The provisions of this paragraph (b)(2), paragraph (b)(3) of this section, and § 1.1441–5 (c), (d), and (e) dealing with determinations of payee and applicable presumptions in the absence of documentation, apply only to payments of amounts subject to withholding under chapter 3 of the Code (within the meaning of § 1.1441–2(a)). Similar payee and presumption provisions are set forth under § 1.6049–5(d) for payments of amounts that are not subject to withholding under chapter 3 of the Code (or the regulations thereunder) but that may be reportable under provisions of chapter 61 of the Code (and the regulations thereunder). See paragraph (d) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a U.S. person. See paragraph (e) of this section for documentation upon which the withholding agent may rely in order to treat the payee or beneficial owner as a foreign person. For applicable presumptions of status in the absence of documentation, see paragraph (b)(3) of this section and § 1.1441–5(d). For definitions of a foreign person and U.S. person, see paragraph (c)(2) of this section.

(ii) *Payments to a U.S. agent of a foreign person.* A withholding agent making a payment to a U.S. person (other than to a U.S. branch that is treated as a U.S. person pursuant to paragraph (b)(2)(iv) of this section) and who has actual knowledge that the U.S. person receives the payment as an agent of a foreign person must treat the payment as made to the foreign person. However, the withholding agent may treat the payment as made to the U.S. person if the U.S. person is a financial institution and the withholding agent has no reason to believe that the financial institution will not comply with its obligation to withhold. See paragraph (c)(5) of this section for the definition of a financial institution.

(iii) *Payments to wholly-owned entities*—(A) *Foreign-owned domestic entity.* A payment to a wholly-owned domestic entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall be treated as a payment to the owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section. For purposes of this paragraph (b)(2)(iii)(A), a domestic entity means a person that would be treated as a U.S. person if it had an election in effect under § 301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. For example, a limited liability company, A, organized under the laws of the State of Delaware, opens an account at a U.S. bank. Upon opening of the account, the bank requests A to furnish a Form W–9 as required under section 6049(a) and the regulations under that section. A does not have an election in effect under § 301.7701–3(c)(1)(i) of this chapter and, therefore, is not treated as an organization taxable as a corporation, including for purposes of the exempt recipient provisions in § 1.6049–4(c)(1). If A has a single owner and the owner is a foreign person (as defined in paragraph (c)(2) of this section), then A may not furnish a Form W–9 because it may not represent that it is a U.S. person for purposes of the provisions of chapters 3 and 61 of the Code, and section 3406. Therefore, A must furnish a Form W–8 with the name, address, and taxpayer identifying number (TIN) (if required) of the foreign person who is the single owner in the same manner as if the account were opened directly by the foreign single owner. See §§ 1.894–1T(d) and 1.1441–6(b)(4) for special rules where the entity's owner is claiming a reduced rate of withholding under an income tax treaty.

(B) *Foreign entity.* A payment to a wholly-owned foreign entity that is disregarded under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner shall be treated as a payment to the single owner of the entity, subject to the provisions of paragraph (b)(2)(iv) of this section if the foreign entity has a U.S. branch in the United States. For purposes of this paragraph (b)(2)(iii)(B), a foreign entity means a person that would be treated as a foreign person if it had an election in effect under § 301.7701–3(c)(1)(i) of this chapter to be treated as a corporation. See §§ 1.894–1T(d) and 1.1441–6(b)(4) for special rules where the foreign entity or its owner is claiming a reduced rate of withholding under an income tax treaty. Thus, for example, if the foreign entity's single owner is a U.S. person, the payment shall be treated as a payment to a U.S. person. Therefore, based on the savings clause in U.S. income tax treaties, such an entity may not claim benefits under an income tax treaty even if the entity is organized in a country with which the United States has an income tax treaty in effect and treats the entity as a non-fiscally transparent entity. See § 1.894–1T(d)(6), *Example 10.* Unless it has actual knowledge or reason to know that the foreign entity to whom the payment is made is disregarded under § 301.7701–2(c)(2) of this chapter, a withholding agent may treat a foreign entity as an entity separate from its owner unless it can reliably associate the payment with a withholding certificate from the entity's owner.

(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to the U.S. branch of a foreign person is a payment to the foreign person. However, a U.S. branch described in this paragraph (b)(2)(iv)(A) and a withholding agent (including another U.S. branch described in this paragraph (b)(2)(iv)(A)) may agree to treat the branch as a U.S. person for purposes of withholding on specified payments to the U.S. branch. Such agreement must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioner with the Insurance Department of a State, a Territory, or the District of Columbia. The Internal Revenue Service (IRS) may approve a list of U.S. branches that may

qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter).

(B) *Consequences to the withholding agent.* Any person that is otherwise a withholding agent regarding a payment to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section shall treat the payment in one of the following ways—

(*1*) As a payment to a U.S. person, in which case the withholding agent is not responsible for withholding on such payment to the extent it can reliably associate the payment with a withholding certificate described in paragraph (e)(3)(v) of this section that has been furnished by the U.S. branch under its agreement with the withholding agent to be treated as a U.S. person;

(*2*) As a payment directly to the persons whose names are on withholding certificates or other appropriate documentation forwarded by the U.S. branch to the withholding agent when no agreement is in effect to treat the U.S. branch as a U.S. person for such payment, to the extent the withholding agent can reliably associate the payment with such certificates or documentation; or

(*3*) As a payment to a foreign person of income that is effectively connected with the conduct by that foreign person of a trade or business in the United States if the withholding agent cannot reliably associate the payment with a certificate from the U.S. branch or any other certificate or other appropriate documentation from another person.

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a person for purposes of section 1441(a) and all other provisions of chapter 3 of the Code and the regulations thereunder for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on the payment in accordance with the provisions under chapter 3 of the Code and the regulations thereunder and other applicable withholding provisions of the Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment on behalf of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section.

(D) *Definition of payment to a U.S. branch.* A payment is treated as a payment to a U.S. branch of a foreign bank or foreign insurance company if the payment is credited to an account maintained in the United States in the name of a U.S. branch of the foreign person, or the payment is made to an address in the United States where the U.S. branch is located and the name of the U.S. branch appears on documents (in written or electronic form) associated with the payment (e.g., the check mailed or a letter addressed to the branch).

(E) *Payments to other U.S. branches.* Similar withholding procedures may apply to payments to U.S. branches that are not described in paragraph (b)(2)(iv)(A) of this section to the extent permitted by the district director or the Assistant Commissioner (International). Any such branch must establish that its situation is analogous to that of a U.S. branch described in paragraph (b)(2)(iv)(A) of this section regarding its registration with, and regulation by, a U.S. governmental institution, the type and amounts of assets it is required to, or actually maintain in the United States, and the personnel who carry out the activities of the branch in the United States. In the alternative, the branch must establish that the withholding and reporting requirements under chapter 3 of the Code and the regulations thereunder impose an undue administrative burden and that the collection of the tax imposed by section 871(a) or 881(a) on the foreign person (or its members in the case of a foreign partnership) will not be jeopardized by the exemption from withholding. Generally, an undue administrative burden will be found to exist in a case where the person entitled to the income, such as a foreign insurance company, receives from the withholding agent income on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with conduct of a trade or business within the United States and the criteria for determining the effective connection are unduly difficult to apply because of the circumstances under which such securities are held. No exemption from withholding shall be granted under this paragraph (b)(2)(iv)(E) unless the person entitled to the income complies with such other requirements as may be imposed by the district director or the Assistant Commissioner (International) and unless the district director or the Assistant Commissioner (International) is satisfied that the collection of the tax on the income involved will not be jeopardized by the exemption from withholding. The IRS may prescribe such procedures as are necessary to make these determinations (see § 601.601(d)(2) of this chapter).

(v) *Payments to a foreign intermediary*—(A) *Payments treated as made to persons for whom the intermediary collects the payment.* Except as otherwise provided in paragraph (b)(2)(v)(B) of this section, a payment to a person that the withholding agent may treat as a foreign intermediary in accordance with the provisions of paragraph (b)(3)(v)(A) of this section is treated as a payment made directly to the person or persons for whom the intermediary collects the payment. Thus, for example, a payment that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary (defined in paragraph (e)(5)(ii) of this section) and that is allocable to the category of assets described in paragraph (e)(5)(v)(B)(*3*) of this section (i.e., assets allocable to persons for whom the foreign qualified intermediary does not hold documentation as specified under its agreement with the IRS) is treated as a payment to the persons holding assets in that category. See paragraph (b)(3)(v)(B) of this section for applicable presumptions in such a case. For similar rules for payments to flow-through entities, see § 1.1441–5 (c)(1)(i) and (e).

(B) *Payments treated as made to foreign intermediary.* A payment to a person that the withholding agent can reliably associate with a withholding certificate described in paragraph (e)(3)(ii) of this section from a qualified intermediary that has elected to assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section is treated as a payment to the qualified intermediary, except to the extent of the portion of the payment that the withholding agent can reliably associate with Forms W–9. See paragraphs (b)(1) and (e)(5)(iv) of this section for consequences to the withholding agent.

(vi) *Other payees.* A payment to a person described in § 1.6049–4(c)(1)(ii) that the withholding agent would treat as a payment to a foreign person without obtaining documentation for purposes of information reporting under section 6049 (if the payment were interest) is treated as a payment to a foreign payee for purposes of chapter 3 of the Code and the regulations thereunder (or to a foreign beneficial owner to the extent provided in paragraph (e)(1)(ii)(A) (*6*) or (*7*) of this

section). Further, payments that the withholding agent can reliably associate with documentary evidence described in § 1.6049–5(c)(4) relating to the payee is treated as a payment to a foreign payee. A payment that the withholding agent may treat as a payment to an authorized foreign agent (as defined in § 1.1441–7(c)(2)) is treated as a payment to the agent and not to the persons for whom the agent collects the payment. See § 1.1441–5 (b)(1) and (c)(1) for payee determinations for payments to partnerships. See § 1.1441–5(e) for payee determinations for payments to foreign trusts or foreign estates.

(vii) *Rules for reliably associating a payment with documentation.* Generally, a withholding agent can reliably associate a payment with documentation if, for that payment, it holds valid documentation to which the payment relates, it can reliably determine how much of the payment relates to the valid documentation (e.g., based on information furnished in accordance with paragraph (e)(3)(iv) or (5)(v) of this section in the case of a payment to a foreign intermediary or in accordance with § 1.1441–5(c)(3)(iv) in the case of a payment to a foreign partnership), and it has no actual knowledge or reason to know that any of the information or certifications stated in the documentation are incorrect. The documentation referred to in this paragraph (b)(2)(vii) is documentation described in paragraph (d) or (e) of this section upon which a withholding agent may rely in order to treat the payment as a payment made to a payee or beneficial owner that is a U.S. or a foreign person, and to ascertain the characteristics of the payee or beneficial owner, as may be relevant to withholding or reporting under chapter 3 of the Code and the regulations thereunder (e.g., beneficial owner or intermediary, corporation or partnership). For purposes of this paragraph (b)(2)(vii), documentation also includes a withholding certificate described in paragraph (e)(3)(ii) of this section from a person representing to be a qualified intermediary that has assumed primary withholding responsibility, a withholding certificate described in paragraph (e)(3)(v) of this section from a person representing to be a U.S. branch described in paragraph (b)(2)(iv)(A) of this section, a withholding certificate described in § 1.1441–5(c)(2)(iv) from a person representing to be a withholding foreign partnership, and the agreement that the withholding agent has in effect with an authorized foreign agent in accordance with § 1.1441–7(c)(2)(i). A withholding agent that is not required to obtain documentation with respect to a payment is considered to lack documentation for purposes of this paragraph (b)(2)(vii). For example, a withholding agent paying U.S. source interest to a person that is an exempt recipient, as defined in § 1.6049–4(c)(1)(ii), is not required to obtain documentation from that person in order to determine whether an amount paid to that person is reportable under an applicable information reporting provision under chapter 61 of the Code. Therefore, the withholding agent may rely on the provisions of paragraph (b)(3)(iii)(A) of this section to determine whether the person is presumed to be a U.S. person (in which case, no withholding is required under this section), or whether the person is presumed to be a foreign person (in which case 30-percent withholding is required under this section). See paragraph (b)(3)(v)(A) of this section for special reliance rules in the case of a payment to a foreign intermediary and § 1.1441–5(d)(3) for special reliance rules in the case of a payment to a foreign partnership.

(3) *Presumptions regarding payee's status in the absence of documentation*—(i) *General rules.* A withholding agent that cannot reliably associate a payment with documentation may rely on the presumptions of this paragraph (b)(3) in order to determine the status of the payee as a U.S. or a foreign person and the payee's other relevant characteristics (e.g., as an owner or intermediary, as an individual, trust, partnership, or corporation). The determination of withholding and reporting requirements applicable to payments to a person presumed to be a foreign person is governed only by the provisions of chapter 3 of the Code and the regulations thereunder. For the determination of withholding and reporting requirements applicable to payments to a person presumed to be a U.S. person, see chapter 61 of the Code, section 3402, 3405, or 3406, and the regulations under these provisions. A presumption that a payee is a foreign payee is not a presumption that the payee is a foreign beneficial owner. Therefore, the provisions of this paragraph (b)(3) have no effect for purposes of reducing the withholding rate if associating the payment with documentation of foreign beneficial ownership is required as a condition for such rate reduction. See paragraph (b)(3)(ix) of this section for consequences to a withholding agent that fails to withhold in accordance with the presumptions set forth in this paragraph (b)(3) or if the withholding agent has actual knowledge or reason to know of facts that are contrary to the presumptions set forth in this paragraph (b)(3). See paragraph (b)(2)(vii) of this section for rules regarding the extent which a withholding agent can reliably associate a payment with documentation.

(ii) *Presumptions of status as individual, corporation, partnership, etc.* A withholding agent that cannot reliably associate a payment with documentation must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (i.e., based on the payee's name or other indications). In the absence of reliable indications that the payee is an individual, estate, or trust, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049–4(c)(1)(ii) (B) through (Q) if it can be so treated under § 1.6049–4(c)(1)(ii)(A)(*1*) or any one of the paragraphs under § 1.6049–4(c)(1)(ii) (B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii) (A)(*1*) through (Q), then the payee shall be presumed to be a partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation, if documentation is otherwise required in order to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049–4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W–8 described in § 1.1441–9(b)(2) be furnished to the withholding agent.

(iii) *Presumption of U.S. or foreign status.* A payment that the withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person, except as otherwise provided in this paragraph (b)(3)(iii), in paragraphs (b)(3) (iv) and (v) of this section, or in § 1.1441–5 (d) or (e).

(A) *Payments to exempt recipients.* If a withholding agent cannot reliably associate a payment with documentation from the payee and the

payee is an exempt recipient (as determined under the provisions of § 1.6049–4(c)(1)(ii) in the case of interest, or under similar provisions under chapter 61 of the Code applicable to the type of payment involved, but not including a payee that the withholding agent may treat as a foreign intermediary in accordance with paragraph (b)(3)(v) of this section), the payee is presumed to be a foreign person and not a U.S. person—

(*1*) If the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits ''98'';

(*2*) If the withholding agent's communications with the payee are mailed to an address in a foreign country;

(*3*) If the name of the payee indicates that the entity is the type of entity that is on the per se list of foreign corporations contained in § 301.7701–2(b)(8)(i) of this chapter; or

(*4*) If the payment is made outside the United States (as defined in § 1.6049–5(e)).

(B) *Scholarships and grants.* A payment representing taxable scholarship or fellowship grant income that does not represent compensation for services (but is not excluded from tax under section 117) and that a withholding agent that cannot reliably associate with documentation is presumed to be made to a foreign person if the withholding agent has a record that the payee has a U.S. visa that is not an immigrant visa. See section 871(c) and § 1.1441–4(c) for applicable tax rate and withholding rules.

(C) *Pensions, annuities, etc.* A payment from a trust described in section 401(a), an annuity plan described in section 401(a), an annuity plan described in section 403(a), or a payment with respect to any annuity, custodial account, or retirement income account described in section 403(b) that a withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person only if the withholding agent has a record of a Social Security number for the payee and relies on a mailing address described in the following sentence. A mailing address is an address used for purposes of information reporting or otherwise communicating with the payee that is an address in the United States or in a foreign country with which the United States has an income tax treaty in effect that provides that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on amounts described in this paragraph (b)(3)(iii)(C). Any payment described in this paragraph (b)(3)(iii)(C) that is not presumed made to a U.S. person is presumed to be made to a foreign person. A withholding agent making a payment to a person presumed to be a foreign person may not reduce the 30-percent amount of withholding required on such payment unless it receives a withholding certificate described in paragraph (e)(2)(i) of this section furnished by the beneficial owner. For basis of reduction in the 30-percent rate, see § 1.1441–4(e) or § 1.1441–6(b).

(D) *Certain payments to offshore accounts.* A payment that would be subject to withholding under section 1441, 1442, or 1443 if made to a foreign person and is exempt from backup withholding under section 3406 by reason of § 31.3406(g)–1(e) of this chapter (relating to exemption from backup withholding under section 3406 for certain payments to offshore accounts) is presumed to be made to a foreign payee.

(iv) *Grace period in the case of indicia of a foreign payee.* A withholding agent may choose, in its discretion, to apply the provisions of § 1.6049–5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by substituting the term *withholding agent* for the term *payor*) to amounts described in § 1.1441–6(b)(2)(ii) and to amounts covered by a Form 8233 described in § 1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may, in its discretion, choose to treat an account holder as a foreign person and withhold under chapter 3 of the Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to the account. However, a withholding agent who can reliably associate the payment with a withholding certificate that is otherwise valid within the meaning of the applicable provisions except for the fact that it is transmitted by facsimile may rely on that facsimile form for purposes of withholding at the claimed reduced rate. For reporting of amounts credited both before and after the grace period, see § 1.1461–1(c)(7). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. person who is not an exempt recipient, then backup withholding applies to amounts credited to the account after the expiration of the grace period only. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461–2.

(B) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a foreign person, or if documentation is furnished that does not support the claimed rate reduction, then adjustments must be made to correct the underwithholding on amounts credited to the account during the grace period, based on adjustment procedures described in § 1.1461–2.

(v) *Special rules applicable to payments to foreign intermediaries*—(A) *Reliance on claim of status as foreign intermediary.* A withholding agent that can reliably associate a payment with a withholding certificate described in paragraph (e)(3)(ii) or (iii) of this section may treat the payment as made to a foreign intermediary, as represented in the certificate. For this purpose, a U.S. person's foreign branch that is a qualified intermediary defined in paragraph (e)(5)(ii) of this section shall be treated as a foreign intermediary. For purposes of this section, a payment that the withholding agent can reliably associate with a withholding certificate described in paragraph (e)(3)(ii) or (iii) of this section that would be valid except for the fact that some or all of the withholding certificates or other appropriate documentation required to be attached are lacking or are unreliable or that information for allocating the payment among the various persons for whom the intermediary is acting is lacking or is unreliable shall nevertheless be treated as a payment to a foreign intermediary and the rules of this paragraph (b)(3)(v) shall apply accordingly. A payee that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (b)(3)(v)(A) is presumed to be an owner whose status as an individual, trust, estate, etc., must be determined in accordance with paragraph (b)(3)(ii) of this section, to the extent relevant. In addition, such payee is presumed to be a U.S. or a foreign payee based upon the presumptions described in paragraph (b)(3)(iii) of this section. The provisions of paragraphs (b)(3)(v) (B), (C), and (D) of this section are not relevant to a withholding agent that can reliably associate a payment with a withholding certificate from a person representing to be a qualified intermediary that has assumed primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section.

(B) *Beneficial owner documentation is lacking or unreliable.* Any portion of a payment that the withholding agent may treat as made to a foreign intermediary in accordance with paragraph (b)(3)(v)(A) of this section but cannot reliably associate with a beneficial owner due to the lack of a withholding certificate or other appropriate documentation for that beneficial owner is presumed to be made to a foreign payee for whom the foreign intermediary collects the payment (see paragraph (b)(2)(v) of this section). For purposes of this paragraph (b)(2)(v)(B), any payment that a foreign qualified intermediary represents to be allocable to the category of assets described in paragraph (e)(5)(v)(B)(*3*) of this section (i.e., assets allocable to persons for whom the qualified intermediary does not hold documentation as specified under its agreement with the IRS) is treated as a payment that the withholding agent cannot reliably associate with beneficial owners. As a result, any payment allocable to such category of assets is presumed to be made to an unidentified foreign payee. Under paragraph (b)(1) of this section, a payment to a foreign payee is subject to withholding at a 30-percent rate.

(C) *Information regarding allocation of payment is lacking or unreliable.* If a withholding agent can reliably associate a payment with a group of beneficial owners or payees but lacks reliable information to determine how much of the payment is allocable to one or more of the beneficial owners or payees in the group (because, for example, the statement described in paragraph (e)(3)(iv) of this section has not been furnished), the payment, to the extent it cannot reliably be allocated, is presumed to be allocable entirely to the beneficial owner or payee in the group with the highest applicable withholding rate or, if the rates are equal, to the beneficial owner or payee in the group with the highest U.S. tax liability, as the withholding agent shall estimate, based on its knowledge and available information. If a withholding certificate attached to an intermediary certificate is another intermediary certificate or a certificate from a foreign partnership described in § 1.1441–5(c)(3)(iii), the rules of this paragraph (b)(3)(v)(C) apply by treating the share of the payment allocable to the other intermediary or to the foreign partnership as if the payment were made directly to the other intermediary or to the foreign partnership.

(D) *Certification that the foreign intermediary has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.* If the certification required under paragraph (e)(3)(iii)(D) of this section (that the attached withholding certificates and other appropriate documentation represent all of the persons to whom the intermediary withholding certificate relates) is lacking or is unreliable and, as a result, the withholding agent cannot reliably determine how much of the payment is allocable to each of the persons or group of persons for which the withholding agent holds a withholding certificate or other appropriate documentation, then none of the payment can reliably be associated with any one person and the entire payment is presumed to be made to an unidentified foreign payee for whom the intermediary collects the payment and from which a 30-percent amount must be withheld in accordance with paragraph (b)(1) of this section.

(vi) *U.S. branches and foreign flow-through entities.* The rules of paragraphs (b)(3)(v) (B), (C), and (D) of this section shall apply to payments to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that has agreed to assume withholding responsibility in the same manner that they apply to payments to a foreign intermediary. See § 1.1441–5(d) for similar rules in the case of payments to foreign partnerships. See § 1.1441–5(e) for similar rules in the case of payments to foreign trusts or foreign estates.

(vii) *Joint payees.* A payment made to joint payees for whom the withholding agent cannot reliably associate documentation for all joint payees or can reliably associate the payment with a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter from one of the joint payees is presumed to be made to U.S. persons. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee qualifies for the conditions described in paragraph (b)(3)(iv) of this section. However, as provided in paragraph (b)(3)(iii)(D) of this section, a payment of an amount that would be subject to withholding under section 1441, 1442, or 1443 if paid to a foreign person and is exempt from the application of the provisions of section 3406 by reason of § 31.3406(g)–1(e) of this chapter (relating to exemption from backup withholding under section 3406 of the Code for certain payments made with respect to offshore accounts), is presumed to be made to foreign persons.

(viii) *Rebuttal of presumptions.* A payee or beneficial owner may rebut the presumptions described in this paragraph (b)(3) by providing reliable documentation to the withholding agent or, if applicable, to the IRS.

(ix) *Effect of reliance on presumptions and of actual knowledge or reason to know otherwise*—(A) *General rule.* Except as otherwise provided in paragraph (b)(3)(ix)(B) of this section, a withholding agent that withholds on a payment under section 3402, 3405 or 3406 in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under this section even it is later established that the beneficial owner of the payment is, in fact, a foreign person. Similarly, a withholding agent that withholds on a payment under this section in accordance with the presumptions set forth in this paragraph (b)(3) shall not be liable for withholding under section 3402 or 3405 or for backup withholding under section 3406 even if it is later established that the payee or beneficial owner is, in fact, a U.S. person. A withholding agent that, instead of relying on the presumptions described in this paragraph (b)(3), relies on its own actual knowledge to withhold a lesser amount, not withhold, or not report a payment, even though reporting of the payment or withholding a greater amount would be required if the withholding agent relied on the presumptions described in this paragraph (b)(3) shall be liable for tax, interest, and penalties to the extent provided under section 1461 and the regulations under that section. See paragraph (b)(7) of this section for provisions regarding such liability if the withholding agent fails to withhold in accordance with the presumptions described in this paragraph (b)(3).

(B) *Actual knowledge or reason to know that amount of withholding is greater than is required under the presumptions or that reporting of the payment is required.* Notwithstanding the provisions of paragraph (b)(3)(ix)(A) of this section, a withholding agent may not rely on the presumptions described in this paragraph (b)(3) to the extent it has actual knowledge or reason to know that the status or characteristics of the payee or of the beneficial owner are other than what is presumed under this paragraph (b)(3) and, if based on such knowledge or reason to know, it should withhold (under this section or another withholding provision of the Code) an amount greater than would be the case if it relied on the presumptions described in this paragraph (b)(3) or it should report (under this section or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the presumptions described in this

paragraph (b)(3). In such a case, the withholding agent must rely on its actual knowledge or reason to know rather than on the presumptions set forth in this paragraph (b)(3). Failure to do so and, as a result, failure to withhold the higher amount or to report the payment, shall result in liability for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections.

(x) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. A withholding agent, W, makes a payment of U.S. source dividends to person X, Inc. at an address outside the United States. W cannot reliably associate the payment to X with documentation. Under §§ 1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii)(A)(*1*), W may treat X as a corporation. Thus, under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that X is a foreign person (because the payment is made outside the United States). However, W knows that X is a U.S. person who is an exempt recipient. W may not rely on its actual knowledge to not withhold under this section. If W s knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 1461. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that the tax is not due or has been satisfied. If W s actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 1461 for the amount that W should have withheld based upon the presumptions. W would be permitted to reduce or eliminate its liability for the tax by establishing, in accordance with paragraph (b)(7) of this section, that its actual knowledge was, in fact, correct and that no tax or a lesser amount of tax was due.

Example 2. A withholding agent, W, makes a payment of U.S. source dividends to Y who does not qualify as an exempt recipient under §§ 1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii). W cannot reliably associate the payment to Y with documentation. Under the presumptions described in paragraph (b)(3)(iii) of this section, W must presume that Y is a U.S. person who is not an exempt recipient for purposes of section 6042. However, W knows that Y is a foreign person. W may not rely on its actual knowledge to withhold under this section rather than backup withhold under section 3406. If W s knowledge is, in fact, incorrect, W would be liable for tax, interest, and, if applicable, penalties, under section 3403. If W s actual knowledge is, in fact, correct, W may nevertheless be liable for tax, interest, or penalties under section 3403 for the amount that W should have withheld based upon the presumptions. Paragraph (b)(7) of this section does not apply to provide relief from liability under section 3403.

Example 3. A withholding agent, W, makes a payment of U.S. source dividends to X, Inc. W cannot reliably associate the payment to X, Inc. with documentation. X, nc. presents none of the indicia of foreign status described in paragraph (b)(3)(iii)(A) of this section, but W has actual knowledge that X, Inc. is a foreign corporation. W may treat X, Inc. as an exempt recipient under § 1.6042–3(b)(1)(vii). Because there are no indicia of foreign status, W would, absent actual knowledge or reason to know otherwise, be permitted to treat X, Inc. as a domestic corporation in accordance with the presumptions of paragraph (b)(3)(iii) of this section. However, under paragraph (b)(3)(ix)(B) of this section, W may not rely on the presumption of U.S. status since reliance on its actual knowledge requires that it withhold an amount greater than would be the case under the presumptions.

Example 4. A withholding agent, W, is a plan administrator who makes pension payments to person X with a mailing address in a foreign country with which the United States has an income tax treaty in effect. Under that treaty, the type of pension income paid to X is taxable solely in the country of residence. The plan administrator has a record of X's U.S. social security number. W has no actual knowledge or reason to know that X is a foreign person. W may rely on the presumption of paragraph (b)(3)(iii)(C) of this section in order to treat X as a U.S. person. Therefore, any withholding and reporting requirements for the payment are governed by the provisions of section 3405 and the regulations under that section.

(4) *List of exemptions from, or reduced rates of, withholding under chapter 3 of the Code.* A withholding agent that has determined that the payee is a foreign person for purposes of paragraph (b)(1) of this section must determine whether the payee is entitled to a reduced rate of withholding under section 1441, 1442, or 1443. This paragraph (b)(4) identifies items for which a reduction in the rate of withholding may apply and whether the rate reduction is conditioned upon documentation being furnished to the withholding agent. Documentation required under this paragraph (b)(4) is documentation that a withholding agent must be able to associate with a payment upon which it can rely to treat the payment as made to a foreign person that is the beneficial owner of the payment in accordance with paragraph (e)(1)(ii) of this section. This paragraph (b)(4) also cross-references other sections of the Code and applicable regulations in which some of these exceptions, exemptions, or reductions are further explained. See, for example, paragraph (b)(4)(viii) of this section, dealing with effectively connected income, that cross-references § 1.1441–4(a); see paragraph (b)(4)(xv) of this section, dealing with exemptions from, or reductions of, withholding under an income tax treaty, that cross-references § 1.1441–6. This paragraph (b)(4) is not an exclusive list of items to which a reduction of the rate of withholding may apply and, thus, does not preclude an exemption from, or reduction in, the rate of withholding that may otherwise be allowed under the regulations under the provisions of chapter 3 of the Code for a particular item of income identified in this paragraph (b)(4).

(i) Portfolio interest described in section 871(h) or 881(c) and substitute interest payments described in § 1.871–7(b)(2)(i) or 1.881–2(b)(2) are exempt from withholding under section 1441(a). See § 1.871–14 for regulations regarding portfolio interest and section 1441(c)(9) for exemption from withholding. Documentation establishing foreign status is required for interest on an obligation in registered form to qualify as portfolio interest. See section 871(h)(2)(B)(ii) and § 1.871–14(c)(1)(ii)(C). For special documentation rules regarding foreign-targeted registered obligations described in § 1.871–14(e)(2), see § 1.871–14(e) (3) and (4) and, in particular, § 1.871–14(e)(4)(i)(A) and (ii)(A) regarding the time when the withholding agent must receive the documentation. The documentation furnished for purposes of qualifying interest as portfolio interest serves as the basis for the withholding exemption for purposes of this section and for purposes of establishing foreign status for purposes of section 6049. See § 1.6049–5(b)(8). Documentation establishing foreign status is not required for qualifying interest on an obligation in bearer form described in § 1.871–14(b)(1) as portfolio interest. However, in certain cases, documentation for portfolio interest on a bearer obligation may have to be furnished in order to establish foreign status for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(7).

(ii) Bank deposit interest and similar types of deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) that are from sources within the United States are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also § 1.6049–5(b)(11) for applicable documentation exemptions for certain

bank deposit interest paid on obligations in bearer form.

(iii) Bank deposit interest (including original issue discount) described in section 861(a)(1)(B) is exempt from withholding under sections 1441(a) as income that is not from U.S. sources. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. Reporting requirements for payments of such interest are governed by section 6049 and the regulations under that section. See § 1.6049–5(b)(12) and alternative documentation rules under § 1.6049–5(c)(4).

(iv) Interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3) is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(12) for applicable documentation for establishing foreign status and § 1.6049–5(d)(3)(iii) for exceptions to the foreign payee and exempt recipient rules regarding this type of income. See also § 1.6049–5(b)(10) for applicable documentation exemptions for certain obligations in bearer form.

(v) Income from sources without the United States is exempt from withholding under sections 1441(a). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6049 or other applicable provisions of chapter 61 of the Code and backup withholding under section 3406. See, for example, § 1.6049–5(b) (6) and (12) and alternative documentation rules under § 1.6049–5(c)(4). See also paragraph (b)(5) of this section for cross references to other applicable provisions of the regulations under chapter 61 of the Code.

(vi) Distributions from certain domestic corporations described in section 871(i)(2)(B) or 881(d) are exempt from withholding under section 1441(a). See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See § 1.6042–3(b)(1)(iii) through (vi).

(vii) Dividends paid by certain foreign corporations that are treated as income from sources within the United States by reason of section 861(a)(2)(B) are exempt from withholding under section 884(e)(3) to the extent that the distributions are paid out of earnings and profits in any taxable year that the corporation was subject to branch profits tax for that year. Documentation establishing foreign status is not required for purposes of this withholding exemption but may have to be furnished for purposes of the information reporting provisions of section 6042 and backup withholding under section 3406. See § 1.6042–3(b)(1)(iii) through (vii).

(viii) Certain income that is effectively connected with the conduct of a U.S. trade or business is exempt from withholding under section 1441(a). See section 1441(c)(1). Documentation establishing foreign status and status of the income as effectively connected must be furnished for purposes of this withholding exemption to the extent required under the provisions of § 1.1441–4(a). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, § 1.6041–4(a)(1).

(ix) Certain income with respect to compensation for personal services of an individual that are performed in the United States is exempt from withholding under section 1441(a). See section 1441(c)(4) and § 1.1441–4(b). However, such income may be subject to withholding as wages under section 3402. Documentation establishing foreign status must be furnished for purposes of any withholding exemption or reduction to the extent required under § 1.1441–4(b) or 31.3401(a)(6)–1(e) and (f) of this chapter. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See § 1.6041–4(a)(1).

(x) Amounts described in section 871(f) that are received as annuities from certain qualified plans are exempt from withholding under section 1441(a). See section 1441(c)(7). Documentation establishing foreign status must be furnished for purposes of the withholding exemption as required under § 1.1441–4(d). Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of information reporting under section 6041. See § 1.6041–4(a)(1).

(xi) Payments to a foreign government (including a foreign central bank of issue) that are excludable from gross income under section 892(a) are exempt from withholding under section 1442. See § 1.1441–8(b). Documentation establishing status as a foreign government is required for purposes of this withholding exemption. Payments to a foreign government are exempt from information reporting under chapter 61 of the Code (see § 1.6049–4(c)(1)(ii)(F)).

(xii) Payments of certain interest income to a foreign central bank of issue or the Bank for International Settlements that are exempt from tax under section 895 are exempt from withholding under section 1442. Documentation establishing eligibility for such exemption is required to the extent provided in § 1.1441–8(c)(1). Payments to a foreign central bank of issue or to the Bank for International Settlements are exempt from information reporting under chapter 61 of the Code (see § 1.6049–4(c)(1)(ii) (H) and (M)).

(xiii) Amounts derived by a foreign central bank of issue from bankers' acceptances described in section 871(i)(2)(C) or 881(d) are exempt from tax and, therefore, from withholding. See section 1441(c)(10). Documentation establishing foreign status is not required for purposes of this withholding exemption if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is a foreign central bank of issue as defined in § 1.861–2(b)(4). See § 1.1441–8(c)(2) for withholding procedures. See also §§ 1.6049–4(c)(1)(ii)(H) and 1.6041–3(q)(8) for a similar exemption from information reporting.

(xiv) Payments to an international organization from investments in the United States of stocks, bonds, or other domestic securities or from interest on deposits in banks in the United States of funds belonging to such international organization are exempt from tax under section 892(b) and, thus, from withholding. Documentation establishing status as an international organization is not required if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is an international organization within the meaning of section 7701(a)(18). See § 1.1441–8(d). Payments to an international organization are exempt from information reporting under chapter 61 of the Code (see § 1.6049–4(c)(1)(ii)(G)).

(xv) Amounts may be exempt from, or subject to a reduced rate of, withholding under an income tax treaty. Documentation establishing eligibility for benefits under an income tax treaty is required for this purpose as provided under §§ 1.1441–6. Documentation furnished for this purpose also serves as documentation establishing foreign status for purposes of applicable information reporting provisions under chapter 61 of the Code and for backup withholding under section 3406. See, for example, § 1.6041–4(a)(1).

(xvi) Amounts of scholarships and grants paid to certain exchange or training program participants that do not represent compensation for services but are not excluded from tax under section 117 are subject to a reduced rate of withholding of 14-percent under section 1441(b). Documentation establishing foreign status is required for purposes of this reduction in rate as provided under § 1.1441–4(c). This income is not subject to information reporting under chapter 61 of the Code nor to backup withholding under section 3406. The compensatory portion of a scholarship or grant is reportable as wage income. See § 1.6041–3(o).

(xvii) Amounts paid to a foreign organization described in section 501(c) are exempt from withholding under section 1441 to the extent that the amounts are not income includible under section 512 in computing the organization's unrelated business taxable income and are not subject to the tax imposed by section 4948(a). Documentation establishing status as a tax-exempt organization is required for purposes of this exemption to the extent provided in § 1.1441–9. Amounts includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding to the extent provided in section 1443(a) and § 1.1443–1(a). Gross investment income (as defined in section 4940(c)(2)) of a private foundation is subject to withholding at a 4-percent rate to the extent provided in section 1443(b) and § 1.1443–1(b). Payments to a tax-exempt organization are exempt from information reporting under chapter 61 of the Code and the regulations thereunder (see § 1.6049–4(c)(1)(ii)(B)(1)).

(xviii) Per diem amounts for subsistence paid by the U.S. government to a nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954 are exempt from withholding under section 1441(a). See section 1441(c)(6). Documentation of foreign status is required under § 1.1441–4(e) for purposes of establishing eligibility for this exemption. See § 1.6041–3(p).

(xix) Interest with respect to tax-free covenant bonds issued prior to 1934 is subject to special withholding procedures set forth in § 1.1461–1 in effect prior to January 1, 1999 (see § 1.1461–1 as contained in 26 CFR part 1, revised April 1, 1997).

(xx) Income from certain gambling winnings of a nonresident alien individual is exempt from tax under section 871(j) and from withholding under section 1441(a). See section 1441(c)(11). Documentation establishing foreign status is not required for purposes of this exemption but may have to be furnished for purposes of the information reporting provisions of section 6041 and backup withholding under section 3406. See §§ 1.6041–1 and 1.6041–4(a)(1).

(xxi) Any payments not otherwise mentioned in this paragraph (b)(4) shall be subject to withholding at the rate of 30-percent if it is an amount subject to withholding (as defined in § 1.1441–2(a)) unless and to the extent the IRS may otherwise prescribe in published guidance (see § 601.601(d)(2) of this chapter) or unless otherwise provided in regulations under chapter 3 of the Code.

(5) *Establishing foreign status under applicable provisions of chapter 61 of the Code.* This paragraph (b)(5) identifies relevant provisions of the regulations under chapter 61 of the Code that exempt payments from information reporting, and therefore, from backup withholding under section 3406, based on the payee's status as a foreign person. Many of these exemptions require that the payee's foreign status be established in order for the exemption to apply. The regulations under applicable provisions of chapter 61 of the Code generally provide that the documentation described in this section may be relied upon for purposes of determining foreign status.

(i) Payments to a foreign person that are governed by section 6041 (dealing with certain trade or business income) are exempt from information reporting under § 1.6041–4(a).

(ii) Payments to a foreign person that are governed by section 6041A (dealing with remuneration for services and certain sales) are exempt from information reporting under § 1.6041A–1(d)(3).

(iii) Payments to a foreign person that are governed by section 6042 (dealing with dividends) are exempt from information reporting under § 1.6042–3(b)(1) (iii) through (vi).

(iv) Payments to a foreign person that are governed by section 6044 (dealing with patronage dividends) are exempt from information reporting under § 1.6044–3(c)(1).

(v) Payments to a foreign person that are governed by section 6045 (dealing with broker proceeds) are exempt from information reporting under § 1.6045–1(g).

(vi) Payments to a foreign person that are governed by section 6049 (dealing with interest) to a foreign person are exempt from information reporting under § 1.6049–5(b) (6) through (15).

(vii) Payments to a foreign person that are governed by section 6050N (dealing with royalties) are exempt from information reporting under § 1.6050N–1(c).

(viii) Payments to a foreign person that are governed by section 6050P (dealing with income from cancellation of debt) are exempt from information reporting under section 6050P or the regulations under that section except to the extent provided in Notice 96–61 (I.R.B. 1996–49); see also § 601.601(b)(2) of this chapter.

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be deemed to have satisfied any obligation it has under chapter 3 of the Code and the regulations thereunder to withhold and report the amount when it, in turn, pays such amount to another person (whether or not the beneficial owner) to the extent that the payment is associated with a valid withholding certificate described in paragraph (e)(3) (ii), (iii), or (v) of this section that it has furnished to another withholding agent and the intermediary does not know and has no reason to know that the correct amount has not been withheld under chapter 3 of the Code and the regulations thereunder. See § 1.1441–5(c)(3)(v) for a similar rule for payments by certain foreign partnerships.

(7) *Liability for failure to obtain documentation timely or to act in accordance with applicable presumptions*—(i) *General rule.* A withholding agent that cannot reliably associate a payment with documentation on the date of payment and that does not withhold under this section, or withholds at less than the 30-percent rate prescribed under section 1441(a) and paragraph (b)(1) of this section, is liable under section 1461 for the tax required to be withheld under chapter 3 of the Code and the regulations thereunder, without the benefit of a reduced rate unless—

(A) The withholding agent has appropriately relied on the presumptions described in paragraph (b)(3) of this section (including the grace period described in paragraph (b)(3)(iv) of this section) in order to treat the payee as a U.S. person or, if applicable, on the presumptions described in § 1.1441–4(a) (2)(i) or (3) to treat the payment as effectively connected income; or

(B) The withholding agent can demonstrate to the satisfaction of the district director or the Assistant Commissioner (International) that the proper amount of tax, if any, was in fact paid to the IRS; or

(C) No documentation is required under section 1441 or this section in order for a reduced rate of withholding to apply.

(ii) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (b)(7)(i)(B) of this section on the basis of a Form 4669 (or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)), establishing the amount of tax, if any, actually paid by or for the beneficial owner on the income. Proof that a reduced rate of withholding was, in fact, appropriate under the provisions of chapter 3 of the Code and the regulations thereunder may also be established after the date of payment by the withholding agent on the basis of a valid withholding certificate or other appropriate documentation furnished after that date. However, in the case of a withholding certificate or other appropriate documentation received after the date of payment (or after the grace period specified in paragraph (b)(3)(iv) of this section), the district director or the Assistant Commissioner (International) may require additional proof if it is determined that the delays in obtaining the withholding certificate affect its reliability.

(iii) *Liability for interest and penalties.* A withholding agent that has failed to withhold other than based on appropriate reliance on the presumptions described in paragraph (b)(3) of this section or in § 1.1441–4(a) (2)(i) or (3) is not relieved from liability for interest under section 6601. Such liability exists even if there is no underlying tax liability due. The interest on the amount that should have been withheld shall be imposed as prescribed under section 6601 beginning on the last date for paying the tax due under section 1461 (which, under section 6601, is the due date for filing the withholding agent's return of tax). The interest shall stop accruing on the earlier of the date that the required withholding certificate or other documentation is provided to the withholding agent and to the extent of the amount of tax that is determined not to be due based on documentation provided, or the date, and to the extent, that the unpaid tax liability under section 871, 881 or under section 1461 is satisfied. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge. However, the withholding agent is not relieved of any applicable penalties. See section 1464.

(iv) *Special effective date.* See paragraph (f)(2)(ii) of this section for the special effective date applicable to this paragraph (b)(7).

(v) *Examples.* The provisions of paragraph (b)(7) of this section are illustrated by the following examples:

Example 1. On June 15, 1999, a withholding agent pays U.S. source interest on an obligation in registered form (issued after July 18, 1984) to a foreign corporation that it cannot reliably associate with a Form W–8 or other appropriate documentation upon which to rely to treat the beneficial owner as a foreign person. The withholding agent does not withhold from the payment. On September 30, 2001, the withholding agent receives from the foreign corporation a valid Form W–8 described in paragraph (e)(2)(ii) of this section. Thus, the interest qualifies as portfolio interest retroactively to June 15, 1999 (the date of payment). See § 1.871–14(c)(3). The foreign corporation does not file a U.S. federal income tax return and does not pay the tax owed. The withholding agent is not liable under section 1461 for the 30-percent tax on the interest income because the receipt of the Form W–8 exempts the interest from tax for purposes of sections 881(a) and 1461. The withholding agent, however, is liable for interest on the amount of withholding that should have been deducted from the payment on June 15, 1999 and deposited. Under paragraph (b)(7)(iii) of this section, the period during which interest may be assessed against the withholding agent runs from March 15, 2000 (the due date for the Form 1042 relating to the payment) until September 30, 2001 (i.e., the date that appropriate documentation is furnished to the withholding agent).

Example 2. On June 15, 1999, a withholding agent pays U.S. source dividends to a foreign corporation that it cannot reliably associate with a Form W–8 or other appropriate documentation upon which to rely to treat the beneficial owner as a foreign person. The withholding agent does not withhold from the payment. On September 30, 2001, the withholding agent receives from the foreign corporation a valid Form W–8 described in paragraph (e)(2)(ii) of this section claiming a reduced 15-percent rate of withholding under a U.S. income tax treaty. The dividend qualifies for the reduced treaty rate retroactively to June 15, 1999 (the date of payment). The foreign corporation does not file a U.S. federal income tax return and does not pay the tax owed. Under section 1461, the withholding agent is liable only for a 15-percent tax on the dividend income because the receipt of the Form W–8 allows the tax rate to be reduced for purposes of sections 881(a) and 1461 from 30 percent to 15 percent. The withholding agent, however, is liable for interest on the full 30-percent amount that should have been deducted and withheld from the payment on June 15, 1999, and deposited, over a period running from March 15, 2000 (the due date for the Form 1042 relating to the payment) until September 30, 2001 (the date that the appropriate documentation is furnished to the withholding agent supporting a reduction in rate under a tax treaty). Additional interest may be assessed relating to the outstanding 15-percent tax liability (i.e., the portion of the 30-percent total tax liability that is not reduced under the treaty). Such additional interest runs from March 15, 2000, until such date as that 15-percent tax liability is satisfied by the withholding agent or the taxpayer (subject to abatement in order to avoid a double interest charge).

(8) *Adjustments, refunds, or credits of overwithheld amounts.* If the amount withheld under section 1441, 1442, or 1443 is greater than the tax due by the withholding agent or the taxpayer, adjustments may be made in accordance with the procedures described in § 1.1461–2(a). Alternatively, refunds or credits may be claimed in accordance with the procedures described in § 1.1464–1, relating to refunds or credits claimed by the beneficial owner, or § 1.6414–1, relating to refunds or credits claimed by the withholding agent. If an amount was withheld under section 3406 or is subsequently determined to have been paid to a foreign person, see paragraph (b)(3)(vii) of this section and § 31.6413(a)–3(a)(1) of this chapter.

(9) *Payments to joint owners.* A payment to joint owners that requires documentation in order to reduce the rate of withholding under chapter 3 of the Code and the regulations thereunder does not qualify for such reduced rate unless the withholding agent can reliably associate the payment with documentation from each owner. Notwithstanding the preceding sentence, a payment to joint owners qualifies as a payment exempt from withholding under this section if any one of the owners provides a certificate of U.S. status on a Form W–9 in accordance with paragraph (d) (2) or (3) of this section or the withholding agent can associate the payment with a withholding certificate upon which it can rely to treat the payment as made

to a U.S. beneficial owner under paragraph (d)(4) of this section. See § 31.3406(h)–2(a)(3)(i)(B) of this chapter.

(c) *Definitions*—(1) *Withholding.* The term *withholding* means the deduction and withholding of tax at the applicable rate from the payment.

(2) *Foreign and U.S. person.* The term *foreign person* means a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person described in the next sentence. For purposes of the regulations under chapter 3 of the Code, the term *foreign person* also means, with respect to a payment by a withholding agent, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate described in paragraph (e)(3)(ii) of this section. A U.S. person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

(3) *Individual*—(i) *Alien individual.* The term *alien individual* means an individual who is not a citizen or a national of the United States. See § 1.1–1(c).

(ii) *Nonresident alien individual.* The term *nonresident alien individual* means a person described in section 7701(b)(1)(B), an alien individual who is a resident of a foreign country under the residence article of an income tax treaty and § 301.7701(b)–7(a)(1) of this chapter, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under § 301.7701(b)–1(d) of this chapter. An alien individual who has made an election under section 6013 (g) or (h) to be treated as a resident of the United States is nevertheless treated as a nonresident alien individual for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(4) *Certain foreign corporations.* For purposes of this section, a corporation created or organized in Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, is not treated as a foreign corporation if the requirements of sections 881(b)(1) (A), (B), and (C) are met for such corporation. Further, a payment made to a foreign government or an international organization shall be treated as a payment made to a foreign corporation for purposes of withholding under chapter 3 of the Code and the regulations thereunder.

(5) *Financial institution and foreign financial institution.* For purposes of the regulations under chapter 3 of the Code, the term *financial institution* means a person described in § 1.165–12(c)(1)(iv) (not including a person providing pension or other similar benefits or a regulated investment company or other mutual fund, unless otherwise indicated) and the term *foreign financial institution* means a financial institution that is a foreign person, as defined in paragraph (c)(2) of this section.

(6) *Beneficial owner*—(i) *General rule.* In the case of a payment of income, the term *beneficial owner* means the person who is the owner of the income for tax purposes and who beneficially owns that income. A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Code). Beneficial ownership of income is determined under the provisions of section 7701(l) and the regulations under that section and any other applicable general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction. Thus, a person receiving income in a capacity as a nominee, agent, custodian for another person is not the beneficial owner of the income. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship. In the case of a payment of an amount that is not income, the beneficial owner determination shall be made under this paragraph (c)(6) as if the amount was income.

(ii) *Special rules for flow-through entities and arrangements*—(A) *General rule.* The beneficial owners of income paid to a partnership or other flow-through arrangements described in paragraph (c)(6)(ii)(C) of this section are those persons who, under U.S. tax principles, are the owners of the income for tax purposes in their separate or individual capacities and who beneficially own that income. For example, a partnership (first tier) that is a partner in another partnership (second tier) is not the beneficial owner of income paid to the second tier partnership since the first tier partnership is not the owner of the income under U.S. tax principles. Rather, the partners of the first tier partnership are the beneficial owners (to the extent they are not themselves partnerships and are not conduits within the meaning of section 7701(l) and the regulations under that section). See § 1.1441–5(b) for applicable withholding procedures for payments to a domestic partnership. See also § 1.1441–5(c)(3)(ii) for applicable withholding procedures for payments to a foreign partnership where one of the partners (at any level in the chain of tiers) is a domestic partnership. See § 1.1441–6(b)(4) for rules governing the eligibility of a payment to an entity or other arrangement for a reduced rate of withholding under an income tax treaty.

(B) *Trusts and estates.* The provisions of paragraphs (c)(6)(i) and (ii)(A) of this section shall not apply to a trust or an estate, whether domestic or foreign. The beneficial owner of income paid to a trust or to an estate shall be determined under the provisions of § 1.1441–3(f) and (g) in effect prior to January 1, 1999 (see § 1.1441–3(f) and (g) as contained in 26 CFR part 1, revised April 1, 1997).

(C) *Definition of a flow-through entity or arrangement.* For purposes of this paragraph (c)(6)(ii), a flow-through entity means a partnership, estate, or trust. A flow-though arrangement is a contractual arrangement that does not involve an entity and is treated as a partnership for U.S. tax purposes or is a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner. The term *partnership* means any entity or arrangement (as defined in § 301.7701–2(c)(1) of this chapter) whose tax regime is governed by subchapter K of chapter 1 of the Code.

(7) *Withholding agent.* For a definition of the term *withholding agent* and applicable rules, see § 1.1441–7.

(8) *Person.* For purposes of the regulations under chapter 3 of the Code, the term *person* shall mean a person described in section 7701(a)(1) and the regulations under that section and a U.S. branch to the extent treated as a U.S. person under paragraph (b)(2)(iv) of this section. For purposes of the regulations under chapter 3 of the Code, the term *person* does not include a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner. See paragraph (b)(2)(iii) of this section for procedures applicable to payments to such entities.

(9) *Source of income.* The source of income is determined under the provisions of part I (section 861 and following) , subchapter N, chapter 1 of the Code and the regulations under those provisions.

(10) *Chapter 3 of the Code.* For purposes of the regulations under sections 1441, 1442, and 1443, any reference to chapter 3 of the Code shall

not include references to sections 1445 and 1446, unless the context indicates otherwise.

(11) *Reduced rate.* For purposes of regulations under chapter 3 of the Code, and other withholding provisions of the Code, the term *reduced rate,* when used in regulations under chapter 3 of the Code, shall include an exemption from tax.

(d) *Beneficial owner's or payee's claim of U.S. status*—(1) *In general.* Under paragraph (b)(1) of this section, a withholding agent is not required to withhold under chapter 3 of the Code on payments to a U.S. payee, to a person presumed to be a U.S. payee in accordance with the provisions of paragraph (b)(3) of this section, or to a person that the withholding agent may treat as a U.S. beneficial owner of the payment. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the provisions of this paragraph (d) in order to determine whether to treat a payee or beneficial owner as a U.S. person.

(2) *Payments for which a Form W–9 is otherwise required.* A withholding agent may treat as a U.S. person a payee who is required to furnish a Form W–9 and who furnishes it in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter (including the requirement that the payee furnish its taxpayer identifying number (TIN)) if the withholding agent meets all the requirements described in § 31.3406(h)–3(e) of this chapter regarding reliance by a payor on a Form W–9.

(3) *Payments for which a Form W–9 is not otherwise required.* In the case of a payee who is not required to furnish a Form W–9 under section 3406, the withholding agent may rely on a certificate of U.S. status described in this paragraph (d)(3). A certificate of U.S. status is a certificate described in § 31.3406(h)–3(c)(2) of this chapter (relating to forms for exempt recipients) or a Form W–9 (or a substitute form or such other form as the IRS may prescribe) that is signed under penalties of perjury by the payee and contains the name, permanent residence address, and TIN of the payee. The procedures described in § 31.3406(h)–2(a) of this chapter shall apply to payments to joint payees. A withholding agent that receives a Form W–9 in order to satisfy this paragraph (d)(3) must retain the form in accordance with the provisions of § 31.3406(h)–3(g) of this chapter, if applicable, or of paragraph (e)(4)(iii) of this section (relating to the retention of withholding certificates) if § 31.3406(h)–3(g) of this chapter does not apply. The rules of this paragraph (d)(3) are only intended to provide a method by which a withholding agent may determine that a payee is not a foreign person and do not otherwise impose a requirement that documentation be furnished by a person who is otherwise treated as an exempt recipient for purposes of the applicable information reporting provisions under chapter 61 of the Code (e.g., § 1.6049–4(c)(1)(ii) for payments of interest).

(4) *Other payments.* This paragraph (d)(4) describes the documentation upon which a withholding agent may rely in order to treat a payment as made to a U.S. person that is a beneficial owner for purposes of paragraph (b)(1) of this section. The withholding agent may treat the payment as made to a U.S. beneficial owner only if it can reliably associate the payment with documentation prior to the payment, if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and if it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W–9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the payor may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under that section and the regulations under that section for payors who have been notified with regard to such a Form W–9. Payors who have been notified in relation to other Forms W–9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter). A withholding agent may treat a payment as made to a U.S. beneficial owner—

(i) To the extent the withholding agent can reliably associate the payment with a Form W–9 described in paragraph (d) (2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section;

(ii) To the extent the withholding agent can reliably associate a payment to a qualified intermediary with the category of assets described in paragraph (e)(5)(v)(B)(*2*) of this section that the qualified intermediary has represented, in accordance with paragraphs (e) (3)(ii)(E) and (5)(v) of this section as being allocable to U.S. persons based on the Forms W–9 that they have furnished; or

(iii) To the extent the withholding agent can reliably associate the payment with a Form W–8 from a U.S. branch described in paragraph (e)(3)(v) of this section that evidences an agreement between the U.S. branch and the withholding agent to treat the U.S. branch as U.S. person.

(e) *Beneficial owner's claim of foreign status*—(1) *Withholding agent's reliance*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may treat a payment as made to a foreign beneficial owner in accordance with the provisions of paragraph (e)(1)(ii) of this section. See paragraph (e)(4)(viii) of this section for applicable reliance rules. See paragraph (b)(4) of this section for a description of payments for which a claim of foreign status is relevant for purposes of claiming a reduced rate of withholding for purposes of section 1441, 1442, or 1443. See paragraph (b)(5) of this section for a list of payments for which a claim of foreign status is relevant for other purposes, such as claiming an exemption from information reporting under chapter 61 of the Code.

(ii) *Payments that a withholding agent may treat as made to a foreign person that is a beneficial owner*—(A) *General rule.* The withholding agent may treat a payment as made to a foreign person that is a beneficial owner if it complies with the requirements described in paragraph (e)(1)(ii)(B) of this section and, then, only to the extent—

(*1*) That the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in paragraph (e)(2) of this section furnished by the person whose name is on the certificate or attached to a valid foreign intermediary, flow-through entity, or U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section;

(*2*) That the payment is made outside the United States (within the meaning of § 1.6049–5(e)) with respect to an offshore account (within the meaning of § 1.6049–5(c)(1)) and the withholding agent can reliably associate the payment with documentary evidence described in §§ 1.1441–6(c)(3) or (4), or 1.6049–5(c)(1) relating to the beneficial owner;

(*3*) That the withholding agent can reliably associate the payment with the category of assets described in paragraph (e)(5)(v)(B)(*1*) of this section that the qualified intermediary has represented, in accordance with paragraphs (e) (3)(ii)(E) and (5)(v) of this section as being allocable to foreign persons for whom the qualified intermediary is holding valid documentation;

(*4*) That the withholding agent can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(3)(iii) from a foreign partnership claiming that the payment is effectively connected income;

(*5*) That the withholding agent identifies the payee as a U.S. branch described in paragraph (b)(2)(iv) of this section, the payment to which it treats as effectively connected income in accordance with § 1.1441–4(a) (2)(ii) or (3);

(*6*) That the withholding agent identifies the payee as an international organization (or any wholly-owned agency or instrumentality thereof) as defined in section 7701(a)(18) that has been designated as such by executive order (pursuant to 22 U.S.C. 288 through 288(f)); or

(*7*) That the withholding agent pays interest from bankers' acceptances and identifies the payee as a foreign central bank of issue (as defined in § 1.861–2(b)(4)).

(B) *Additional requirements.* In order for a payment described in paragraph (e)(1)(ii)(A) of this section to be treated as made to a foreign beneficial owner, the withholding agent must hold the documentation (if required) prior to the payment, comply with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section (if required), and must not have been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. If the withholding agent has been so notified, it may rely on the withholding certificate or other documentation only to the extent provided under procedures prescribed by the IRS (see § 601.601(d)(2) of this chapter). See paragraph (b)(2)(vii) of this section for rules regarding reliable association of a payment with a withholding certificate or other appropriate documentation.

(2) *Beneficial owner withholding certificate*—(i) *In general.* A beneficial owner withholding certificate is a statement by which the beneficial owner of the payment represents that it is a foreign person and, if applicable, claims a reduced rate of withholding under section 1441. A separate withholding certificate must be submitted to each withholding agent. If the beneficial owner receives more than one type of payment from a single withholding agent, the beneficial owner may have to submit more than one withholding certificate to the single withholding agent for the different types of payments as may be required by the applicable forms and instructions, or as the withholding agent may require (such as to facilitate the withholding agent's compliance with its obligations to determine withholding under this section or the reporting of the amounts under § 1.1461–1 (b) and (c)). For example, if a beneficial owner claims that some but not all of the income it receives is effectively connected with the conduct of a trade or business in the United States, it may be required to submit two separate withholding certificates, one for income that is not effectively connected and one for income that is so connected. See § 1.1441–6(b)(4)(ii) for special rules for determining who must furnish a beneficial owner withholding certificate when a benefit is claimed under an income tax treaty. See paragraph (e)(4)(ix) of this section for reliance rules in the case of certificates held by another person or at a different branch location of the same person.

(ii) *Requirements for validity of certificate.* A beneficial owner withholding certificate is valid only if it is provided on a Form W–8, or a Form 8233 in the case of personal services income described in § 1.1441–4(b) or certain scholarship or grant amounts described in § 1.1441–4(c) (or a substitute form described in paragraph (e)(4)(vi) of this section, or such other form as the IRS may prescribe). A Form W–8 is valid only if its validity period has not expired, it is signed under penalties of perjury by the beneficial owner, and it contains all of the information required on the form. The required information is the beneficial owner's name, permanent residence address, and TIN (if required), the country under the laws of which the beneficial owner is created, incorporated, or governed (if a person other than an individual), the classification of the entity, and such other information as may be required by the regulations under section 1441 or by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (e)(2)(ii). A person's permanent residence address is an address in the country where the person claims to be a resident for purposes of that country's income tax. In the case of a certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, the residence must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b)(4)(i). The address of a financial institution with which the beneficial owner maintains an account, a post office box, or an address used solely for mailing purposes is not a residence address for this purpose. If the beneficial owner is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the beneficial owner normally resides. If the beneficial owner is not an individual and does not have a tax residence in any country, then the permanent residence address is the place at which the person maintains its principal office. See paragraph (e)(4)(vii) of this section for circumstances in which a TIN is required on a beneficial owner withholding certificate. See paragraph (f)(2)(i) of this section for continued validity of certificates during a transition period.

(3) *Intermediary, flow-through, or U.S. branch withholding certificate*—(i) *In general.* An intermediary withholding certificate is a Form W–8 by which a payee represents that it is a foreign person and that it is an intermediary with respect to a payment and not the beneficial owner. A flow-through withholding certificate is a Form W–8 furnished by a flow-through entity under § 1.1441–5(c)(2) or (3) for a partnership or under § 1.1441–5(e) for a foreign estate or trust. See paragraph (c)(6)(ii)(C) of this section for a definition of a flow-through entity. A U.S. branch certificate is a Form W–8 by which the payee represents that it is a U.S. branch described in paragraph (b)(2)(iv) (A) or (E) of this section and that the payment is not effectively connected with the conduct of its trade or business in the United States. An intermediary withholding certificate is used by an intermediary either to make representations regarding the status of beneficial owners of the amount paid or to transmit appropriate documentation to the withholding agent. A flow-through certificate is used by a flow-through entity to establish its status as a foreign person or the status of its partners or beneficiaries, if required, and, if applicable, to claim a reduced rate of withholding. An intermediary means, with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary. See paragraph (e)(4)(viii) of this section for applicable reliance rules.

(ii) *Intermediary withholding certificate from a qualified intermediary.* An intermediary withholding certificate from a person representing to be a qualified intermediary (described in paragraph (e)(5)(ii) of this section) is valid only if it is furnished on a Form W–8 (or an

acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by an officer of the qualified intermediary with authority to sign for the intermediary, its validity has not expired, and it contains the following information, statement, and certifications:

(A) The name, permanent residence address (as described in paragraph (e)(2)(ii) of this section), and the employer identification number of the intermediary, and the country under the laws of which the intermediary is created, incorporated, or governed.

(B) A certification that the person whose name is on the Form W–8 is not acting for its own account and is acting as a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section.

(C) A certification that the intermediary has obtained the appropriate certificates (such as Forms W–8 or W–9) or other appropriate documentation in the manner required in its withholding agreement with the IRS for those account holders that are covered by the certificate and whose assets are identified as being allocable to the categories described in paragraph (e)(5)(v)(B) (*1*) or (*2*) (in accordance with paragraph (e)(5)(v) of this section or otherwise).

(D) A certification whether the qualified intermediary is assuming primary withholding responsibility for the amounts to which the certificate relates.

(E) A statement attached to the certificate that provides such information as may be required by the form and accompanying instructions, including sufficient information for the withholding agent to determine the amount required to be withheld from amounts paid to the intermediary and reported to the IRS. See paragraph (e)(5)(v) of this section for requirement of a statement and rules applicable thereto.

(F) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii).

(iii) *Intermediary withholding certificate from an intermediary that is not a qualified intermediary.* An intermediary withholding certificate from a person that does not represent to be a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section is valid only if it is furnished on a Form W–8 (or an acceptable substitute form, or such other form as the IRS may prescribe), it is signed under penalties of perjury by a person authorized to sign for the intermediary, it contains the information, statement, and certifications described in this paragraph (e)(3)(iii), its validity has not expired, and the withholding certificates and other appropriate documentation for all the persons to whom the certificate relates are attached to the certificate. Appropriate documentation consists of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary withholding certificates described in paragraph (e)(3)(i) of this section, flow-through certificates described in § 1.1441–5(c)(2)(iv), (3)(iii), and (e), documentary evidence described in § 1.1441–6(b)(2)(i) or in § 1.6049–5(c)(1) related to the beneficial owner (or documentary evidence described in § 1.6049–5(c)(4) for purposes of information reporting under chapter 61 of the Code), and other documentation or certificate applicable under other provisions of the Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. If the intermediary is acting on behalf of another intermediary that is not a qualified intermediary or on behalf of a partnership that is not a withholding foreign partnership described in § 1.1441–5(c)(2)(i), then the intermediary must attach to its own withholding certificate the intermediary withholding certificate or the partnership withholding certificate to which all the withholding certificates and other appropriate documentation required to be attached under this paragraph (e)(3)(iii) or in § 1.1441–5(c)(3)(iii) or (e) are also attached. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be passed up to the U.S. withholding agent, in which case the intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871–14(c)(2)(v) furnished in order for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c) or in order for amounts described in § 1.1441–6(b)(2)(ii) to qualify as amounts paid to a foreign person. The information and certification required on a Form W–8 described in this paragraph (e)(3)(iii) (or on an acceptable substitute form or such other form as the IRS may prescribe) are as follows:

(A) The name and permanent resident address (as described in paragraph (e)(2)(ii) of this section) of the intermediary, and the country under the laws of which the intermediary is created, incorporated, or governed.

(B) A certification that the person whose name is on the Form W–8 is not acting for its own account and is using the certificate as a form to transmit withholding certificates and other appropriate documentation for the payment to which the form relates.

(C) If furnishing an intermediary certificate to transmit withholding certificates or other appropriate documentation for more than one person, a statement attached to the Form W–8 that provides such information as may be required by the form and accompanying instructions, including sufficient information for the withholding agent to determine the amount required to be withheld from amounts paid to the intermediary. See paragraph (e)(3)(iv) of this section for rules applicable to such a statement.

(D) A certification either that the attached withholding certificates and other appropriate documentation represent all of the persons to whom the intermediary withholding certificate relates or that the amounts allocable to persons covered by the intermediary withholding certificate and for whom withholding certificates or other appropriate documentation are lacking or unreliable are separately identified.

(E) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(iii).

(iv) *Information to the withholding agent regarding assets owned by beneficial owners, etc.*—(A) *General rule.* An intermediary that has not represented that it is acting as a qualified intermediary within the meaning of paragraph (e)(5)(ii) of this section must provide information sufficient for the withholding agent to determine the proportion of each payment of reportable amounts (as described in paragraph (e)(3)(vi) of this section) that is allocable to each person to whom the intermediary withholding certificate relates, including persons for whom the intermediary has not attached a withholding certificate or other appropriate documentation. The withholding agent may rely on such information in order to determine the amount of withholding on the payment

and how to report this payment under chapter 3 or 61 of the Code and the regulations thereunder. The sum of all the proportions indicated by the intermediary, expressed as a percentage, must equal, but not exceed, one hundred percent of the payment. The information for persons for whom a withholding certificate or other appropriate documentation is lacking or unreliable may be provided in the aggregate and need not be provided separately for each such person. The foreign intermediary is not required to disclose the names of the persons for whom it collects the payment, unless it has actual knowledge that any such person is a U.S. person that is not an exempt recipient. In such a case, the intermediary must state separately the information for such U.S. person even though such person has not provided a Form W–9 to the intermediary in the manner described in paragraph (d)(2) of this section. The information may be furnished in any manner that the parties choose. For example, if the withholding agent maintains separate accounts for different types of income or withholding rates, the intermediary must provide sufficient information so that the withholding agent may allocate assets appropriately among the relevant accounts. If the withholding agent does not maintain separate accounts, it may require the intermediary to attach a statement to the intermediary withholding certificate under paragraphs (e)(3)(iii)(C) and (D) of this section providing the information described in this paragraph (e)(3)(iv).

(B) *Updating the information.* The intermediary must update the information furnished to the withholding agent in accordance with paragraph (e)(3)(iv)(A) of this section as often as is necessary in order to enable the withholding agent to withhold at the appropriate rate on each payment and to report such income for purposes of chapter 3 or 61 of the Code and sections 3402, 3405 and 3406 (and the regulations under those provisions). Any update of the information as required under this paragraph (e)(3)(iv)(B) shall be treated as an integral part of the intermediary withholding certificate with which it is associated. See paragraph (e)(4)(ii)(D) of this section regarding how changes in the information described in this paragraph (e)(3)(iv) may affect the validity of withholding certificates. See paragraph (b)(3)(v)(C) of this section for consequences if the information is not updated as required.

(C) *Examples.* The rules of paragraph (e)(3)(iii) of this section and of this paragraph (e)(3)(iv) are illustrated by the following examples:

Example 1. A U.S. withholding agent, W, pays U.S. source dividends to foreign intermediary X who, in turn, pays to foreign intermediary Y, who collects on behalf of foreign beneficial owners, A and B. A and B have each furnished a beneficial owner Form W–8 to Y. Y must furnish to X an intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it must attach the original or copies of A's and B's Forms W–8. X, in turn, must furnish to W its own intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it must attach the original or copies of the intermediary Form W–8 received from Y and A's and B's Forms W–8.

Example 2. A foreign bank, X, acts as an intermediary for five different persons, A, B, C, D, and E, who each own securities from which they receive U.S. source dividends. The distributions are paid by a U.S. financial institution, W, as custodian of the securities for X. A's, B's, C's, D's, and E's respective claimed ownership interest in the securities is 20-percent each. X has furnished to W an intermediary Form W–8 described in paragraph (e)(3)(iii) of this section, to which it has attached a statement described in this paragraph (e)(3)(iv) stating each of A', B's, and C's interest in the securities with respect to which distributions are made periodically. The respective ownership interests of D and E are not stated separately because X has not received a valid withholding certificate or other appropriate documentation from D or E. Therefore, on the statement, D's and E's interest in the securities is stated in the aggregate (i.e., 40-percent attributable to undocumented owners). X has attached a Form W–8 for A and documentary evidence for B (who each claim a reduced rate of withholding under an income tax treaty), and a Form W–9 for C. In determining the amount to be withheld from the amount paid to X, W may rely on X's intermediary Form W–8, the allocation statement attached to the Form W–8, and the attached Form W–8, documentary evidence, and Form W–9 for each of A, B, and C. Based on paragraphs (b)(1), (b)(2)(v), (b)(2)(vii), (d)(4)(i), and (e)(1)(ii)(A)(*1*) of this section, W may withhold as follows on the payment to X: no withholding on 20-percent of the payment on the basis of C's Form W–9, withholding at the reduced treaty rate on 40-percent of the payment on the basis of A's Form W–8 and B's documentary evidence, and 30-percent on 40-percent of the payment to the undocumented owners group formed by D and E in accordance with the presumptions described in paragraph (b)(3)(v)(B) of this section (i.e., due to the lack of documentation for D and E). Under paragraph (e)(3)(iii) of this section, X is not required to identify D or E to W. For purposes of making a return under § 1.1461–1(c), W would prepare a single Form 1042–S for the group of undocumented owners, D and E (if the names are undisclosed, the Form 1042–S should be made in the name of X and state that the return is made for unknown owners (see § 1.1461–1(c)(4)(iv)). Because X has not furnished required documentation for D and E, X does not qualify under paragraph (b)(6) of this section for relief from an obligation to make a report on a Form 1042–S (to the extent D and E are presumed to be foreign persons under paragraph (b)(3)(iii) of this section) when X makes the payment to D and E (however, because a full 30-percent amount was withheld under this section, X does not have to withhold an additional amount under the facts of this example). In contrast, under paragraph (b)(6) of this section, X is not required to make a report on Form 1042–S for its payments to A or B. Under § 1.6042–3(b)(1)(vi), X is not required to report C's share of the payment on Form 1099 (unless X has actual knowledge that W has not reported the portion of payment allocable to C in accordance with § 1.6042–2).

Example 3. The facts are the same as in *Example 2*, except that D's name is D Insurance Company whom X knows is a U.S. person. Because of D's name, X may treat D as an exempt recipient on an eyeball test basis under §§ 1.6042–3(b)(1)(vii) and 1.6049–4(c)(1)(ii)(A)(*1*). However, even if those facts are disclosed to W, W must withhold 30-percent of the portion of the payment allocable to D because W is making a payment to a foreign person (X). Under paragraph (b)(1) of this section, W may reduce the rate of withholding only if it can associate the payment with documentation upon which it can rely to treat the beneficial owner as a U.S. person or as a foreign person entitled to a reduced rate of withholding. Because X has not furnished documentation for D, W does not have the proper documentation with which it can associate the payment allocable to D. Thus, insofar as W is concerned, the portion of the payment allocable to D is treated as a payment to an undocumented owner that W must presume to be a foreign person under paragraph (b)(3)(v)(B) of this section. Accordingly, under this paragraph (e)(3)(iv), W need not identify the information for D separately and can aggregate the portion of the payment allocable to D and E. W's reporting requirements for the portion of the payment allocable to D and E are the same as under *Example 2*. When X makes the payment to D, X does not benefit from the relief from reporting under § 1.6042–3(b)(1)(vi). However, X is not required to report the payment to D on Form 1099 under section 6042 because, under § 1.6042–3(b)(1)(vii), X can treat D as an exempt recipient.

(v) *Withholding certificate from certain U.S. branches.* A U.S. branch certificate is a representation by the U.S. branch whose name is on the certificate that the payment it receives is not effectively connected with the conduct of a trade or business in the United States and that it is using the certificate either to transmit the appropriate documentation for the persons for whom the branch receives the payment (i.e., as an intermediary) or as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it

is furnished on a Form W–8 (or an acceptable substitute form, or such other form as the IRS may prescribe), it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information and certifications described in paragraphs (e)(3)(v) (A) through (C) of this section and in paragraphs (e)(3)(iii) (C) and (D) of this section. If the certificate is furnished pursuant to an agreement to treat the U.S. branch as a U.S. person, the information and certification required on the Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe) are limited to the following—

(A) The name of the person of which the branch is a part and the address of the branch in the United States;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States; and

(C) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

(vi) *Reportable amounts.* For purposes of this section, the term reportable amount means an amount subject to withholding within the meaning of § 1.1441–2(a), bank deposit interest (including original issue discount) and similar types of deposit interest described in section 871(i)(2)(A) or 881(d) that are from sources within the United States, and any amount of interest or original issue discount from sources within the United States on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3). For purposes of this paragraph (e)(3)(vi), however, reportable amounts do not include payments with respect to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in § 1.6049–5(b) (7), (10) or (11) (relating to certain obligations issued in bearer form). While short-term OID and bank deposit interest are not subject to withholding under chapter 3 of the Code, such amounts may be subject to information reporting under section 6049 if paid to a U.S. person who is not an exempt recipient described in § 1.6049–4(c)(1)(ii) and to backup withholding under section 3406 in the absence of documentation. See § 1.6049–5(d)(3)(iii) for applicable procedures when such amounts are paid to a foreign intermediary.

(4) *Applicable rules.* The provisions in this paragraph (e)(4) describe procedures applicable to withholding certificates on Form W–8 or Form 8233 (or a substitute form) or documentary evidence furnished to establish foreign status. These provisions do not apply to Forms W–9 (or their substitutes). For corresponding provisions regrading Form W–9 (or a substitute form), see section 3406 and the regulations under that section.

(i) *Who may sign the certificate.* A withholding certificate (or other acceptable substitute) may be signed by any person authorized to sign a declaration under penalties of perjury on behalf of the person whose name is on the certificate as provided in section 6061 and the regulations under that section (relating to who may sign generally for an individual, estate, or trust, which includes certain agents who may sign returns and other documents), section 6062 and the regulations under that section (relating to who may sign corporate returns), and section 6063 and the regulations under that section (relating to who may sign partnership returns).

(ii) *Period of validity*—(A) *Three-year period.* A withholding certificate described in paragraph (e)(2)(i) of this section, a certificate described in § 1.871–14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c) or to qualify amounts paid on certain securities described in § 1.1441–6(b)(2)(ii) as paid to a foreign person), or documentary evidence described in § 1.1441–6(b)(2)(i) or in § 1.6049–5(c)(1) shall remain valid until the earlier of the last day of the third calendar year following the year in which the certificate is signed or the documentary evidence is created or the day that a change of circumstances occurs that makes any information on the certificate or documentary evidence incorrect. For example, a certificate signed on September 30, 1999, remains valid through December 31, 2002, unless circumstances change that make the information on the form no longer correct.

(B) *Indefinite validity period.* Notwithstanding paragraph (e)(4)(ii)(A) of this section, the following certificates or parts of certificates shall remain valid until the status of the person whose name is on the certificate is changed in a way relevant to the certificate or circumstances change that make the information on the certificate no longer correct:

(*1*) A beneficial owner withholding certificate described in paragraph (e)(2)(ii) of this section that is furnished with a TIN if the income for which such certificate is furnished is required to be reported under § 1.1461–1(c)(2)(i) or the TIN furnished on the certificate is reported to the IRS under the procedures described in § 1.1461–1(d).

(*2*) A certificate described in paragraph (e)(3)(ii) of this section (dealing with a certificate from a person representing to be a qualified intermediary).

(*3*) A certificate described in paragraph (e)(3)(iii) of this section (dealing with a certificate from a person representing to be a non-qualified intermediary), but not including the withholding certificates or documentary evidence required to be attached to the certificate.

(*4*) A certificate described in paragraph (e)(3)(v) of this section (dealing with a certificate from a person representing to be a U.S. branch), but not the withholding certificates or documentary evidence required to be attached to the certificate.

(*5*) A certificate described in § 1.1441–5(c)(2)(iv) (dealing with a certificate from a person representing to be a withholding foreign partnership).

(*6*) A certificate described in § 1.1441–5(c)(3)(iii) (dealing with a certificate from a person representing to be a foreign partnership that is not a withholding foreign partnership), but not including the withholding certificates or documentary evidence required to be attached to the certificate.

(*7*) A certificate furnished by a person representing to be an integral part of a foreign government (within the meaning of § 1.892–2T(a)(2)) in accordance with § 1.1441–8(b), or by a person representing to be a foreign central bank of issue (within the meaning of § 1.861–2(b)(4)) or the Bank for International Settlements in accordance with § 1.1441–8(c)(1).

(C) *Withholding certificate for effectively connected income.* Notwithstanding paragraph (e)(4)(ii)(B)(*1*) of this section, the period of validity of a withholding certificate furnished to a withholding agent to claim a reduced rate of withholding for income that is effectively connected with the conduct of a trade or business within the United States shall be limited to the three-year period described in paragraph (e)(4)(ii)(A) of this section.

(D) *Change in circumstances.* If a change in circumstances makes any

information on a certificate or other documentation incorrect, then the person whose name is on the certificate or other documentation must inform the withholding agent within 30 days of the change and furnish a new certificate or new documentation. A certificate or documentation becomes invalid from the date that the withholding agent holding the certificate or documentation knows or has reason to know that circumstances affecting the correctness of the certificate or documentation have changed. However, a withholding agent may choose to apply the provisions of paragraph (b)(3)(iv) of this section regarding the 90-day grace period as of that date while awaiting a new certificate or documentation or while seeking information regarding changes, or suspected changes, in the person's circumstances. If an intermediary (including a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that passes through certificates to a withholding agent) or a flow-through entity becomes aware that a certificate or other appropriate documentation it has furnished to the person from whom it collects the payment is no longer valid because of a change in the circumstances of the person who issued the certificate or furnished the other appropriate documentation, then the intermediary or flow-through entity must notify the person from whom it collects the payment of the change of circumstances. It must also obtain a new withholding certificate or new appropriate documentation to replace the existing certificate or documentation whose validity has expired due to the change in circumstances. If a beneficial owner withholding certificate is used to claim foreign status only (and not, also, residence in a particular foreign country for purposes of an income tax treaty), a change of address is a change in circumstances for purposes of this paragraph (e)(4)(ii)(D) only if it changes to an address in the United States. Further, a change of address within the same foreign country is not a change in circumstances for purposes of this paragraph (e)(4)(ii)(D). A change in the circumstances affecting the withholding information provided to the withholding agent in accordance with the provisions in paragraph (e) (3)(iv) or (5)(v) of this section or in § 1.1441–5(c)(3)(iv) shall terminate the validity of the withholding certificate with respect to the information that is no longer reliable unless the information is updated. A withholding agent may rely on a certificate without having to inquire into possible changes of circumstances that may affect the validity of the statement, unless it knows or has reason to know that circumstances have changed. A withholding agent may require a new certificate at any time prior to a payment, even though the withholding agent has no actual knowledge or reason to know that any information stated on the certificate has changed.

(iii) *Retention of withholding certificate.* A withholding agent must retain each withholding certificate and other documentation for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461–1.

(iv) *Electronic transmission of information.* Under procedures issued by the IRS (see § 601.601(d)(2) of this chapter), a withholding agent may be permitted to receive in electronic form the information required to be included on a withholding certificate.

(v) *Electronic confirmation of taxpayer identifying number on withholding certificate.* The Commissioner may prescribe procedures in a revenue procedure (see § 601.601(d)(2) of this chapter) or other appropriate guidance to require a withholding agent to confirm electronically with the IRS information concerning any TIN stated on a withholding certificate.

(vi) *Acceptable substitute form.* A withholding agent may substitute its own form instead of an official Form W–8 or 8233 (or such other official form as the IRS may prescribe). Such a substitute for an official form will be acceptable if it contains provisions that are substantially similar to those of the official form, it contains the same certifications relevant to the transactions as are contained on the official form and these certifications are clearly set forth, and the substitute form includes a signature-under-penalties-of-perjury statement identical to the one stated on the official form. The substitute form is acceptable even if it does not contain all of the provisions contained on the official form, so long as it contains those provisions that are relevant to the transaction for which it is furnished. For example, a withholding agent that pays no income for which treaty benefits are claimed may develop a substitute form that is identical to the official form, except that it does not include information regarding claim of benefits under an income tax treaty. A withholding agent who uses a substitute form must furnish instructions relevant to the substitute form only to the extent and in the manner specified in the instructions to the official form. A withholding agent may refuse to accept a certificate from a payee or beneficial owner (including the official Form W–8 or 8233) if the certificate is not provided the acceptable substitute form provided by the withholding agent. However, a withholding agent may refuse to accept a certificate provided by a payee or beneficial owner only if the withholding agent furnishes the payee or beneficial owner with an acceptable substitute form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form from the payee or beneficial owner. In that case, the substitute form is acceptable only if it contains a notice that the withholding agent has refused to accept the form submitted by the payee or beneficial owner and that the payee or beneficial owner must submit the acceptable form provided by the withholding agent in order for the payee or beneficial owner to be treated as having furnished the required withholding certificate.

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii). A TIN is required to be stated on a beneficial owner certificate if the beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441–6(b)(2)(ii)), an exemption from withholding because income is effectively connected with a U.S. trade or business, an exemption under section 871(f) for certain annuities received under qualified plans, or an exemption solely based on a foreign organization's claim of tax exempt status under section 501(c) or private foundation status. Thus, a TIN is not required from a foreign private foundation that is subject to the 4-percent tax under section 4948(a) on income if that income is otherwise exempt under the Code. In addition, a TIN is required to be stated on the withholding certificate from a person representing to be a qualified intermediary described in paragraph (e)(5)(ii) of this section, on the withholding certificate from a person representing to be a withholding foreign partnership described in § 1.1441–5(c)(2)(i)), on the withholding certificate from a person representing to be a foreign trust or foreign estate, or from a fiduciary thereof, and on the withholding certificate from a person representing to be a U.S. branch described in paragraph (e)(3)(v) of this section. A TIN is an IRS individual taxpayer identification number, an employer identification number, or a social security number as described in section 6109 and § 301.6109–1 of this

chapter, or any other identifier that the Commissioner may designate.

(viii) *Reliance rules.* A withholding agent may rely on the information and certifications stated on withholding certificates or other documentation without having to inquire into the truthfulness of this information or certification, unless it has actual knowledge or reason to know that the same is untrue. In the case of amounts described in § 1.1441–6(b)(2)(ii), a withholding agent described in § 1.1441–7(b)(2)(ii) has reason to know that the information or certifications on a certificate are untrue only to the extent provided in § 1.1441–7(b)(2)(ii). See § 1.1441–6(b)(4)(ii) for reliance on representations regarding eligibility for a reduced rate under an income tax treaty. Paragraphs (e)(4)(viii) (A) and (B) of this section provide examples of such reliance.

(A) *Classification.* A withholding agent may rely on the claim of entity classification indicated on the withholding certificate that it receives from or for the beneficial owner, unless it has actual knowledge or reason to know that the classification claimed is incorrect. A withholding agent may not rely on a person's claim of classification other than as a corporation if the name of the corporation indicates that the person is a per se corporation described in § 301.7701–2(b)(8)(i) of this chapter unless the certificate contains a statement that the person is a grandfathered per se corporation described in § 301.7701–2(b)(8) of this chapter and that its grandfathered status has not been terminated. In the absence of reliable representation or information regarding the classification of the payee or beneficial owner, see § 1.1441–1(b)(3)(ii) for applicable presumptions.

(B) *Status of payee as an intermediary or as a person acting for its own account.* A withholding agent may rely on the type of certificate furnished as indicative of the payee's status as an intermediary or as an owner, unless the withholding agent has actual knowledge or reason to know otherwise. For example, a withholding agent that receives a beneficial owner withholding certificate from a foreign financial institution may treat the institution as the beneficial owner, unless it has information in its records that would indicate otherwise or the certificate contains information that is not consistent with beneficial owner status (e.g., sub-account numbers or names). If the financial institution also acts as an intermediary, the withholding agent may request that the institution furnish two certificates, i.e., a beneficial owner certificate described in paragraph (e)(2)(i) of this section for the amounts that it receives as a beneficial owner, and an intermediary withholding certificate described in paragraph (e)(3)(i) of this section for the amounts that it receives as an intermediary. In the absence of reliable representation or information regarding the status of the payee as an owner or as an intermediary, see paragraph (b)(3)(v)(A) for applicable presumptions.

(ix) *Certificates to be furnished for each account unless exception applies.* Unless otherwise provided in this paragraph (e)(4)(ix), a withholding agent that is a financial institution with which a customer may open an account shall obtain withholding certificates or other appropriate documentation on an account-by-account basis.

(A) *Coordinated account information system in effect.* A withholding agent may rely on the withholding certificate or other appropriate documentation furnished by a customer for a pre-existing account under any one or more of the circumstances described in this paragraph (e)(4)(ix)(A).

(*1*) A withholding agent may rely on documentation furnished by a customer for another account if all such accounts are held at the same branch location.

(*2*) A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a person related to the withholding agent if the withholding agent and the related person are part of a universal account system that uses a customer identifier that can be used to retrieve systematically all other accounts of the customer. See § 31.3406(c)1(c)(3)(ii) and (iii)(C) of this chapter for an identical procedure for purposes of backup withholding. For purposes of this paragraph (e)(4)(ix)(A), a withholding agent is related to another person if it is related within the meaning of section 267(b) or 707(b).

(*3*) A withholding agent may rely on documentation furnished by a customer for an account held at another branch location of the same withholding agent or at a branch location of a person related to the withholding agent if the withholding agent and the related person are part of an information system other than a universal account system and the information system is described in this paragraph (e)(4)(ix)(A)(*3*). The system must allow the withholding agent to easily access data regarding the nature of the documentation, the information contained in the documentation, and its validity status, and must allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of the documentation. The withholding agent must be able to establish how and when it has accessed the data regarding the documentation and, if applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation. In addition, the withholding agent or the related party must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation.

(B) *Family of mutual funds.* An interest in a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may, in the discretion of the mutual fund, be represented by one single withholding certificate where shares are acquired or owned in any of the funds. See § 31.3406(h)–3(a)(2) of this chapter for an identical procedures for purposes of backup withholding.

(C) *Special rule for brokers.* A withholding agent may rely on the certification of a broker acting as the agent of a beneficial owner that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other documentation for that beneficial owner. The certification must contain the date of expiration of the certificate or documentation and be in writing or in electronic form. For purposes of this paragraph (e)(4)(ix)(C), the term *broker* shall have the same meaning as in § 31.3406(h)–3(d) of this chapter.

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish an intermediary withholding certificate to a withholding agent. Such a certificate certifies on behalf of other persons (such as beneficial owners, intermediaries, flow-through entities described in § 1.1441–5, or U.S. payees) for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Code, such as the provisions under chapter 61 of the Code and section 3406 (and the regulations under those provisions). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment or for its shareholders (in the case of claims of

benefits under an income tax treaty by a reverse hybrid entity). Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or shareholders pursuant to its agreement with the IRS, it is not required to attach such documentation to the intermediary withholding certificate. However, the qualified intermediary must disclose the names of those U.S. persons for whom the qualified intermediary receives reportable payments (within the meaning of paragraph (e)(3)(vi) of this section) and who are not exempt recipients (as defined in § 1.6049–4(c)(1)(ii) or an applicable provision under section 6041, 6042, 6045, or 6050N), irrespective of local secrecy laws. A person may claim qualified intermediary status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may prescribe.

(ii) *Definition of qualified intermediary.* With respect to a payment to a foreign person, the term *qualified intermediary* means a person that is a party to a withholding agreement with the IRS and such person is—

(A) A foreign financial institution or a foreign clearing organization (as defined in § 1.163–5(c)(2)(i)(D)(*8*), without regard to the requirement that the organization hold obligations for members), other than a U.S. branch or U.S. office of such institution or organization;

(B) A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization (as defined in § 1.163–5(c)(2)(i)(D)(*8*), without regard to the requirement that the organization hold obligations for members);

(C) A foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders; or

(D) Any other person acceptable to the IRS.

(iii) *Withholding agreement*—(A) *In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under such withholding agreement, a qualified intermediary shall be generally subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Code, and section 3406, and the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. A withholding agreement may apply to the entity as a whole or to certain specified branches of the institution. The determination of the scope of the agreement shall be made on a branch-by-branch basis.

(B) *Terms of the withholding agreement.* Generally, the agreement shall specify the type of certification and documentation upon which the qualified intermediary may rely to ascertain the nationality and residence of beneficial owners and U.S. payees who receive payments collected by the qualified intermediary and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. It shall specify if the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of individual customers. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the qualified intermediary arrangement for purposes of verifying entitlement to such benefits, particularly under an applicable Limitation on Benefits provision. Under the agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures apply in the context of a qualified intermediary arrangement and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts on behalf of its customers. If relevant, the agreement shall specify the manner in which the qualified intermediary may deal with payments to other intermediaries. In addition, the agreement must specify the manner in which the IRS will verify compliance with the agreement. In appropriate cases, the IRS may agree to rely on audits performed by an intermediary's approved auditor. In such a case, the IRS' audit may be limited to the audit of the auditor's records (including work papers of the auditor and reports prepared by the auditor indicating the methodology employed to verify the entity's compliance with the agreement). For this purpose, the agreement shall specify which auditor or class of auditors is approved. Generally, an auditor will be approved if it is subject to regulatory supervision under the laws of the country in which a significant part of the intermediary activities under the agreement are expected to occur, its internal procedures require it to verify that the intermediary complies with the terms of the withholding agreement and to report non-compliance findings under the agreement in the same manner as it is required to report other findings of non-compliance with applicable local laws and regulatory requirements, and its relevant records (i.e., work papers and reports) are available to the IRS. The agreement must include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement shall specify the procedures by which deposits of amounts withheld are to be deposited, if different from normally applicable deposit procedures under the Code and applicable regulations. The agreement shall also specify the assets that the qualified intermediary has in the United States or alternative means of collection, if necessary. To determine the terms of any particular withholding agreement, the IRS will consider appropriate factors including whether or not the foreign person agrees to assume primary responsibility as a withholding agent, the type of local know-your-customer laws and practices to which it is subject, the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign person, the volume of investments in U.S. securities (determined in dollar amounts and number of account holders), and financial condition of the foreign person.

(iv) *Assignment of primary withholding responsibility.* A withholding agent making a payment to a qualified intermediary must presume that the withholding agent has full withholding responsibility for that payment, except as otherwise specified in this paragraph (e)(5)(iv). For this purpose, withholding responsibility means the obligation to withhold as

required under the provisions of section 1441, 1442, or 1443, and the regulations under those sections, and the related reporting obligations under § 1.1461–1(b)(2)(ii) and (c)(4)(ii) for payments identified or treated as made to foreign persons. Withholding responsibility also means obligations imposed on payors under chapter 61 of the Code (and the regulations under those provisions) and, if applicable, under section 3405 or 3406 (and the regulations under those sections). A qualified intermediary that assumes primary withholding responsibility vis-a-vis a withholding agent must assume such responsibility for all payments made to any one account. Any qualified intermediary may agree with the withholding agent to assume primary withholding responsibility, but only if expressly permitted to do so under its agreement with the IRS. Generally, reporting or withholding liability arising from a payment to a U.S. person (or treated as or presumed to be made to a U.S. person) under any provision of the Code or applicable regulations thereunder may not be assigned to a qualified intermediary except where the qualified intermediary is a foreign branch of a U.S. financial institution or except to the extent that the qualified intermediary has a branch in the United States and establishes to the satisfaction of the IRS that its U.S. branch can adequately fulfill the qualified intermediary's obligations on behalf of the qualified intermediary regarding information reporting under chapter 61 of the Code and the regulations under the applicable provisions of that chapter and, if necessary, backup withholding under section 3406 and the regulations under that section (even though the U.S. branch is not a qualified intermediary).

(v) *Information to withholding agent regarding applicable withholding rates*—(A) *General rule.* The qualified intermediary must separate the assets that generate payments of reportable amounts (as described in paragraph (e)(3)(vi) of this section) that are associated with its withholding certificate furnished to the withholding agent into the categories described in paragraph (e)(5)(v)(B) of this section, and provide that information to the withholding agent so that the withholding agent may determine the applicable withholding rate applicable to each category. The information may be furnished in any manner that the parties choose. For example, if the withholding agent maintains separate accounts for each category of assets described in paragraph (e)(5)(v)(B) of this section, the intermediary must provide information sufficient for the withholding agent to allocate assets appropriately among the various accounts. If the withholding agent does not maintain separate accounts, it may require the intermediary to attach a statement to the intermediary withholding certificate under paragraph (e)(3)(ii)(E) of this section providing the information described in this paragraph (e)(5)(v).

(B) *Categories of assets.* A payment of a reportable amount (as defined in paragraph (e)(3)(vi) of this section) must be associated with one of the three categories of assets set forth in paragraphs (e)(5)(v)(B) (*1*) through (*3*) of this section and may be associated with only one of these three categories. Additional or different categories of assets may be specified, however, under procedures prescribed by the IRS (see § 602.602–1(d) of this chapter) or in the qualified intermediary agreement. No information is required regarding assets that do not generate a reportable amount described in paragraph (b)(3)(vi) of this section. The information provided to the withholding agent, and any update thereof, shall be considered an integral part of the intermediary withholding certificate. The three categories of assets required to be identified to the withholding agent are as follows:

(*1*) The first category of assets consists of assets that are associated with non-U.S. payees to which the intermediary certificate relates, and the applicable withholding rate. If different withholding rates apply, the withholding agent must indicate the applicable rate for each class of non-U.S. payees to which different withholding rates apply and the assets associated with each class. In the case of a qualified intermediary that has assumed primary withholding responsibility, the intermediary must simply certify the amount of assets for which it assumes primary withholding responsibility because they are assets for which it holds the appropriate documentation and are not described in the other two categories.

(*2*) The second category of assets consists of assets that are associated with all U.S. payees to which the certificate relates. The qualified intermediary must furnish a Form W–9 (or an acceptable substitute form) for each U.S. payee described in paragraph (d)(2) of this section or, in the absence of a Form W–9, the name and address of the U.S. payee or such information it has available regarding the payee. The identity of U.S. payees described in paragraph (d)(3) of this section need not be disclosed to the withholding agent.

(*3*) The third category of assets consists of assets that are associated with payees for whom the qualified intermediary holds no documentation, or holds documentation that it knows or has reason to know is unreliable and for which it has no actual knowledge that the payees are U.S. persons. A qualified intermediary that has assumed primary withholding responsibility need not furnish information regarding this category of assets.

(C) *Updating the information.* The intermediary must update the information furnished to the withholding agent in accordance with this paragraph (e)(5)(v) as often as is necessary in order to enable the withholding agent to withhold at the appropriate rate on each payment and to report such income for purposes of chapter 3 or 61 of the Code and sections 3402, 3405 and 3406 (and the regulations under those provisions). See paragraph (e)(4)(ii)(D) of this section regarding how changes in the information affect the validity of a withholding certificate. See § 1.1441–1(b)(3)(v)(C) for consequences if the information is not updated as required.

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, a withholding agent that on December 31, 1998, holds a Form W–8, 8233, 1001, 4224, 1078, or a statement described in § 1.1441–5 in effect prior to January 1, 1999 (see § 1.1441–5 as contained in 26 CFR part 1, revised April 1, 1997) under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), that is a valid certificate or statement as determined under those regulations may treat the certificate or statement as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the

transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 1998.

§ 1.1441–2 Amounts subject to withholding.

(a) *In general.* For purposes of the regulations under chapter 3 of the Internal Revenue Code (Code), the term *amounts subject to withholding* means amounts from sources within the United States that constitute either fixed or determinable annual or periodical income described in paragraph (b) of this section or other amounts subject to withholding described in paragraph (c) of this section. For purposes of this paragraph (a), an amount shall not be treated as not being from sources within the United States merely because the source of the amount cannot be determined at the time of payment. See § 1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount. Amounts subject to withholding include amounts that are not fixed or determinable annual or periodical income and upon which withholding is specifically required under a provision of this section or another section of the regulations under chapter 3 of the Code (such as corporate distributions that do not constitute dividend income upon which withholding is required under § 1.1441–3(c)(1)). Amounts subject to withholding do not include amounts described in § 1.1441–1(b)(4)(i) to the extent they involve interest on obligations in bearer form or on foreign-targeted registered obligations (but, in the case of a foreign-targeted registered obligation, only to the extent of those amounts paid to a registered owner that is a financial institution within the meaning of section 871(h)(5)(B)), amounts described in § 1.1441–1(b)(4)(ii) (dealing with bank deposit interest and similar types of interest (including original issue discount) described in section 871(i)(2)(A) or 881(d)), amounts described in § 1.1441–1(b)(4)(iv) (dealing with interest or original issue discount on certain short-term obligations described in section 871(g)(1)(B) or 881(a)(3)), and amounts described in § 1.1441–1(b)(4)(xx) (dealing with income from certain gambling winnings exempt from tax under section 871(j)).

(b) *Fixed or determinable annual or periodical income*—(1) *In general*—(i) *Definition.* For purposes of chapter 3 of the Code and the regulations thereunder, fixed or determinable annual or periodical income is all income included in gross income under section 61 (including original issue discount), except for the items specified in paragraph (b)(2) of this section. Therefore, items of U.S. source income that are excluded from gross income under any provision of law without regard to the identity of the holder, such as interest excluded from gross income under section 103(a), are not fixed or determinable annual or periodical income. See § 1.306–3(h) for treating income from the disposition of section 306 stock as fixed or determinable annual or periodical income.

(ii) *Manner of payment.* The term *fixed or determinable annual or periodical* is merely descriptive of the character of a class of income. If an item of income falls within the class of income contemplated in the statute and described in paragraph (a) of this section, it is immaterial whether payment of that item is made in a series of payments or in a single lump sum. Further, the income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, prevent it from being fixed or determinable annual or periodical income (e.g., a lump sum payment). In addition, the fact that the length of time during which the payments are to be made may be increased or diminished in accordance with someone s will or with the happening of an event does not disqualify the payment as determinable or periodical. For this purpose, the share of the fixed or determinable annual or periodical income of an estate or trust from sources within the United States which is required to be distributed currently, or which has been paid or credited during the taxable year, to a nonresident alien beneficiary of such estate or trust constitutes fixed or determinable annual or periodical income.

(iii) *Determinability of amount.* An item of income is fixed when it is to be paid in amounts definitely pre-determined. An item of income is determinable if the amount to be paid is not known but there is a basis of calculation by which the amount may be ascertained at a later time. For example, interest is determinable even if it is contingent in that its amount cannot be determined at the time of payment of an amount with respect to a loan because the calculation of the interest portion of the payment is contingent upon factors that are not fixed at the time of the payment. For purposes of this section, an amount of income does not have to be determined at the time that the payment is made in order to be determinable. An amount of income described in paragraph (a) of this section which the withholding agent knows is part of a payment it makes but which it cannot calculate exactly at the time of payment, is nevertheless determinable if the determination of the exact amount depends upon events expected to occur at a future date. In contrast, a payment which may be income in the future based upon events that are not anticipated at the time the payment is made is not determinable. For example, loan proceeds may become income to the borrower when and to the extent the loan is canceled without repayment. While the cancellation of the debt is income to the borrower when it occurs, it is not determinable at the time the loan proceeds are disbursed to the borrower if the lack of repayment leading to the cancellation of part or all of the debt was not anticipated at the time of disbursement. The fact that the source of an item of income cannot be determined at the time that the payment is made does not render a payment not determinable. See § 1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount.

(2) *Exceptions.* For purposes of chapter 3 of the Code and the regulations thereunder, the items of income described in this paragraph (b)(2) are not fixed or determinable annual or periodical income—

(i) Gains derived from the sale of property (including market discount and option premiums), except for gains described in paragraph (b)(3) or (c) of this section;

(ii) Insurance premiums within the meaning of section 4372 paid to a foreign insurer or reinsurer; and

(iii) Any other income that the Internal Revenue Service (IRS) may determine, in published guidance (see § 601.601(d)(2) of this chapter), is not fixed or determinable annual or periodical income.

(3) *Original issue discount*—(i) *General rule.* An amount representing original issue discount is fixed or determinable annual or periodical income that is subject to withholding to the extent provided in this paragraph (b)(3) if not otherwise excluded under paragraph (a) of this section. Under sections 871(a)(1)(C) and 881(a)(3), an amount of original issue discount is subject to tax to a foreign beneficial owner of an obligation carrying original issue discount upon a taxable sale or exchange of the obligation or when a payment is made on such obligation. The amount taxable is the amount of original issue discount that accrued while the foreign person held the obligation up to the time that the obligation is sold or exchanged or that a payment is made on the obligation, reduced by any amount of original issue discount that was taken into account prior to that time (due to a payment made on the obligation). In the case of a taxable event due to a payment made on the obligation, the tax due on the amount of taxable original issue discount may not exceed the payment less the tax imposed thereon. A person who is a withholding agent with respect to a payment that, under section 871(a)(1)(C) or 881(a)(3), is taxable to a foreign person holding or disposing of an original issue discount obligation must withhold to the extent provided in this paragraph (b)(3).

(ii) *Amounts actually known to the withholding agent.* A withholding agent must withhold on the taxable amount of original issue discount to the extent that it has actual knowledge of the proportion of the payment that is taxable to the beneficial owner under section 871(a)(1)(C) or 881(a)(3)(A). A withholding agent has actual knowledge if it knows how long the beneficial owner has held the obligation, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent is treated as having knowledge if the information is reasonably available. The information is not considered reasonably available if the withholding agent does not have a direct customer relationship with the foreign beneficial owner or such other person who has actual knowledge of the facts relevant to the determination of the amount taxable to the foreign beneficial owner, and has no access to such information in the ordinary course of its business due to the manner in which the obligation is held (e.g., in street name or through intermediaries). In the case of a withholding agent maintaining a direct account relationship with the beneficial owner, knowledge regarding the beneficial owner's holding period and acquisition premium is considered to be reasonably available to the withholding agent. A withholding agent may rely on the most recently published List of Original Issue Discount Instruments (IRS Publication 1212 (available from the IRS Forms Distribution Centers) or similar list) published by the IRS in order to determine the amount of taxable OID in any particular transaction.

(iii) *Amounts for which certain documentation is not furnished.* Notwithstanding lack of knowledge (within the meaning of paragraph (b)(3)(ii) of this section), withholding is required on the entire amount of stated interest, if any, and original issue discount on the obligation as determined as of the date of original issue if the withholding agent, pursuant to the provisions in § 1.1441–1(b)(3), treats the payment as made to a foreign payee because it cannot reliably associate the payment with documentation and the amount would qualify as portfolio interest if the withholding agent held documentation described in § 1.871–14(c)(2). A withholding agent may rely on the most recently published List of Original Issue Discount Instruments (IRS Publication 1212 (available from the IRS Forms Distribution Centers) or similar list) published by the IRS in order to determine the amount of taxable OID in any particular transaction. See § 1.1441–1(b)(8) for adjustments to any amount that has been overwithheld.

(iv) *Exceptions to withholding.* The obligation to withhold under this paragraph (b)(3) shall apply only to obligations issued after December 31, 1998, and payable more than 183 days from the date of original issue. Any exemption from withholding pursuant to this paragraph (b)(3) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6049 and backup withholding under section 3406. See § 1.6049–5(b)(7) through (15).

(4) *Securities lending transactions and equivalent transactions.* See §§ 1.871–7(b)(2) and 1.881–2(b)(2) regarding the character of substitute payments as fixed and determinable annual or periodical income. Such amounts constitute income subject to withholding to the extent they are from sources within the United States, as determined under section §§ 1.861–2(a)(7) and 1.861–3(a)(6). See §§ 1.6042–3(a)(2) and 1.6049–5(a)(5) for reporting requirements applicable to substitute dividend and interest payments, respectively.

(c) *Other income subject to withholding.* Withholding is also required on the following items of income—

(1) Gains described in sections 631 (b) or (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest; and

(2) Gains subject to the 30-percent tax under section 871(a)(1)(D) or 881(a)(4), relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property.

(d) *Exceptions to withholding where no money or property is paid or lack of knowledge*—(1) *General rule.* A withholding agent who is not related to the recipient or beneficial owner has an obligation to withhold under section 1441 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (d)) and the due date for the filing of return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over, or custody of money or property owned by the recipient or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. The exemption from the obligation to withhold under this paragraph (d) shall not apply, however, to distributions with respect to stock or if the lack of control or custody of money or property from which to withhold is part of a pre-arranged plan known to the withholding agent to avoid withholding under section 1441, 1442, or 1443. For purposes of this paragraph (d), a withholding agent is related to the recipient or beneficial owner if it is related within the meaning of section 482. Any exemption from withholding pursuant to this paragraph (d) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406. The exemption from withholding under this paragraph (d) is not a determination that the amounts are not fixed or determinable annual or periodical income, nor does it constitute an exemption from reporting the amount under § 1.1461–1 (b) and (c).

(2) *Cancellation of debt.* A lender of funds who forgives any portion of the loan is deemed to have made a payment

of income to the borrower under § 1.61–12 at the time the event of forgiveness occurs. However, based on the rules of paragraph (d)(1) of this section, the lender shall have no obligation to withhold on such amount to the extent that it does not have custody or control over money or property of the borrower at any time between the time that the loan is forgiven and the due date (including extensions) of the Form 1042 for the year in which the payment is deemed to occur. A payment received by the lender from the borrower in partial settlement of the debt obligation does not, for this purpose, constitute an amount of money or property belonging to the borrower from which the withholding tax liability can be satisfied.

(3) *Satisfaction of liability following underwithholding by withholding agent.* A withholding agent who, after failing to withhold the proper amount from a payment, satisfies the underwithheld amount out of its own funds may cause the beneficial owner to realize income to the extent of such satisfaction or may be considered to have advanced funds to the beneficial owner. Such determination depends upon the contractual arrangements governing the satisfaction of such tax liability (e.g., arrangements in which the withholding agent agrees to pay the amount due under section 1441 for the beneficial owner) or applicable laws governing the transaction. If the satisfaction of the tax liability is considered to constitute an advance of funds by the withholding agent to the beneficial owner and the withholding agent fails to collect the amount from the beneficial owner, a cancellation of indebtedness may result, giving rise to income to the beneficial owner under § 1.61–12. While such income is annual or periodical fixed or determinable, the withholding agent shall have no liability to withhold on such income to the extent the conditions set forth in paragraphs (d) (1) and (2) of this section are satisfied with respect to this income. Contrast the rules of this paragraph (d)(3) with the rules in § 1.1441–3(f)(1) dealing with a situation in which the satisfaction of the beneficial owner's tax liability itself constitutes additional income to the beneficial owner. See, also, § 1.1441–3(c)(2)(ii)(B) for a special rule regarding underwithholding on corporate distributions due to underestimating an amount of earnings and profits.

(e) *Payment*—(1) *General rule.* A payment is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. For example, realization of income from cancellation of debt results in a deemed payment. A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting. A payment is considered made whether it is made directly to the beneficial owner or to another person for the benefit of the beneficial owner (e.g., to the agent of the beneficial owner). Thus, a payment of income is considered made to a beneficial owner if it is paid in complete or partial satisfaction of the beneficial owner's debt to a creditor. In the event of a conflict between the rules of this paragraph (e)(1) governing whether a payment has occurred and its timing and the rules of § 31.3406(a)–4 of this chapter, the rules in § 31.3406(a)–4 of this chapter shall apply to the extent that the application of section 3406 is relevant to the transaction at issue.

(2) *Income allocated under section 482.* A payment is considered made to the extent income subject to withholding is allocated under section 482. Further, income arising as a result of a secondary adjustment made in conjunction with a reallocation of income under section 482 from a foreign person to a related U.S. person is considered paid to a foreign person unless the taxpayer to whom the income is reallocated has entered into a repatriation agreement with the IRS and the agreement eliminates the liability for withholding under this section. For purposes of determining the liability for withholding, the payment of income is deemed to have occurred on the last day of the taxable year in which the transactions that give rise to the allocation of income and the secondary adjustments, if any, took place.

(3) *Blocked income.* Income is not considered paid if it is blocked under executive authority, such as the President's exercise of emergency power under the Trading with the Enemy Act (50 U.S.C. App. 5), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq). However, on the date that the blocking restrictions are removed, the income that was blocked is considered constructively received by the beneficial owner (and therefore paid for purposes of this section) and subject to withholding under § 1.1441–1. Any exemption from withholding pursuant to this paragraph (e)(3) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under chapter 61 of the Code and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e)(3) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(4) *Special rules for dividends.* For purposes of sections 1441 and 6042, in the case of stock for which the record date is earlier than the payment date, dividends are considered paid on the payment date. In the case of a corporate reorganization, if a beneficial owner is required to exchange stock held in a former corporation for stock in a new corporation before dividends that are to be paid with respect to the stock in the new corporation will be paid on such stock, the dividend is considered paid on the date that the payee or beneficial owner actually exchanges the stock and receives the dividend. See § 31.3406(a)–4(a)(2) of this chapter.

(5) *Certain interest accrued by a foreign corporation.* For purposes of sections 1441 and 6049, a foreign corporation shall be treated as having made a payment of interest as of the last day of the taxable year if it has made an election under § 1.884–4(c)(1) to treat accrued interest as if it were paid in that taxable year.

(6) *Payments other than in U.S. dollars.* For purposes of section 1441, a payment includes amounts paid in a medium other than U.S. dollars. See § 1.1441–3(e) for rules regarding the amount subject to withholding in the case of such payments.

(f) *Effective date.* This section applies to payments made after December 31, 1998.

Par. 8. Section 1.1441–3 is amended by:

1. Revising the section heading, and paragraphs (a) through (f) and (h).
2. Removing paragraphs (g) and (i).
3. Redesignating paragraph (j) as paragraph (g).
4. Removing the language ''(j)'' and adding ''(g)'' in its place in the fourth sentence of newly designated paragraph (g)(1) and in the first sentence of newly designated paragraph (g)(2).
5. Removing the language ''§ 1.1441–7(d)'' in the last sentence of newly designated paragraph (g)(1) and adding ''§ 1.1441–7(f)'' in its place.
6. Removing the authority citation at the end of the section.

The revisions read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

(a) *Withholding on gross amount.* Except as otherwise provided in regulations under section 1441, the amount subject to withholding under § 1.1441–1 is the gross amount of income subject to withholding that is

paid to a foreign person. The gross amount of income subject to withholding may not be reduced by any deductions, except to the extent that one or more personal exemptions are allowed as provided under § 1.1441–4(b)(6).

(b) *Withholding on payments on certain obligations*—(1) *Withholding at time of payment of interest.* When making a payment on an interest-bearing obligation, a withholding agent must withhold under § 1.1441–1 upon the gross amount of stated interest payable on the interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income within the meaning of section 61. To the extent an amount was withheld on an amount of capital rather than interest, see the rules for adjustments, refunds, or credits under § 1.1441–1(b)(8).

(2) *No withholding between interest payment dates*—(i) *In general.* A withholding agent is not required to withhold under § 1.1441–1 upon interest accrued on the date of a sale of debt obligations when that sale occurs between two interest payment dates (even though the amount is treated as interest under § 1.61–7 (c) or (d) and is subject to tax under section 871 or 881). See § 1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. See § 1.61–7(c) regarding the character of payments received by the acquirer of an obligation subsequent to such acquisition (that is, as a return of capital or interest accrued after the acquisition). Any exemption from withholding pursuant to this paragraph (b)(2)(i) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6045 or 6049 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (b)(2) is not a determination that the accrued interest is not fixed or determinable annual or periodical income under section 871(a) or 881(a) nor does it constitute an exemption from reporting under § 1.1461–1 (b) and (c) the amount of accrued interest paid.

(ii) *Anti-abuse rule.* The exemption in paragraph (b)(2)(i) of this section does not apply if the sale of securities is part of a plan the principal purpose of which is to avoid tax by selling and repurchasing securities and the withholding agent has actual knowledge or reason to know of such plan.

(c) *Corporate distributions*—(1) *General rule*. A corporation making a distribution with respect to its stock or any intermediary (described in § 1.1441–1(e)(3)(i)) making a payment of such a distribution is required to withhold under section 1441, 1442, or 1443 on the entire amount of the distribution, unless it elects to reduce the amount of withholding under the provisions of paragraph (c)(2) of this section. The exemption from withholding provided by this paragraph (c) applies without any requirement to furnish documentation to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6042 or 6045 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (c) does not constitute a determination that the exempted amounts are not fixed or determinable annual or periodical income under sections 871(a) or 881(a) nor does it constitute an exemption from reporting under § 1.1461–1 (b) and (c) the amount of the distribution.

(2) *Exception to withholding on distributions*—(i) *In general.* An election described in paragraph (c)(1) of this section is made by actually reducing the amount of withholding at the time that the payment is made. An intermediary that makes a payment of a distribution is not required to reduce the withholding based on the distributing corporation's estimate of earnings and profits, even if the distributing corporation itself elects to reduce the withholding on payments of distributions that it itself makes to foreign persons. Conversely, an intermediary may elect to reduce the amount of withholding with respect to the payment of a distribution even if the distributing corporation does not so elect for the payments of distributions that it itself makes of distributions to foreign persons. The amounts with respect to which a distributing corporation or intermediary may elect to reduce the withholding are as follows:

(A) A distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a nontaxable distribution payable in stock or stock rights.

(B) A distributing corporation or intermediary may elect to not withhold on a distribution to the extent it represents a distribution in part or full payment in exchange for stock.

(C) A distributing corporation or intermediary may elect to not withhold on a distribution (actual or deemed) to the extent it is not paid out of accumulated earnings and profits or current earnings and profits, based on a reasonable estimate determined under paragraph (c)(2)(ii) of this section.

(D) A regulated investment company or intermediary may elect to not withhold on a distribution representing a capital gain dividend (as defined in section 852(b)(3)(C)) or an exempt interest dividend (as defined in section 852(b)(5)(A)) based on the applicable procedures described under paragraph (c)(3) of this section.

(E) A U.S. Real Property Holding Corporation (defined in section 897(c)(2)) or a real estate investment trust (defined in section 856) or intermediary may elect to not withhold on a distribution to the extent it is subject to withholding under section 1445 and the regulations under that section. See paragraph (c)(4) of this section for applicable procedures.

(ii) *Reasonable estimate of accumulated and current earnings and profits on the date of payment*—(A) *General rule.* A reasonable estimate for purposes of paragraph (c)(2)(i)(C) of this section is a determination made by the distributing corporation at a time reasonably close to the date of payment of the extent to which the distribution will constitute a dividend, as defined in section 316. The determination is based upon the anticipated amount of accumulated earnings and profits and current earnings and profits for the taxable year in which the distribution is made, the distributions made prior to the distribution for which the estimate is made and all other relevant facts and circumstances. A reasonable estimate may be made based on the procedures described in § 31.3406(b)(2)–4(c)(2) of this chapter.

(B) *Procedures in case of underwithholding.* A distributing corporation or intermediary that is a withholding agent with respect to a distribution and that determines at the end of the taxable year in which the distribution is made that it underwithheld under section 1441 on the distribution shall be liable for the amount underwithheld as a withholding agent under section 1461. However, for purposes of this section and § 1.1461–1, any amount underwithheld paid by a distributing corporation, its paying agent, or an intermediary shall not be treated as income subject to additional withholding even if that amount is treated as additional income to the shareholders unless the additional amount is income to the shareholder as a result of a contractual arrangement between the parties regarding the satisfaction of the shareholder's tax liabilities. In addition, no penalties shall be imposed for failure to withhold and deposit the tax if—

(*1*) The distributing corporation made a reasonable estimate as provided in paragraph (c)(2)(ii)(A) of this section; and

(*2*) Either—

(*i*) The corporation or intermediary pays over the underwithheld amount on or before the due date for filing a Form 1042 for the calendar year in which the distribution is made, pursuant to § 1.1461–2(b); or

(*ii*) The corporation or intermediary is not a calendar year taxpayer and it files an amended return on Form 1042X (or such other form as the Commissioner may prescribe) for the calendar year in which the distribution is made and pays the underwithheld amount and interest within 60 days after the close of the taxable year in which the distribution is made.

(C) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether the payment of a corporate distribution is a dividend, a withholding agent that is not the distributing corporation may, absent actual knowledge or reason to know otherwise, rely on representations made by the distributing corporation regarding the reasonable estimate of the anticipated accumulated and current earnings and profits made in accordance with paragraph (c)(2)(ii)(A) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the distributing corporation to reasonably estimate the portion of the distribution treated as a dividend or to properly communicate the information to the withholding agent shall be imputed to the distributing corporation. In such a case, the Internal Revenue Service (IRS) may collect from the distributing corporation any underwithheld amount and subject the distributing corporation to applicable interest and penalties as a withholding agent.

(D) *Example.* The rules of this paragraph (c)(2) are illustrated by the following example:

Example. (i) *Facts.* Corporation X, a publicly traded corporation with both U.S. and foreign shareholders and a calendar year taxpayer, has an accumulated deficit in earnings and profits at the close of 2000. In 2001, Corporation X generates $1 million of current earnings and profits each month and makes an $18 million distribution, resulting in a $12 million dividend. Corporation X plans to make an additional $18 million distribution on October 1, 2002. Approximately one month before that date, Corporation X's management receives an internal report from its legal and accounting department concerning Corporation X's estimated current earnings and profits. The report states that Corporation X should generate only $5.1 million of current earnings and profits by the close of the third quarter due to costs relating to substantial organizational and product changes, but these changes will enable Corporation X to generate $1.3 million of earnings and profits monthly for the last quarter of the 2002 fiscal year. Thus, the total amount of current and earnings and profits for 2002 is estimated to be $9 million.

(ii) *Analysis.* Based on the facts in paragraph (i) of this *Example,* including the fact that earnings and profits estimate was made within a reasonable time before the distribution, Corporation X can rely on the estimate under paragraph (c)(2)(ii)(A) of this section. Therefore, Corporation X may treat $9 million of the $18 million of the October 1, 2002, distribution to foreign shareholders as a non-dividend distribution.

(3) *Special rules in the case of distributions from a regulated investment company*—(i) *General rule.* If the amount of any distributions designated as being subject to section 852(b)(3)(C) or (5)(A) exceeds the amount that may be designated under those sections for the taxable year, then no penalties will be asserted for any resulting underwithholding if the designations were based on a reasonable estimate (made pursuant to the same procedures as are described in paragraph (c)(2)(ii)(A) of this section) and the adjustments to the amount withheld are made within the time period described in paragraph (c)(2)(ii)(B) of this section. Any adjustment to the amount of tax due and paid to the IRS by the withholding agent as a result of underwithholding shall not be treated as a distribution for purposes of section 562(c) and the regulations thereunder. Any amount of U.S. tax that a foreign shareholder is treated as having paid on the undistributed capital gain of a regulated investment company under section 852(b)(3)(D) may be claimed by the foreign shareholder as a credit or refund under § 1.1464–1.

(ii) *Reliance by intermediary on reasonable estimate.* For purposes of determining whether a payment is a distribution designated as subject to section 852(b) (3)(C) or (5)(A), a withholding agent that is not the distributing regulated investment company may, absent actual knowledge or reason to know otherwise, rely on the designations that the distributing company represents have been made in accordance with paragraph (c)(3)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the regulated investment company to reasonably estimate the required amounts or to properly communicate the relevant information to the withholding agent shall be imputed to the distributing company. In such a case, the IRS may collect from the distributing company any underwithheld amount and subject the company to applicable interest and penalties as a withholding agent.

(4) *Coordination with withholding under section 1445*—(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i) (A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs, see paragraph (c)(4)(i)(C) of this section.

(A) *Withholding under section 1441.* The USRPHC may choose to withhold on a distribution only under section 1441 (or 1442 or 1443) and not under section 1445. In such a case, the USRPHC must withhold under section 1441 (or 1442 or 1443) on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate under an income tax treaty applies to the distribution by the USRPHC, then the applicable rate of withholding on the distribution shall be no less than 10-percent, unless the applicable treaty specifies an applicable lower rate for distributions from a USRPHC, in which case the lower rate may apply.

(B) *Withholding under both sections 1441 and 1445.* As an alternative to the procedure described in paragraph (c)(4)(i)(A) of this section, a USRPHC may choose to withhold under both sections 1441 (or 1442 or 1443) and 1445 under the procedures set forth in this paragraph (c)(4)(i)(B). The USRPHC must make a reasonable estimate of the portion of the distribution that is a dividend under paragraph (c)(2)(ii)(A) of this section, and must—

(*1*) Withhold under section 1441 (or 1442 or 1443) on the portion of the distribution that is estimated to be a dividend under paragraph (c)(2)(ii)(A) of this section; and

(*2*) Withhold under section 1445(e)(3) and § 1.1445–5(e) on the remainder of the distribution or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445–5(e)(2)(iv).

(C) *Coordination with REIT withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT that is not designated as a capital gain dividend or return of basis. Withholding is required under section 1445 on the portion of the distribution designated by a REIT as a capital gain dividend. See § 1.1445–8.

(ii) *Intermediary reliance rule.* A withholding agent that is not the distributing USRPHC must withhold under paragraph (c)(4)(i) of this section, but may, absent actual knowledge or reason to know otherwise, rely on representations made by the USRPHC regarding the determinations required under paragraph (c)(4)(i) of this section. Failure by the withholding agent to withhold the required amount due to a failure by the distributing USRPHC to make these determinations in a reasonable manner or to properly communicate the determinations to the withholding agent shall be imputed to the distributing USRPHC. In such a case, the IRS may collect from the distributing USRPHC any underwithheld amount and subject the distributing USRPHC to applicable interest and penalties as a withholding agent.

(d) *Withholding on payments that include an undetermined amount of income*—(1) *In general.* Where the withholding agent makes a payment and does not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment, then the withholding agent must withhold an amount under § 1.1441–1 based on the entire amount paid that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the amount that will subsequently be determined to be from sources within the United States or to be income subject to tax. The amount so withheld shall not exceed 30 percent of the amount paid. In the alternative, the withholding agent may make a reasonable estimate of the amount from U.S. sources or of the taxable amount and set aside a corresponding portion of the amount due under the transaction and hold such portion in escrow until the amount from U.S. sources or the taxable amount can be determined, at which point withholding becomes due under § 1.1441–1. See § 1.1441–1(b)(8) regarding adjustments in the case of overwithholding. The provisions of this paragraph (d)(1) shall not apply to the extent that other provisions of the regulations under chapter 3 of the Internal Revenue Code (Code) specify the amount to be withheld, if any, when the withholding agent lacks knowledge at the time of payment (e.g., lack of reliable knowledge regarding the status of the payee or beneficial owner, addressed in § 1.1441–1(b)(3), or lack of knowledge regarding the amount of original issue discount under § 1.1441–2(b)(3)).

(2) *Withholding on certain gains.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim regarding the amount of gain described in § 1.1441–2(c) if the beneficial owner withholding certificate, or other appropriate withholding certificate, states the beneficial owner's basis in the property giving rise to the gain. In the absence of a reliable representation on a withholding certificate, the withholding agent must withhold an amount under § 1.1441–1 that is necessary to assure that the tax withheld is not less than 30 percent (or other applicable percentage) of the recognized gain. For this purpose, the recognized gain is determined without regard to any deduction allowed by the Code from the gains. The amount so withheld shall not exceed 30 percent of the amount payable by reason of the transaction giving rise to the recognized gain. See § 1.1441–1(b)(8) regarding adjustments in the case of overwithholding.

(e) *Payments other than in U.S. dollars*—(1) *In general.* The amount of a payment made in a medium other than U.S. dollars is measured by the fair market value of the property or services provided in lieu of U.S. dollars. The withholding agent may liquidate the property prior to payment in order to withhold the required amount of tax under section 1441 or obtain payment of the tax from an alternative source. However, the obligation to withhold under section 1441 is not deferred even if no alternative source can be located. Thus, for purposes of withholding under chapter 3 of the Code, the provisions of § 31.3406(h)–2(b)(2)(ii) of this chapter (relating to backup withholding from another source) shall not apply. If the withholding agent satisfies the tax liability related to such payments, the rules of paragraph (f) of this section apply.

(2) *Payments in foreign currency.* If the amount subject to withholding tax is paid in a currency other than the U.S. dollar, the amount of withholding under section 1441 shall be determined by applying the applicable rate of withholding to the foreign currency amount and converting the amount withheld into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) in effect on that date. A withholding agent making regular or frequent payments in foreign currency may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently for all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner. The U.S. dollar amount so determined shall be treated by the beneficial owner as the amount of tax paid on the income for purposes of determining the final U.S. tax liability and, if applicable, claiming a refund or credit of tax.

(f) *Tax liability of beneficial owner satisfied by withholding agent*—(1) *General rule.* In the event that the satisfaction of a tax liability of a beneficial owner by a withholding agent constitutes income to the beneficial owner and such income is of a type that is subject to withholding, the amount of the payment deemed made by the withholding agent for purposes of this paragraph (f) shall be determined under the gross-up formula provided in this paragraph (f)(1). Whether the payment of the tax by the withholding agent constitutes a satisfaction of the beneficial owner's tax liability and whether, as such, it constitutes additional income to the beneficial owner, must be determined under all the facts and circumstances surrounding the transaction, including any agreements between the parties and applicable law. The formula described in this paragraph (f)(1) is as follows:

$$\text{Payment} = \frac{\text{Gross payment without withholding}}{1\text{-(tax rate)}}$$

(2) *Example.* The following example illustrates the provisions of this paragraph (f):

Example. College X awards a qualified scholarship within the meaning of section 117(b) to foreign student, FS, who is in the United States on an F visa. FS is a resident of a country that does not have an income tax treaty with the United States. The scholarship is $20,000 to be applied to tuition, mandatory fees and books, plus benefits in kind consisting of room and board and roundtrip air transportation. College X agrees to pay any U.S. income tax owed by FS with respect to the scholarship. The fair market value of the room and board measured by the amount College X charges non-scholarship students is $6,000. The cost

of the roundtrip air transportation is $2,600. Therefore, the total fair market value of the scholarship received by FS is $28,600. However, the amount taxable is limited to the fair market value of the benefits in kind ($8,600) because the portion of the scholarship amount for tuition, fees, and books is not included in gross income under section 117. The applicable rate of withholding is 14 percent under section 1441(b). Therefore, under the gross-up formula, College X is deemed to make a payment of $10,000 ($8,600 divided by (1–.14). The U.S. tax that must be deducted and withheld from the payment under section 1441(b) is $1,400 (.14×$10,000). College X reports scholarship income of $30,000 and $1,400 of U.S. tax withheld on Forms 1042 and 1042–S.

* * * * *

(h) *Effective date.* Except as otherwise provided in paragraph (g) of this section, this section applies to payments made after December 31, 1998.

Par. 9. Section 1.1441–4 is amended by:

1. Revising the section heading, and paragraph (a).

2. Paragraph (b)(1) is amended by:

a. Revising of paragraphs (b)(1)(i) and (b)(1)(ii).

b. Removing the period at the end of paragraph (b)(1)(iii) and adding a semicolon in its place.

c. Removing the language ''or'' at the end of paragraph (b)(1)(iv) and adding a semicolon in its place.

d. Removing the period at the end of paragraph (b)(1)(v) and adding '' ; or'' in its place.

e. Adding paragraph (b)(1)(vi).

3. Adding four sentences at the end of paragraph (b)(2)(i).

4. Paragraph (b)(2)(ii) is amended by:

a. Revising paragraph (b)(2)(ii) heading and introductory text, and paragraph (b)(2)(ii)(A).

b. Redesignating paragraph (b)(2)(ii)(H) as paragraph (b)(2)(ii)(J) and amending newly designated paragraph (b)(2)(ii)(J) by removing the period and adding ''; and'' in its place.

c. Redesignating paragraphs (b)(2)(ii)(B), (C), (D), (E), (F) and (G) as paragraphs (b)(2)(ii)(D), (E), (F), (G), (H) and (I), respectively.

d. Adding new paragraphs (b)(2)(ii)(B), (C), and (K).

e. Removing the period at the end of newly designated paragraph (b)(2)(ii)(D) and the comma at the end of newly designated paragraphs (b)(2)(ii)(E), (F), (G), and (H) and adding a semicolon in each place.

f. Removing the language '', and'' and adding a semicolon in its place in newly designated paragraph (b)(2)(ii)(I).

5. Removing the concluding text immediately following paragraph (b)(2)(iv)(C).

6. Revising paragraph (b)(2)(v).

7. Removing the language ''statement'' and adding the language ''withholding certificate'' in each place in paragraph (b)(2)(i).

8. Removing the language ''Director of the Foreign Operations District'' in paragraphs (b)(2)(i) fourth sentence, (b)(2)(iii) fourth and fifth sentences, and (b)(3) first sentence, and adding the language ''Assistant Commissioner (International)'' in each place.

9. Adding paragraph (b)(6).

10. Revising paragraphs (c), (d), (e), (f), and (g) .

11. Removing paragraphs (h) and (i).

12. Removing the OMB parenthetical and the authority citation at the end of the section.

The revisions and additions read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

(a) *Certain income connected with a U.S. trade or business*—(1) *In general.* No withholding is required under section 1441 on income otherwise subject to withholding if the income is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the taxable year. For purposes of this paragraph (a), an amount is not deemed to be includible in gross income if the amount is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States and the beneficial owner claims an exemption from tax under an income tax treaty because the income is not attributable to a permanent establishment in the United States. To claim a reduced rate of withholding because the income is not attributable to a permanent establishment, see § 1.1441–6(b)(1). This paragraph (a) does not apply to income of a foreign corporation to which section 543(a)(7) applies for the taxable year or to compensation for personal services performed by an individual. See paragraph (b) of this section for compensation for personal services performed by an individual.

(2) *Withholding agent's reliance on a claim of effectively connected income*—(i) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim of exemption based upon paragraph (a)(1) of this section if, prior to the payment to the foreign person, the withholding agent can reliably associate the payment with a Form W–8 upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii). For purposes of this paragraph (a), a withholding certificate is valid only if, in addition to other applicable requirements, it includes the taxpayer identifying number of the person whose name is on the Form W–8 and represents, under penalties of perjury, that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the United States. In the absence of a reliable claim that the income is effectively connected with the conduct of a trade or business in the United States, the income is presumed not to be effectively connected, except as otherwise provided in paragraph (a)(2)(ii) or (3) of this section. See § 1.1441–1(e)(4)(ii)(C) for the period of validity applicable to a certificate provided under this section and § 1.1441–1(e)(4)(ii)(D) for changes in circumstances arising during the taxable year indicating that the income to which the certificate relates is not, or is no longer expected to be, effectively connected with the conduct of a trade or business within the United States. A withholding certificate shall be effective only for the item or items of income specified therein. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(ii) *Special rules for U.S. branches of foreign persons*—(A) *U.S. branches of certain foreign banks or foreign insurance companies.* A payment to a U.S. branch described in § 1.1441–1(b)(2)(iv)(A) is presumed to be effectively connected with the conduct of a trade or business in the United States without the need to furnish a certificate, unless the U.S. branch provides a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) that represents otherwise. If no certificate is furnished but the income is not, in fact, effectively connected income, then the branch must withhold whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity. See § 1.1441–1(b) (2)(iv) and (6) for general rules applicable to payments to U.S. branches of foreign persons.

(B) *Other U.S. branches.* See § 1.1441–1(b)(2)(iv)(E) for similar procedures for other U.S. branches to the extent provided in a determination letter from the district director or the Assistant Commissioner (International).

(3) *Income on notional principal contracts*—(i) *General rule.* A withholding agent that pays amounts attributable to a notional principal contract described in § 1.863–7(a) or 1.988–2(e) shall have no obligation to

withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under § 1.1461–1(b) and (c) reporting the income that it must treat as paid to a foreign person and as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must so treat the income unless it can reliably associate the payment with a withholding certificate upon which it can rely to treat the payment as an amount that is not effectively connected. Income on a notional principal contract does not include the amount characterized as interest under the provisions of § 1.446–3(g)(4).

(ii) *Exception for certain payments.* A payment to a foreign financial institution (within the meaning of § 1.165–12(c)(1)(iv)) shall not be treated as effectively connected with the conduct of a trade or business within the United States for purposes of paragraph (a)(3)(i) of this section even if no withholding certificate is furnished if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example an International Swaps and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a U.S. person or a non-U.S. branch of a foreign person.

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

(i) Such compensation is subject to withholding under section 3402 (relating to withholding on wages) and the regulations under that section;

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (not including paragraph (a)(6) of that section) and the regulations under that section. This paragraph (b)(1)(ii) does not apply to payments to a nonresident alien individual from any trust described in section 401(a), any annuity plan described in section 403(a), or any annuity, custodial account, or retirement income account described in section 403(b). Instead, these payments are subject to withholding under this section to the extent they are exempted from the definition of wages under section 3401(a)(12) or to the extent they are from an annuity, custodial account, or retirement income account described in section 403(b). Thus, for example, payments to a nonresident alien individual from a trust described in section 401(a) are subject to withholding under section 1441 and not under section 3405 or 3406;

* * * * *

(vi) Compensation that is exempt from withholding under section 3402 by reason of section 3402(e), provided that the employee and his employer enter into an agreement under section 3402(p) to provide for the withholding of income tax upon payments of amounts described in § 31.3401(a)–3(b)(1) of this chapter. An employee who desires to enter into such an agreement should furnish his employer with Form W–4 (withholding exemption certificate) (or such other form as the Internal Revenue Service (IRS) may prescribe). See section 3402(f) and the regulations thereunder and § 31.3402(p)-1 of this chapter.

(2) * * * (i) * * * The withholding agent may rely on an accepted withholding certificate only if the IRS has not objected to the certificate. For purposes of this paragraph (b)(2)(i), the IRS will be considered to have not objected to the certificate if it has not notified the withholding agent within a 10-day period beginning from the date that the withholding certificate is forwarded to the IRS pursuant to paragraph (b)(2)(v) of this section. After expiration of the 10-day period, the withholding agent may rely on the withholding certificate retroactive to the date of the first payment covered by the certificate. The fact that the IRS does not object to the withholding certificate within the 10-day period provided in this paragraph (b)(2)(i) shall not preclude the IRS from examining the withholding agent at a later date in light of facts that the withholding agent knew or had reason to know regarding the payment and eligibility for a reduced rate and that were not disclosed to the IRS as part of the 10-day review process.

(ii) *Withholding certificate claiming withholding exemption.* The statement claiming an exemption from withholding shall be made on Form 8233 (or an acceptable substitute or such other form as the IRS may prescribe). Form 8233 shall be dated, signed by the beneficial owner under penalties of perjury, and contain the following information—

(A) The individual's name, permanent residence address, taxpayer identifying number (or a copy of a completed Form W–7 or SS–5 showing that a number has been applied for), and the U.S. visa number, if any;

(B) The individual's current immigration status and visa type;

(C) The individual's original date of entry into the United States;

* * * * *

(K) Any other information as may be required by the form or accompanying instructions in addition to, or in lieu of, the information described in this paragraph (b)(2)(ii).

* * * * *

(v) *Copies of Form 8233.* The withholding agent shall forward one copy of each Form 8233 that is accepted under paragraph (b)(2)(iv) of this section to the Assistant Commissioner (International), within five days of such acceptance. The withholding agent shall retain a copy of Form 8233.

* * * * *

(6) *Personal exemption*—(i) *In general.* To determine the tax to be withheld at source under § 1.1441–1 from remuneration paid for personal services performed within the United States by a nonresident alien individual and from scholarship and fellowship income described in paragraph (c) of this section, a withholding agent may take into account one personal exemption pursuant to sections 873(b)(3) and 151 regardless of whether the income is effectively connected. For purposes of withholding under section 1441 on remuneration for personal services, the exemption must be prorated upon a daily basis for the period during which the personal services are performed within the United States by the nonresident alien individual by dividing by 365 the number of days in the period during which the individual is present in the United States for the purpose of performing the services and multiplying the result by the amount of the personal exemption in effect for the taxable year. See § 31.3402(f)(6)–1 of this chapter.

(ii) *Multiple exemptions.* More than one personal exemption may be claimed in the case of a resident of a contiguous country or a national of the United States under section 873(b)(3). In addition, residents of a country with which the United States has an income tax treaty in effect may be eligible to claim more than one personal exemption if the treaty so provides. Claims for more than one personal exemption shall be made on the withholding certificate furnished to the withholding agent. The exemption must be prorated on a daily basis in the same manner as described in paragraph (b)(6)(i) of this section.

(iii) *Special rule where both certain scholarship and compensation income are received.* The fact that both non-compensatory scholarship income and compensation income (including

compensatory scholarship income) are received during the taxable year does not entitle the taxpayer to claim more than one personal exemption amount (or more than the additional amounts permitted under paragraph (b)(6)(ii) of this section). Thus, if a nonresident alien student receives non-compensatory taxable scholarship income from one withholding agent and compensation income from another withholding agent, no more than the total personal exemption amount permitted under the Internal Revenue Code or under an income tax treaty may be taken into account by both withholding agents. For this purpose, the withholding agent may rely on a representation from the beneficial owner that the exemption amount claimed does not exceed the amount permissible under this section.

(c) *Special rules for scholarship and fellowship income*—(1) *In general.* Under section 871(c), certain amounts paid as a scholarship or fellowship for study, training, or research in the United States to a nonresident alien individual temporarily present in the United States as a nonimmigrant under section 101(a)(15) (F), (J), (M), or (Q) of the Immigration and Nationality Act are treated as income effectively connected with the conduct of a trade or business within the United States. The amounts described in the preceding sentence are those amounts that do not represent compensation for services. Such amounts (as described in the second sentence of section 1441(b)) are subject to withholding under section 1441, but at the lower rate of 14 percent. That rate may be reduced under the provisions of an income tax treaty. Claims of a reduced rate under an income tax treaty shall be made under the procedures described in § 1.1441–6(b)(1). Therefore, claims for reduction in withholding under an income tax treaty on amounts described in this paragraph (c)(1) may not be made on a Form 8233. However, if the payee is receiving both compensation for personal services (including compensatory scholarship income) and non-compensatory scholarship income described in this paragraph (c)(1) from the same withholding agent, claims for reduction of withholding on both types of income may be made on Form 8233.

(2) *Alternate withholding election.* A withholding agent may elect to withhold on the amounts described in paragraph (c)(1) of this section at the rates applicable under section 3402, as if the income were wages. Such election shall be made by obtaining a Form W–4 (or an acceptable substitute or such other form as the IRS may prescribe) from the beneficial owner. The fact that the withholding agent asks the beneficial owner to furnish a Form W–4 for such fellowship or scholarship income or to take such income into account in preparing such Form W–4 shall serve as notice to the beneficial owner that the income is being treated as wages for purposes of withholding tax under section 1441.

(d) *Annuities received under qualified plans.* Withholding is not required under section § 1.1441–1 in the case of any amount received as an annuity if the amount is exempt from tax under section 871(f) and the regulations under that section. The withholding agent may exempt the payment from withholding if, prior to payment, it can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner in accordance with § 1.1441–1(e)(1)(ii). A beneficial owner withholding certificate furnished for purposes of claiming the benefits of the exemption under this paragraph (d) is valid only if, in addition to other applicable requirements, it contains a taxpayer identifying number.

(e) *Per diem of certain alien trainees.* Withholding is not required under section 1441(a) and § 1.1441–1 on per diem amounts paid for subsistence by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended (22 U.S.C. chapter 24). This rule shall apply even though such amounts are subject to tax under section 871. Any exemption from withholding pursuant to this paragraph (e) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6041 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(f) *Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or does not act in accordance with applicable presumptions described in paragraph (a) (2)(i), (2)(ii), or (3) of this section.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* A withholding agent that on December 31, 1998, holds a Form 4224 or 8233 that is a valid certificate as determined under the regulations in effect prior to January 1, 1999 (see CFR part 1 revised, April 1, 1997), may treat the certificate as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

§ 1.1441–4T [Removed]

Par. 10. Section 1.1441–4T is removed.

Par. 11. Sections 1.1441–5 and 1.1441–6 are revised to read as follows:

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

(a) *Rules of withholding applicable to payments to partnerships.* This paragraph (a) describes the determinations that a withholding agent must make when making a payment to a person that may be a partnership (as defined in § 1.1441–1(c)(6)(ii)(C)). Such determinations are made in order to determine a withholding agent's obligations under chapters 3 and 61 of the Internal Revenue Code (Code) and sections 3402, 3405, and 3406 (and applicable regulations under those provisions) to withhold and report payments of amounts subject to withholding under chapter 3 of the Code and the regulations thereunder. The reliance provisions stated in this paragraph (a) are subject to the presumptions described in § 1.1441–1(b)(3) and paragraph (d) of this section, including § 1.1441–1(b)(3)(ix) regarding

the withholding agent's actual knowledge or reason to know that the presumptions are not correct. For similar presumptions for reporting and withholding on amounts not subject to withholding under chapter 3 of the Code (e.g., foreign source income, broker proceeds) that may be paid to a foreign partnership, see § 1.6049–5(d)(2) through (5).

(1) The withholding agent must determine whether the payee is a U.S. or a foreign person. For this purpose, the withholding agent may treat the payee as U.S. or foreign if it can reliably associate the payment with a Form W–9 described in § 1.1441–1(d) or a Form W–8 described in § 1.1441–1(e)(2)(i) or (3)(i). In the absence of documentation, see § 1.1441–1(b)(3) and paragraph (d) of this section for applicable presumptions of foreign or U.S. status and other relevant characteristics.

(2) If the payee is determined to be a foreign person, the withholding agent must determine whether the foreign payee is acting for its own account or for the account of others (i.e., as an intermediary, as defined in § 1.1441–1(e)(3)(i)). The withholding agent may treat the payee as a foreign intermediary if it can reliably associate the payment with a Form W–8 described in § 1.1441–1(e)(3)(ii), (iii), or (v), within the meaning of § 1.1441-1(b)(3)(v)(A).

(3) If the foreign payee is determined to act as an intermediary described in § 1.1441–1(e)(3)(i), the withholding agent must determine whether or not the payee is a qualified intermediary. The withholding agent may treat the payee as a qualified intermediary only if it can reliably associate the payment with a Form W–8 described in § 1.1441–1(e)(3)(ii). A foreign payee that is treated as an intermediary with respect to a payment is subject to the provisions applicable to intermediaries in § 1.1441–1(e)(3) or (5). In such a case, the provisions of paragraph (c) of this section do not apply to the payment.

(4) If the foreign payee is determined to act for its own account (or is so presumed), the withholding agent must determine the status of the payee as a partnership. The withholding agent may treat the payee as a domestic or as a foreign partnership if it can reliably associate the payment with a Form W–9 furnished in accordance with § 1.1441–1(d)(2) or (4) (for a domestic partnership) or a Form W–8 described in paragraph (c)(2)(iv) or (3)(iii) of this section (for a foreign partnership). See § 1.1441–1(e)(4)(viii) for reliance on the payee's representations on a Form W–8. In the absence of documentation, see § 1.1441–1(b)(3)(ii) and paragraph (d)(2) of this section for applicable presumptions of status.

(5) If the foreign payee is determined to be a foreign partnership and the withholding agent has determined (or presumes) that the partnership is acting for the account of its partners, then the withholding agent must determine whether the payment represents income effectively connected with the partnership's conduct of a U.S. trade or business. The withholding agent may treat the payment as effectively connected if it can reliably associate the payment with a Form W–8 described in paragraph (c)(3)(iii) of this section representing that the income is effectively connected or if it so presumes in accordance with the provisions in § 1.1441–4(a)(2)(ii) or (3). In the absence of documentation, the payment is generally presumed to be non-effectively connected. See § 1.1441–4(a)(2)(i). See §§ 1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(6) If the withholding agent cannot reliably treat the payment as effectively connected income nor presume that it is so connected, then the withholding agent must determine whether the partnership is a withholding foreign partnership described in paragraph (c)(2)(i) of this section. The withholding agent may treat the foreign partnership as a withholding partnership if it can reliably associate the payment with a Form W–8 described in paragraph (c)(2)(iv) of this section. In the absence of a reliable Form W–8, the foreign partnership is presumed to be a non-withholding foreign partnership described in paragraph (c)(3)(i) of this section. In such a case, under paragraph (c)(1)(i) of this section, the withholding agent must treat the partners, rather than the partnership, as payees. See paragraph (d) of this section for determining the status of the partners as U.S. or foreign persons in the absence of documentation. See § 1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(7) If the withholding agent determines that the payee is a U.S. partnership, or so presumes in accordance with paragraph (d)(2) of this section in the absence of documentation, the withholding agent is not required to withhold under paragraph (b)(1) of this section because the partnership is treated as a U.S. payee. See paragraph (b)(2) of this section for withholding requirements applicable to a domestic partnership with foreign partners. See §§ 1.1461–1(c)(2)(ii)(A), 1.6031–1 and 1.6031(b)–1T for reporting requirements applicable to the withholding agent and to the partnership.

(8) In order to determine whether to rely on a claim for a reduced rate under a tax treaty by a person that the withholding agent treats as a partnership or as a partner in a partnership, the withholding agent must apply the provisions of § 1.894–1T(d). For applicable procedures regarding reliance by a withholding agent on a claim for benefits under a tax treaty in such a situation, see § 1.1441–6(b)(4).

(b) *Domestic partnerships*—(1) *Exemption from withholding on payment to domestic partnerships.* A payment to a person that the withholding agent may treat as a domestic partnership is treated as a payment to a U.S. payee. Therefore, a payment to a domestic partnership is not subject to withholding under section 1441 even though it may have partners that are foreign persons. A withholding agent may treat the person to whom the payment is made as a domestic partnership if it can reliably associate the payment with a Form W–9 furnished by the partnership in accordance with the procedures under § 1.1441–1(d)(2) or (4) or based upon the presumptions described in paragraph (d)(2) of this section.

(2) *Withholding by a domestic partnership*—(i) *In general.* A domestic partnership is required to withhold under § 1.1441–1 as a withholding agent on the gross amount of items of income subject to withholding that are includible in the distributive share of income of a partner that is a foreign person. Pursuant to the authority provided under section 702(a), each partner shall take into account separately its distributive share of amounts subject to withholding, and thus the partnership, pursuant to section 703(a)(1), shall separately state these amounts when computing its taxable income. A partnership shall withhold when any distributions that include amounts subject to withholding are made or when guaranteed payments are made. To the extent a foreign partner's distributive share of an amount subject to withholding has not been actually distributed, the partnership is required to withhold on the partner's distributive share of that amount on the earlier of the date that the statement required under section 6031(b) and § 1.6031(b)–1T to be provided to that partner is mailed or otherwise furnished to the partner or the due date for furnishing that statement as provided under § 1.6031(b)–1T. If a

partnership withholds on a distributive share before the amount is actually distributed to the partner, then withholding is not required when the amount is subsequently distributed. Withholding on items of income that are effectively connected income in the hands of the partners who are foreign persons is governed by section 1446 and not by this section. In such a case, partners in a domestic partnership are not required to furnish a withholding certificate in order to claim an exemption from withholding under section 1441(c)(1) and § 1.1441–4.

(ii) *Determination by the domestic partnership of the partners' status.* For purposes of determining whether the partners or some other persons are the payees of the partners' distributive shares of any payment made to the partnership and the status of the partners, the partnership shall apply the rules of § 1.1441–1(b) (2) and (3), and of paragraphs (c)(1) and (d) of this section (in the case of a partner that is a foreign partnership) and of paragraph (e) of this section (in the case of a partner that is a foreign estate or a foreign trust) in the same manner as if the partnership were making a payment directly to the partners other than in their capacity as partners.

(iii) *Reliance on a partner's claim for reduced withholding.* Absent actual knowledge or reason to know otherwise, a domestic partnership may rely on a claim for reduced withholding under chapter 3 of the Code by a partner, if prior to the time the partnership is required to withhold, the partnership can reliably associate the partner's distributive share of the partnership items with documentation upon which it may rely to treat the partner or another person as a U.S. person under § 1.1441–1(d) (2) or (3), as a U.S. beneficial owner under § 1.1441–1(d)(4), or as a foreign beneficial owner under § 1.1441–1(e)(1)(ii).

(iv) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see § 1.1441–1(b)(2)(vii).

(v) *Coordination with chapter 61 of the Internal Revenue Code and section 3406.* A domestic partnership is not a payor for purposes of chapter 61 of the Code or section 3406 with respect to payments to its partners in their capacity as partners. Thus, it is not required to make an information return on Form 1099 nor to backup withhold with respect to its partners' distributive share of partnership items. However, it must file returns under section 6031. Such returns are in lieu of making returns under § 1.1461–1 (b) and (c). See § 1.1461–1(c)(2)(ii)(A).

(c) *Foreign partnerships*—(1) *Determination of payee*—(i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, a payment to a person that the withholding agent may treat as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section is treated as a payment to the partners (looking through partners that are foreign flow-through entities) as follows—

(A) If the withholding agent can reliably associate the partner's distributive share of the payment with a Form W–9, a Form W–8, or other appropriate documentation upon which it can rely to treat the payment as made to a U.S. or foreign beneficial owner under § 1.1441–1 (d)(4) or (e)(1)(ii), then the beneficial owner so identified is treated as the payee;

(B) If the withholding agent can reliably associate the partner's distributive share with an intermediary certificate described in § 1.1441–1(e)(3)(ii), (iii), or (v), then the rules of § 1.1441–1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary;

(C) If the withholding agent can reliably associate the partner's distributive share with a partnership certificate described in paragraph (c)(2)(iv) or (3)(iii) of this section, then the rules of paragraph (c)(1) (i) or (ii) of this section shall apply to determine whether the payment is treated as made to the partners of the higher-tier partnership under this paragraph (c)(1)(i) or to the higher tier partnership (under the rules of paragraph (c)(1)(ii) of this section), in the same manner as if the partner's distributive share of the payment had been paid directly to such foreign partnership;

(D) If the withholding agent can reliably associate the partner's distributive share with a withholding certificate described in § 1.1441–1(e)(3)(i) regarding a foreign trust or estate, then the rules of paragraph (e) of this section shall apply to determine who the payees are; and

(E) If the withholding agent cannot reliably associate the partner's distributive share with a withholding certificate or other appropriate documentation, the partners are considered to be the payees and the presumptions described in paragraph (d)(3) of this section shall apply to determine the status of the partners.

(ii) *Payments treated as made to the partnership.* A payment to a person that the withholding agent may treat as a foreign partnership in accordance with paragraph (c) (2)(i), (3)(i), or (d)(2) of this section is treated as a payment to the foreign partnership and not to its partners only if—

(A) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(2)(iv) of this section (dealing with a certificate from a person representing to be a withholding foreign partnership); or

(B) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section certifying that the payment is income that is effectively connected with the conduct of a trade or business in the United States.

(iii) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see § 1.1441–1(b)(2)(vii). In the absence of documentation, see § 1.1441–1(b)(3) and paragraph (d) of this section for applicable presumptions.

(iv) *Example.* The rules of paragraphs (c)(1) (i) and (ii) of this section are illustrated by the following example:

Example. (i) *Facts.* A foreign partnership, P, has two partners, a corporation, C, and a partnership, P1, both organized in country X. P1 has three partners, a foreign pension fund, a domestic partnership, P2, and a foreign partnership, P3, organized in country Y. P2's partners are foreign pension funds. P holds U.S. Treasury obligations in registered form, on which it receives interest from U.S. custodian, Z. P1 is not a withholding foreign partnership and it does not certify that the interest is effectively connected with the conduct of a U.S. trade or business. P3 is a withholding foreign partnership. P has furnished a valid withholding certificate described in paragraph (c)(3)(iii) of this section to which it has attached valid withholding certificates for C (beneficial owner Form W–8 described in § 1.1441–1(e)(2)(i)), P1, and P1's three partners (a Form W–9 for P2, a withholding certificate described in paragraph (c)(2)(iv) of this section for P3 and a beneficial owner Form W–8 described in § 1.1441–1(e)(2)(i) for the foreign pension fund). P has furnished appropriate information in accordance with paragraph (c)(3)(iv) of this section upon which the withholding agent can rely to determine which portion of the payment is associated with each withholding certificate.

(ii) *Analysis.* The payment to P is treated as a payment to its partners because none of the conditions described in paragraph (c)(1)(ii) exist under the facts to treat P as the payee (i.e., it is not a withholding foreign partnership and, although it has furnished a withholding certificate described under paragraph (c)(3)(iii) of this section, it is not claiming that the interest is effectively connected with the conduct of a U.S. trade

or business). Under paragraph (c)(1)(i)(A) of this section, C, as a partner of P, is treated as a payee because it is not a flow-through entity or an intermediary (based on the documentation furnished for C). Under paragraph (c)(1)(i)(C) of this section, P1 is not treated as a payee because it is a foreign partnership and none of the conditions described under paragraph (c)(1)(ii) of this section exist under the facts to treat P as the payee. Instead, P2 (under paragraph (c)(1)(i)(A) of this section), P3 (under paragraph (c)(1)(ii)(A) of this section), and the foreign pension fund that is a partner of P1 (under paragraph (c)(1)(i)(A) of this section), are treated as the payees of P1's distributive share of the payment to P. P2 is a payee because, although a flow-through entity, it is a domestic partnership (see paragraph (b)(1) of this section). P3 is treated as a payee under paragraph (c)(1)(ii)(A) of this section, irrespective of who its partners are, because it has furnished a valid withholding certificate as a withholding foreign partnership. The foreign pension fund is treated as a payee under paragraph (c)(1)(i)(A) of this section because it has furnished a beneficial owner Form W–8 described in § 1.1441–1(e)(2)(i).

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the Internal Revenue Service (IRS), as described in paragraph (c)(2)(ii) of this section. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapter 3 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it is not required to attach such documentation to the partnership withholding certificate.

(ii) *Withholding agreement*—(A) *In general.* A foreign partnership may claim withholding foreign partnership status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may issue. A withholding foreign partnership must file a partnership return under section 6031(a) to the extent required under the regulations under that section and furnish statements on Form K–1 to its partners under section 6031(b) to the extent required under the regulations under that section. See §§ 1.6031–1 and 1.6031(b)–1T. See § 1.1461–1(c)(2)(ii)(A) for an exemption from filing Forms 1042 and 1042–S. A foreign withholding partnership that wishes to also be a qualified intermediary under § 1.1441–1(e)(5) for payments it receives for persons other than its partners may combine both agreements into one single agreement.

(B) *Terms of withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under such withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Code, and section 3406, and the regulations under those provisions, and other withholding provisions of the Code, except to the extent provided under the agreement. In particular, the agreement must include provisions for reporting of information on Form 1065 and furnishing K–1 statements to the partners in the manner required under section 6031 and the regulations under that section. Under the agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures apply to the foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts on behalf of its customers. In addition, the agreement must specify the manner in which the IRS will audit the foreign partnership's books and records in order to verify the accuracy of the Forms 1065 filed by the partnership and K–1 statements furnished to the partners as required under section 6031 and the regulations under that section. The agreement shall also specify the assets that the foreign partnership has in the United States or alternative means of collection, if necessary.

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility for all payments that are made to it and, therefore, is not required to provide information to the withholding agent regarding each partner's distributive share of the payment (see paragraph (c)(3)(iv) of this section for the requirement to provide distributive share information to the withholding agent in the case of other foreign partnerships). The partnership shall be a withholding agent with respect to each of its partner's distributive share of income subject to withholding that is paid to the partnership. Therefore, the withholding agent is not required to withhold any amount under chapter 3 of the Code on a payment to a foreign partnership that has furnished a withholding certificate representing that it is a withholding foreign partnership, unless it has actual knowledge or reason to know that the certificate is incorrect. The foreign partnership shall withhold the payments under the same procedures and at the same time as is prescribed for withholding by a domestic partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4)(iv) of this section shall apply and paragraph (b)(2)(ii) of this section shall not apply.

(iv) *Withholding certificate from a withholding foreign partnership.* The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(2)(iv). A withholding certificate furnished by a withholding foreign partnership is valid with regard to any partner on whose behalf the certificate is furnished only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (c)(2)(iv) as follows—

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed;

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section; and

(C) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(2)(iv).

(3) *Other foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(3)(iii) of this section may treat the person to whom it makes the payment as a foreign partnership that is not a withholding foreign partnership. Such reliance is permitted for purposes of withholding under chapter 3 of the Code, information reporting under chapter 61 of the Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. For purposes of this paragraph (c)(3)(i), a payment that the withholding agent can reliably associate with a withholding certificate described in paragraph (c)(3)(iii) of this section that would be valid except for the fact that some or all of the withholding certificates or other appropriate documentation required to be attached are lacking or are unreliable, or that information for allocating the payment among the partners is lacking or is unreliable, shall nevertheless be treated as a payment to a foreign partnership.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign partnership that is not a withholding foreign partnership. To the extent that a withholding agent treats a payment to a foreign partnership as a payment to its partners in accordance with paragraph (c)(1) of this section, it may rely on a claim for reduced withholding by a partner if, prior to the payment, the withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section pertaining to the partner unless the withholding agent has actual knowledge or reason to know that the withholding certificate is unreliable. The certificate will be considered to pertain to the partner if the appropriate withholding certificate for the partner is attached to the partnership's withholding certificate. An appropriate withholding certificate for a partner includes a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or, if applicable, documentary evidence described in § 1.1441–6(b)(2)(i) or in § 1.6049–5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), the applicable certificates described in § 1.1441–1(d)(2) or (3) (for a partner claiming to be a U.S. payee), an intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii), a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v), or a partnership withholding certificate described in paragraph (c)(2)(iv) or (3)(iii) of this section. Except where the partnership certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of the partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single partnership withholding certificate to which the partners' certificates are attached. Where the partnership certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, the claim may be presented without having to identify the partner's distributive share of the payment if the certificate contains the certification described in paragraph (c)(3)(iii)(E) of this section.

(iii) *Withholding certificate from a foreign partnership that is not a withholding foreign partnership.* A withholding certificate furnished by a foreign partnership that is not a withholding foreign partnership is valid only if it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, it contains the information, statement, and certifications described in this paragraph (c)(3)(iii), and the withholding certificates or other appropriate documentation for all of the partners are attached (except that certificates for partners are not required to be attached for a certificate furnished solely for income claimed to be effectively connected with the conduct of a trade or business in the United States, regardless of any partner's status as a U.S. person). The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(3)(iii). The information, statement, and certifications required on the withholding certificate are as follows:

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed.

(B) A representation that the person whose name is on the certificate is a foreign partnership.

(C) A statement attached to the certificate that provides such information as may be required by the form and accompanying instructions, including sufficient information to the withholding agent to determine the amount required to be withheld from amounts paid to the partnership, such as each partner's distributive share of amounts to which the certificate relates, prepared in the manner described in paragraph (c)(3)(iv) of this section. No statement is required for a certificate furnished for income claimed to be effectively connected with the conduct of a trade or business in the United States.

(D) If the withholding certificates are required to be attached to the partnership's withholding certificate, a statement either that the attached withholding certificates represent all of the partners or that the partners for whom withholding certificates are lacking are separately identified in the statement required under paragraph (c)(3)(iv) of this section.

(E) A certification that the income is effectively connected with the conduct of a trade or business in the United States, if applicable.

(F) Any other information or certification as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(3)(iii).

(iv) *Information to the withholding agent regarding each partner's distributive share.* The partnership must furnish information sufficient for the withholding agent to determine each partner's distributive share of reportable amounts (described in § 1.1441–1(e)(3)(vi)). The sum of all partners' distributive shares, expressed as a percentage, must equal, but not exceed one hundred percent. For purposes of this paragraph (c)(3)(iv), the rules of § 1.1441–1(e)(3)(iv) regarding the information to furnish to the withholding agent shall apply.

(v) *Withholding by a foreign partnership.* A foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding under chapter 3 of the Code shall be deemed to have satisfied any obligation under such chapter to withhold on the amount with respect to any partner to the extent that the partner's distributive share of the payment can be reliably associated with a withholding certificate described in paragraph (c)(3)(iii) of this section pertaining to the partner that the

partnership has furnished to a withholding agent and the partnership does not know and has no reason to know that the correct amount has not been withheld under chapter 3 of the Code and the regulations under such chapter.

(d) *Presumptions regarding payee's status in the absence of documentation*—(1) *In general.* This paragraph (d) contains the applicable presumptions for determining the status of the partnership and its partners in the absence of documentation. The provisions of § 1.1441–1(b)(3)(iv) (regarding the 90-day grace period) and § 1.1441–1(b)(3) (vii) through (ix) shall apply for purposes of this paragraph (d).

(2) *Determination of partnership status as domestic or foreign in the absence of documentation.* In the absence of a valid representation of domestic partnership status in accordance with paragraph (b)(1) of this section and of foreign partnership status in accordance with paragraph (c)(2)(i) or (3)(i) of this section, the withholding agent shall determine the status of the payee as a corporation, a partnership or otherwise, based upon the presumptions set forth in § 1.1441–1(b)(3)(ii). If, based upon these presumptions, the withholding agent treats the payee as a partnership, the partnership shall be presumed to be a foreign partnership if the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits ''98,'' if the withholding agent's communications with the payee are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in § 1.6049–5(e)). For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441–1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If the withholding agent treats the payee as a foreign partnership in accordance with paragraph (c)(2)(i), (3)(i), or (d)(2) of this section, the presumptions described in this paragraph (d)(3) shall apply when the withholding agent cannot reliably associate a payment with partner documentation. The provisions of paragraphs (d) (3)(i), (ii), and (iii) of this section are not relevant to a payment that a withholding agent can reliably associate with a withholding certificate described in paragraph (c)(2)(iv) of this section.

(i) *Documentation regarding the status of a partner is lacking or unreliable.* Any portion of a payment that the withholding agent cannot reliably associate with a partner because a withholding certificate or other appropriate documentation for that partner is lacking or unreliable is presumed to be made to foreign payee. Therefore, under § 1.1441–1(b)(1), the withholding agent must withhold 30 percent from payments to the partnership of amounts subject to withholding that are allocable to such partner or group of partners.

(ii) *Information regarding the allocation of payment is lacking or unreliable.* If a withholding agent can reliably associate a payment with a group of partners but lacks reliable information to determine how much of the payment is allocable to each partner in the group, the payment, to the extent it cannot reliably be allocated, is presumed to be allocable entirely to the partner in the group with the highest applicable withholding rate or, if the rates are equal, to the partner in the group with the highest U.S. tax liability, as the withholding agent shall estimate, based on its knowledge and available information. If a withholding certificate attached to the partnership certificate is another partnership certificate or an intermediary certificate described in § 1.1441–1(e)(3)(iii), the rules of this paragraph (d)(3)(ii) apply by treating the share of the payment allocable to the other partnership or the intermediary certificate as if the payment were made directly to the foreign partnership or intermediary.

(iii) *Certification that the foreign partnership has furnished documentation for all of the persons to whom the intermediary certificate relates is lacking or unreliable.* If the certification required under paragraph (c)(3)(iii)(D) of this section (that the attached withholding certificates and other appropriate documentation represent all of the partners in the partnership) is lacking or is unreliable and, as a result, the withholding agent cannot reliably determine how much of the payment is allocable to each of the partners or group of partners for which the withholding agent holds a withholding certificate or other appropriate documentation, then none of the payment can reliably be associated with any one partner and the entire payment is presumed to be made to a foreign payee.

(iv) *Determination by a withholding foreign partnership of the status of its partners.* For purposes of determining whether the partners or some other persons are the payees of the partners' distributive shares of any payment made to a withholding foreign partnership, the partnership shall apply the rules of § 1.1441–1(b)(2), and of paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership) and of paragraph (e) (in the case of a partner that is a foreign estate or a foreign trust), in the same manner as if the partnership were making a payment directly to the partners other than in their capacity as partners. Further, the provisions of paragraphs (d)(3) (i), (ii), and (iii) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on the amount, it cannot reliably associate the amount with documentation for any one or more of its partners. See §§ 1.6031–1 and 1.6031–1T for reporting and filing requirements applicable to a withholding foreign partnership.

(4) Examples. The rules of this paragraph (d) may be illustrated by the following examples:

Example 1. (i) *Facts.* FP is a foreign partnership receiving U.S. source interest that would qualify as portfolio interest described in section 871(h)(2)(B) if the statement described in section 871(h)(5) were furnished. FP has three partners, A, B, and C. FP furnishes to the withholding agent a partnership withholding certificate described in paragraph (c)(3)(iii) of this section to which it attaches a Form W–9 for A and a beneficial owner Form W–8 for B. Nothing on A's Form W–9 indicates that A is an exempt recipient within the meaning of § 1.6049–4(c)(1)(i). No documentation is attached for C. The partnership has one single account with the withholding agent. It furnishes a statement to the withholding agent under paragraph (c)(3)(iv) of this section indicating that A's, B's, and C's respective distributive shares of the payments are 40%, 40%, and 20% and represents, in accordance with paragraph (c)(3)(iii)(D) of this section, that there are only three partners.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely on FP's withholding certificate and A's Form W–9 to treat A as a U.S. beneficial owner under § 1.1441–1(d)(4)(i) and as a U.S. payee under paragraph (c)(1)(i)(A) of this section to the extent of 40 percent of the payment. Under § 1.1441–1(b)(1), the withholding agent is not required to withhold on A's share of the payment. Under § 1.6049–4(a), the withholding agent must comply with information reporting obligations (i.e., file a Form 1099) with respect to A who is treated as a U.S. payee under paragraph (c)(1)(i)(A) of this section and § 1.6049–5(d)(1) for purposes of the information reporting provisions of chapter 61 of the Code and the regulations thereunder. Absent actual knowledge or reason to know otherwise, the withholding agent may also rely on FP's withholding certificate and B's Form W–8 to treat B as a foreign beneficial owner under § 1.1441–1(e)(1)(ii)(A)(1) and paragraph (c)(1)(i)(A) of this section. Thus, under § 1.1441–1(b)(1), the withholding agent may rely on B's claim for portfolio interest

treatment for B's share of the payment. Under § 1.1461–1(b)(1) and (c)(1), the withholding agent must report the payment to B on Forms 1042 and 1042–S unless, under section 6031 and the regulations under that section, the partnership is required to file a return. Because the withholding agent cannot associate the documentation (as defined in § 1.1441–1(b)(3)(vii)) for C's share of the interest income, the withholding agent must, under paragraph (d)(3)(i) of this section, treat that amount as a payment made to an unidentified foreign partner and withhold 30 percent under section 1441 in accordance with § 1.1441–1(b)(1).

Example 2. The facts are the same as in *Example 1*, but the partnership has furnished no information under paragraph (c)(3)(iv) of this section regarding how much of the payment to the foreign partnership is attributable to A and C. Under paragraph (d)(3)(ii) of this section, the payment allocable to group A–C is presumed made entirely to A or to C, depending of who of A or C is subject to the highest withholding rate. A is not subject to withholding because it has furnished a valid Form W–9. C is subject to a 30-percent withholding rate under § 1.1441–1(b)(1) because it is presumed to be an unidentified foreign partner under paragraph (d)(3)(i) of this section. Therefore, under paragraph (d)(3)(ii) of this section, the portion of the payment that the withholding agent can associate with A and C is subject to withholding at a 30-percent rate. The withholding agent may ignore the fact that A has furnished a valid Form W–9 supporting his claim of exemption from withholding as a U.S. person because it has no reliable information on how much of the payment is allocable to A. Because the withholding agent has a Form W–9 for the U.S. individual partner, it must also report A's distributive share on a Form 1099. To the extent that A's exact share is not known, the entire amount should be reported on the Form 1099.

(e) *Trusts and estates.* [Reserved]

(f) *Failure to receive withholding certificate timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or fails to rely on the presumptions set forth in § 1.1441–1(b)(3) or in paragraph (d) or (e) of this section.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* A withholding agent that on December 31, 1998, holds a withholding certificate that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country.

See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also § 1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) (not including 1.1441–1(e)(1)(ii)(B) relating to documentary evidence). Except as otherwise provided in paragraph (b)(2) or (3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) is valid only if it includes the beneficial owner's taxpayer identifying number and certifies that the taxpayer has complied with the advance ruling requirements described in paragraph (e) of this section (if applicable), and, if the beneficial owner is a person related to the withholding agent within the meaning of section 482, that the beneficial owner will file the statement required under § 301.6114–1(d) of this chapter (if applicable). The requirement to file an information statement under section 6114 for income subject to withholding applies only to amounts received during the calendar year that, in the aggregate, exceed $500,000. See § 301.6114–1(d) of this chapter. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. A beneficial owner's taxpayer identifying number on a withholding certificate is valid for purposes of establishing proof of residence in a treaty country only if the taxpayer identifying number is certified by the IRS in accordance with the procedures set forth in paragraph (c) of this section. However, absent actual knowledge or reason to know otherwise, a withholding agent may rely on a taxpayer identifying number without having to inquire as to whether the taxpayer identifying number is certified, if the number appears correct on its face and the permanent residence address on the certificate is in the country whose tax treaty with the United States is invoked. See 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(2) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income*—(i) *General rule.* In the case of income described in paragraph (b)(2)(ii) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section even if the person whose name is on the certificate has not provided a taxpayer identifying number. In the case of payments made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore account (as defined in § 1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating

to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441–1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the certifications described in paragraphs (c)(5) (i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (b)(2)(i) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

(ii) *Income to which special rules apply.* The income to which paragraph (b)(2)(i) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were, upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a) and amounts paid with respect to loans of securities described in this paragraph (b)(2)(ii). For purposes of this paragraph (b)(2)(ii), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and § 1.1092(d)–1 when documentation is provided.

(3) *Competent authority agreements.* The procedures described in this section may be modified to the extent the U.S. competent authority may agree with the competent authority of a country with which the United States has an income tax treaty in effect.

(4) *Eligibility for reduced withholding under an income tax treaty in the case of a payment to a person other than an individual*—(i) *General rule.* The withholding imposed under section 1441, 1442, or 1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the payment, and all other applicable requirements for benefits under the treaty are satisfied. A payment received by an entity is treated as derived by a resident of an applicable treaty jurisdiction to the extent that the payment is subject to tax in the hands of a resident of that jurisdiction. For this purpose, a payment received directly by an entity that is treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of the jurisdiction to the extent that the interest holders in the entity are residents of the jurisdiction. For purposes of the preceding sentence, interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities by the applicable treaty jurisdiction. A payment received by an entity that is not treated as fiscally transparent by the applicable treaty jurisdiction shall be considered a payment subject to tax in the hands of a resident of such jurisdiction only if the entity is itself a resident of that jurisdiction. If the entity is a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single member is a foreign person, amounts paid to such entity may nevertheless be treated as derived by a resident of a treaty country if the entity is treated by the applicable treaty country as deriving the income as a resident of that country. The provisions of § 1.894–1T(d) (1) through (4) shall apply for purposes of determinations made under this paragraph (b)(4).

(ii) *Withholding certificates*—(A) *In general.* The type of withholding certificate or other appropriate documentation that must be furnished by a person claiming a reduced rate of withholding under an income tax treaty depends upon the status of the entity under the laws of the applicable treaty jurisdiction. For example, if the person receiving the payment is a foreign entity but the persons eligible for benefits under the applicable income tax treaty are the entity's interest holders in the foreign entity receiving the payment, rather than the entity itself, then the entity shall be treated as a foreign partnership for purposes of determining which withholding certificate is appropriate irrespective of the fact that the entity may be treated as a corporation for U.S. tax purposes. If, conversely, the person eligible for benefits under an income tax treaty is the entity rather than the interest holders, then the entity shall be treated as a corporation for purposes of determining which withholding certificate is appropriate irrespective of the fact that the entity may be treated as a partnership for U.S. tax purposes. In the event of a claim for dual treatment described in paragraph (b)(4)(iii) of this section, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (e.g., portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on the representations on the certificate that the beneficial owner derives the income and is a resident of the applicable treaty country, within the meaning of § 1.894–1T(d) and the applicable income tax treaty, without having to inquire into the truthfulness of these representations or to research foreign law.

(B) *Certification by qualified intermediary.* A foreign corporation that is a qualified intermediary described in § 1.1441–1(e)(5)(ii)(C) for purposes of claiming reduced rates of withholding under an income tax treaty for its shareholders (who are treated as deriving the income paid to the corporation as resident of an applicable treaty jurisdiction) may furnish a single Form W–8 for its shareholders for amounts for which it claims the benefit of a reduced rate of withholding under an applicable income tax treaty. The Form W–8 shall be one described under § 1.1441–1(e)(3)(ii).

(iii) *Multiple claims of treaty benefits.* A withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity for the same or for another portion of the payment. In the case of concurrent and inconsistent claims of treaty benefits for the same amount, the withholding agent may choose to reject the claim and request that a consistent claim be submitted or it may choose which reduction to apply. In the case of concurrent and consistent claims (e.g., the entity that is paid the amount claims a reduced rate for a portion of the payment and an interest holder claims a different reduced rate for the balance of the payment), the withholding agent may, at its option, accept such dual claim based, as appropriate, on withholding certificates furnished by such persons with respect to their respective shares of such payment, even

though the withholding agent holds different withholding certificates that requires it to treat the entity inconsistently with respect to different payments or with respect to different portions of the same payment. See paragraph (b)(4)(iv) *Example 2* of this section. If the withholding agent does not accept claims of reduced rate presented by any one or more of the interest holders, or by the entity, any interest holder or the entity may subsequently claim a refund or credit of any amount so withheld to the extent the holder's or entity's share of such withholding exceeds the amount of tax due under section 894 (in the case of a foreign person) or under section 1 or 11 (in the case of a U.S. person).

(iv) *Examples.* This paragraph (b)(4) is illustrated by the following examples:

Example 1. (i) *Facts.* Entity A is a business organization formed under the laws of country Y that has an income tax treaty with the United States. A receives U.S. source royalties from withholding agent R and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). A furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that A is a resident of country Y (within the meaning of the U.S.-Y tax treaty) and the beneficial owner of the royalties (within the meaning of the U.S.-Y tax treaty).

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the representation that A is a resident of country Y and a beneficial owner of the royalty income within the meaning of the U.S.-Y tax treaty.

Example 2. (i) *Facts.* The facts are the same as under *Example 1,* except that one of A's interest holders, T, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty is only reduced to 5 percent. T furnishes a beneficial owner withholding certificate to A that represents that T is deriving its distributive share of the royalty income paid to A as a resident of country Z (within the meaning of § 1.894–1T(d)(1) and the U.S.-Z tax treaty) and is the beneficial owner of the royalty income (within the meaning of the U.S.-Z tax treaty). A furnishes to R an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches T's beneficial owner withholding certificate for the portion of the payment that T claims as its distributive share of the royalty income. A also furnishes to R a beneficial owner withholding certificate for itself for the portion of the payment that T does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the documentation furnished by A in order to treat the royalty payment to a single foreign entity (A) as derived by different residents of tax treaty countries as a result of concurrent and consistent claims presented under different treaties. R may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that T claims to derive as a resident of country Z and a reduced rate of 5 percent under the U.S.-Y treaty for the balance. However, under paragraph (b)(4)(iii) of this section, R may, at its option, treat A as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

Example 3. (i) *Facts.* Entity A is a business organization formed under the laws of the United States and is classified as a partnership for U.S. tax purposes. A's partners are S and T. S is an entity organized in country Z. T is an entity organized in country X. Under the laws of country Z, A is treated as an entity taxable at the entity level. Therefore, S is treated as a shareholder for purposes of the laws of country Z and is not required to take A's income into account for purposes of determining its tax liability under those laws. Distributions from A are treated as distributions from a corporate entity for purposes of the tax laws of Country Z. Under the laws of country X, A is treated as a fiscally transparent entity and T is required to take into account its distributive share of A's income for purposes of determining its tax liability under those laws. A receives U.S. source royalties that are not connected with a trade or business. The United States has a tax treaty with countries Z and X under which the rate on royalties is reduced to zero. Both S and T furnish a beneficial owner certificate to A representing that they are resident of their respective countries and a beneficial owner of their respective distributive share of royalty income. A has actual knowledge of the tax treatment of S and T in their respective countries.

(ii) *Analysis.* Because A is a partnership for U.S. tax purposes, S and T are each taxable on their respective distributive share of the royalty income under section 881(a). However, under § 1.1441–5(b)(1), the payment of royalty to A is not a payment subject to withholding. Instead, under § 1.1441–5(b)(2), A must withhold on each partner's distributive share of U.S. source royalty income and may apply the rules of this section to determine the extent to which the 30-percent withholding rate under section 1442 should be reduced under the income tax treaties with countries Z and X. Because A has actual knowledge of the tax treatment of S in country Z as a shareholder of A and not as a partner (or owner of a fiscally transparent entity), A may not rely on the certificate furnished by S in order to reduce the rate of withholding under the U.S.-Z tax treaty. Therefore, it withholds 30 percent of S's distributive share of royalty income. A may rely on T's certificate to treat T as deriving its distributive share of A's royalty income as a resident of country X and as a beneficial owner. Therefore, A withholds on T's distributive share of royalty income at the reduced rate under the U.S.-X tax treaty.

Example 4. (i) *Facts.* Entity A is a business organization formed under the laws of country Y. A receives from withholding agent R U.S. source royalties and U.S. source interest income that is potentially eligible for the portfolio interest exemption under section 871(h) and 881(c). A's interest holders are S, an individual who resides in country Y, T, an individual who resides in country Z, and U, an individual resident in the United States. The United States has a tax treaty with both country Y and country Z. The U.S.-Y tax treaty reduces the rate on royalties to 5 percent, and the U.S.-Z tax treaty reduces the rate to zero. A is classified as a partnership under U.S. tax principles. Under the tax laws of country Y, A is treated as a fiscally transparent entity and S is required to include in income his distributive share of A's income. A furnishes to R an intermediary withholding certificate described in § 1.1441–5(c)(3)(iii) to which it attaches—

(A) A Form W–9 for U; and

(B) Beneficial owner withholding certificates for S and T that represent that S and T are foreign persons. For purposes of claiming the reduced rate under each applicable tax treaty, each of S's and T's certificates represents that S and T are deriving their distributive share of the royalty income as a resident of their respective countries (within the meaning of § 1.894–1T(d)(1) and of the applicable tax treaty) and as a beneficial owner (within the meaning of the applicable tax treaty).

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on the representations that S and T derive a distributive share of the royalty income as resident of their respective countries and are the beneficial owners of the income. Therefore, R may withhold on S's distributive share of the royalty income paid to A at the 5-percent rate under the U.S.–Y tax treaty. R may withhold on T's distributive share of the royalty income paid to A at the zero rate under the U.S.-Z tax treaty, even though A is not organized in, or a resident of, country Z. R may rely on U's Form W–9 to treat U as a U.S. person. Therefore, R does not withhold on U's share of the royalty payment. R also does not withhold on any portion of the interest paid to A because S and T have furnished beneficial owner certificates and U has furnished a Form W–9.

Example 5. (i) *Facts.* The facts are the same as in *Example 4,* except that A represents that it derives the royalty income it receives from R as a resident of country Y (within the meaning of § 1.894–1T(d)(1) and the U.S.-Y tax treaty) and as a beneficial owner of the income (within the meaning of the U.S.-Y tax treaty). Neither T nor S represent to derive the royalty income as resident of their respective country. A furnishes an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it attaches a Form W–9 for U and beneficial owner withholding certificates for S and T. No claims of reduced rate under a tax treaty are made on S's or T's certificates. A also furnishes to R its own beneficial withholding certificate in order to claim the reduced rate under the U.S.-Y tax treaty for the royalty income.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, R may rely on A's intermediary certificate and the certificates attached thereto in order to treat S and T as

foreign beneficial owners for purposes of treating the interest as portfolio interest and to treat U as a U.S. payee. Therefore, R does not withhold on the payment of interest to A. In addition, absent actual knowledge or reason to know otherwise, R may rely on A's beneficial owner certificate in order to reduce the rate of withholding on the royalty income under the U.S.-Y tax treaty.

(5) *Claim of benefits under an income tax treaty by a U.S. person.* In certain cases, a U.S. person may claim the benefit of an income tax treaty. For example, under certain treaties, a U.S. citizen residing in the treaty country may claim a reduced rate of U.S. tax on certain amounts representing a pension or an annuity from U.S. sources. Claims of treaty benefits by a U.S. person may be made by furnishing a Form W–9 to the withholding agent or such other form as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter).

(c) *Proof of tax residence in a treaty country and certification of entitlement to treaty benefits*—(1) *In general.* A beneficial owner establishes proof of its tax residence in a treaty country for purposes of its claim to the withholding agent that a reduced rate of tax applies under an income tax treaty by complying with the procedures described in this paragraph (c) or with such other procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). For purposes of this section, the residence of a beneficial owner must be determined in accordance with the provisions of the applicable U.S. income tax treaty as may be clarified by any applicable regulations thereunder, or technical explanations thereof, or other published guidance.

(2) *Certification of taxpayer identifying number*—(i) *In general.* A taxpayer may certify its taxpayer identifying number as required under paragraph (b)(1) of this section by having the number certified by the IRS either directly as provided under paragraph (c)(2)(ii) of this section or through a qualified intermediary as provided in paragraph (c)(2)(iii) of this section.

(ii) *IRS-certified TIN.* The IRS shall certify a taxpayer identifying number (TIN) upon a certificate of residence described in paragraph (c)(3) of this section to which it shall attach the certifications described in paragraphs (c)(5) (i) and (ii) of this section, if applicable. The taxpayer may provide documentary evidence described in paragraph (c)(4) of this section instead of a certificate of residence. However, a taxpayer (other than a person organized as a corporate body in the applicable treaty jurisdiction) may furnish documentary evidence instead of a certificate of residence only if a certificate of residence is not available to the taxpayer.

A certificate of residence is not available for purposes of this paragraph (c)(2)(ii) if the tax administration of the country where the taxpayer claims to be a resident does not have a procedure in effect by which such certificates are routinely issued or the taxpayer establishes that obtaining such certificate would require an unreasonable amount of time or costs relative to the taxpayer's circumstances (e.g., amount of investments in the United States). A person organized as a corporate body in the applicable treaty jurisdiction may, instead of a certificate of residence, furnish a certificate of incorporation, articles of incorporation, or other official document reflecting the taxpayer's status as a corporate body in that jurisdiction, regardless of whether a certificate of residence described in paragraph (c)(3) of this section is otherwise available. The certificate or documentary evidence must be furnished to the IRS by, or on behalf of, the beneficial owner upon application for the taxpayer identifying number or at any other time, as permitted under such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). If the tax residence of the beneficial owner changes, the beneficial owner shall notify the IRS of that change within 30 days thereof. This requirement is in addition to the notification requirements described in § 1.1441–1(e)(4)(ii)(D) regarding notification to a withholding agent in the event of changes in the beneficial owner s circumstances. The IRS may, under the exchange of information provisions of an applicable income tax treaty, exchange information with the relevant foreign competent authority for the purpose of confirming with appropriate tax officials of the other country that the beneficial owner continues to be a tax resident of that country. The IRS may from time to time, in its discretion, request that the beneficial owner reconfirm its residence in the treaty country.

(iii) *Special rules for qualified intermediaries.* The IRS may certify a taxpayer identifying number based upon the certification of a qualified intermediary described in § 1.1441–1(e)(5)(ii) regarding the tax residence of any of its account holders, under procedures agreed upon with the IRS. If a new account holder has a TIN at the time it opens an account, the qualified intermediary may rely on a statement by the account or interest holder that appropriate proof of tax residence in the treaty jurisdiction was previously provided to the IRS. In such case, the qualified intermediary must notify the IRS each time that the account or interest holder's address changes to another country or when the account or interest holder terminates its relationship with the qualified intermediary within 30 days of that change.

(3) *Certificate of residence.* A certificate of residence referred to in paragraph (b)(2)(i) or (c)(2)(ii) of this section is a certification issued by the competent authority (or another appropriate tax official) of the treaty country of which the taxpayer claims to be a resident that the taxpayer has filed its most recent income tax return as a resident of that country (within the meaning of the applicable tax treaty). A certificate of residence is valid for a period of three years or such longer period as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). The competent authorities may agree to a different procedure for certifying residence, in which case such procedure shall govern for payments made to a person claiming to be a resident of the country with which such an agreement is in effect.

(4) *Documentary evidence establishing residence in the treaty country*—(i) *Individuals.* For purposes of this paragraph (c)(4), documentary evidence establishes the residence of an individual in a treaty country if it includes the name, address, and photograph of the person seeking to prove residence, is an official document issued by an authorized governmental body (i.e., a government or agency thereof, or a municipality), and has been issued no more than three years prior to presentation to the IRS or the withholding agent. A document older than three years may be relied upon as proof of residence only if it is accompanied by additional evidence of the person's residence in the treaty country (e.g., a bank statement, utility bills, or medical bills). Documentary evidence must be in the form of original documents or certified copies thereof. Documentary evidence must be accompanied by an affidavit of the taxpayer signed under penalties of perjury that the documentary evidence submitted is true and complete.

(ii) *Persons other than individuals.* For purposes of this paragraph (c)(4), documentary evidence establishes the residence in a treaty country of a person other than an individual if it includes the name of the entity and the address of its principal office in the treaty

country, and is an official document issued by an authorized governmental body (e.g., a government or agency thereof, or a municipality).

(5) *Certifications regarding entitlement to treaty benefits*—(i) *Certification regarding conditions under a Limitation on Benefits Article.* A taxpayer that is not an individual must certify to the IRS by way of an affidavit attached to its request for certification of its employer identification number that it meets one or more of the conditions set forth in the Limitation on Benefits Article (if any, or in a similar provision) contained in the applicable tax treaty. The affidavit must describe sufficient facts for the IRS to determine which condition the taxpayer claims to satisfy. The affidavit must be signed by the taxpayer under penalties of perjury.

(ii) *Certification regarding whether the taxpayer derives the income.* A taxpayer that is not an individual shall certify to the IRS by way of an affidavit attached to its request for certification of its employer identification number that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself as a resident of the applicable treaty jurisdiction within the meaning of § 1.894–1T(d)(1). The affidavit must be signed under penalties of perjury. This requirement does not apply if the taxpayer furnishes a certificate of residence that certifies that fact.

(d) *Joint owners.* In the case of a payment to joint owners, each owner must furnish a withholding certificate or, if applicable, documentary evidence or a certificate of residence. The applicable rate of tax on a payment of income to joint owners shall be the highest applicable rate.

(e) *Related party dividends under U.S.-Denmark income tax treaty.* Article VI(3) of the income tax treaty between the United States and Denmark (see 1950–1 C.B. 77; see also § 601.601(d)(2) of this chapter) reduces the rate of tax on dividends between related corporations to 5 percent subject to the condition that the relationship between the domestic and foreign corporations was not arranged or maintained for the purpose of securing the reduced rate. A domestic corporation that makes a distribution derived by a resident of Denmark may treat this condition as satisfied if, prior to the payment, a request has been made to the IRS for a private letter ruling determining that the relationship between the corporation and the Danish resident was not arranged or maintained for such purpose and the IRS has either issued a favorable ruling (and the ruling has not been revoked) or is considering the ruling request.

(f) *Failure to receive withholding certificate timely.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment.

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form 1001 or 8233 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under § 1.894–1T(d). Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section. Certificates issued prior to April 1, 1998, that expire at any time after March 31, 1998 (other than by reason of changes in the circumstances of the person whose name is on the certificate) shall remain valid until December 31, 1998.

Par. 12. Section 1.1441–7 is amended by

1. Revising paragraphs (a) through (c).
2. Redesignating paragraph (d) as paragraph (f).
3. Adding new paragraph (d), and paragraphs (e) and (g).
4. Removing the language ''(j)'' and adding ''(g)'' in its place in the first sentence of newly designated paragraph (f)(1).
5. Removing the language ''(d)'' and adding ''(f)'' in its place in the first sentence of newly designated paragraph (f)(1), in the first sentence of newly designated paragraph (f)(2)(i), and in the first sentence of newly designated paragraph (f)(3).
6. Removing the authority citation at the end of the section.

The revisions read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) *Withholding agent defined.* For purposes of chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter, the term *withholding agent* means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in § 1.1441–1(e)(3)(i), a foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv) (A) or (E). See § 1.1441–1(b) (1) and (2) for determining whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under § 1.1461–1(a) and to make the returns prescribed by § 1.1461–1 (b) and (c), as modified by the terms of an agreement with a qualified intermediary (in the case of a qualified intermediary) or, in the case of a foreign partnership, to make the returns prescribed under section 6031 and the regulations thereunder. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and, generally, only one return (on Form 1042, as required under § 1.1461–1(b)), is required to be made. See § 1.1461–1(b)(2) and (c)(4) for filing procedures when multiple withholding agents are involved. In the case of a withholding agent paying to partners of a withholding foreign partnership described in § 1.1441–5(c)(2)(i), the withholding agent may arrange with the partnership to withhold if it is provided the information by the partnership, in which case the partnership does not have to withhold. However, the partnership must still file a partnership return under section 6031(a) and the regulations under that section. The withholding agent does not have to file Forms 1042–S (but does have to file a Form 1042) since the withholding foreign partnership furnishes FormsK–1 to its partners pursuant to section 6031(b) and § 1.6031(b)–1T. For purposes of this section and any requirement to withhold under chapter 3 of the Code and the regulations thereunder, a person who, as a nominee described in § 1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished

under § 1.6031(c)–1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(b) *Standards of knowledge*—(1) *In general.* A withholding agent must withhold at the full 30-percent rate under section 1441, 1442, or 1443(a) or at the full 4-percent rate under section 1443(b) if it has actual knowledge or reason to know that a claim of U.S. status or of a reduced rate of withholding under section 1441, 1442, or 1443 is incorrect. A withholding agent shall be liable for tax, interest, and penalties to the extent provided under sections 1461 and 1463 and the regulations under those sections if it fails to withhold the correct amount despite its actual knowledge or reason to know the amount required to be withheld. For purposes of the regulations under sections 1441, 1442, and 1443, a withholding agent may rely on information or certifications contained in, or attached to, a withholding certificate or other documentation furnished by or for a beneficial owner or payee unless the withholding agent has actual knowledge or reason to know that the information or certifications are not correct and, if based on such knowledge or reason to know, it should withhold (under chapter 3 of the Code or another withholding provision of the Code) an amount greater than would be the case if it relied on the information or certifications, or it should report (under chapter 3 of the Code or under another provision of the Code) an amount that would not otherwise be reportable if it relied on the information or certifications. See § 1.1441–1(e)(4)(viii) for applicable reliance rules. A withholding agent that has received notification by the Internal Revenue Service (IRS) that a claim of U.S. status or of a reduced rate is incorrect has actual knowledge beginning on the date that is 30 calendar days after the date the notice is received. A withholding agent that fails to act in accordance with the presumptions set forth in §§ 1.1441–1(b)(3), 1.1441–4(a), 1.1441–5 (d) and (e), or 1.1441–9(b)(3) may also be liable for tax, interest, and penalties. See § 1.1441–1(b)(3)(ix) and (7).

(2) *Reason to know*—(i) *In general.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made.

(ii) *Limits on reason to know in certain cases.* Except as otherwise provided in paragraph (b)(3) of this section, a withholding agent that is a financial institution (including a regulated investment company) with which a customer may open an account has a reason to know with respect to payments of amounts described in § 1.1441–6(b)(2)(ii) that a beneficial owner withholding certificate or documentary evidence for a beneficial owner is not reliable only if any one or more of the circumstances described in this paragraph (b)(2)(ii) exist for a withholding certificate. In such a case, the withholding agent may require a new withholding certificate. In the absence of a new certificate, a withholding agent may rely on the withholding certificate only after documentation is provided in support of the claim of foreign status, classification, or reduced rate of tax under a tax treaty.

(A) The permanent residence address on the withholding certificate is an address in the United States. In the case of an individual, trust, or estate, the withholding agent may rely on information in its files that is less than three years old and that supports the beneficial owner's claim of foreign status, despite a U.S. address (for example, a bank has evidence of the diplomatic status of a customer). In the absence of evidence in the withholding agent's files, the agent meets its due diligence obligation for purposes of this paragraph (b)(2)(ii)(A) if it contacts the beneficial owner or its agent in the United States and obtains an explanation in writing supporting the foreign status of the beneficial owner (for example, the beneficial owner is a nonresident alien individual temporarily present in the United States as a teacher; see § 301.7701(b)–3(b)(3) of this chapter) and documentation supporting the claim of foreign status is attached to the beneficial owner's statement (for example, in the case of a nonresident alien individual teacher, a copy of the relevant pages of the beneficial owner's passport showing the individual's U.S. visa status or a copy of relevant INS documents). In the case of a beneficial owner other than an individual, trust, or estate, the withholding agent must inquire as to whether the person whose name is on the certificate is actually organized or created under the laws of a foreign country.

(B) The payment is directed to a P.O. Box, an in-care-of address, or a U.S. address. In the case of an individual, the withholding agent may rely, for example, on documentary evidence of a type described in § 1.1441–6(c) (3) or (4) supporting the beneficial owner's claim of residence in a foreign country to ascertain that the individual is a nonresident alien individual. In the case of a person other than an individual, the withholding agent may rely on other evidence to ascertain that the person whose name is on the certificate is not a U.S. person.

(C) In the case of income for which benefits are claimed under an income tax treaty, the permanent residence address or mailing address is not in the corresponding treaty country. In such a case, the withholding agent may rely, for example, on documentary evidence of a type described in § 1.1441–6(c) (3) or (4) supporting the beneficial owner's claim of residence in the country whose benefits under an income tax treaty with the United States are invoked.

(D) The mailing address on the withholding certificate is in the United States or the beneficial owner notifies the withholding agent of a new address for mailing or residential purposes that is in the United States, a P.O. box, or an in-care-address, or, in the case of income for which benefits are claimed under an income tax treaty, the mailing address on the certificate or the new mailing or residential address notified to the withholding agent is not in the treaty country. The withholding agent may, however, rely on documentary evidence of a type described in § 1.1441–6(c) (3) or (4) supporting the beneficial owner's claim of residence in a foreign country.

(E) The name of the person on the withholding certificate or documentary evidence indicates that the person's status is a corporation, partnership, trust, estate, or an individual, and the person's claim of status is not consistent with such indication. For example, a person whose name indicates that it is a per se corporation described in § 301.7701–2(b)(8)(i) of this chapter represents on a Form W–8 that it is a partnership.

(F) Such other circumstances as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter).

(3) *Coordinated account information systems.* See § 1.1441–1(e)(4)(ix) for application of these rules other than on an account-by-account basis so that a withholding agent that relies on a coordinated account information system for documentation is considered to know or have reason to know the facts recorded in the system.

(c) *Authorized agent*—(1) *In general.* The acts of an agent of a withholding agent (including the receipt of withholding certificates, the payment of

amounts of income subject to withholding, and the deposit of tax withheld) are imputed to the withholding agent on whose behalf it is acting. However, if the agent is a foreign person, a withholding agent that is a U.S. person may treat the acts of the foreign agent as its own for purposes of determining whether it has complied with the provisions of this section, but only if the agent is an authorized foreign agent, as defined in paragraph (c)(2) of this section. An authorized foreign agent cannot apply the provisions of this paragraph (c) to appoint another person its authorized foreign agent with respect to the payments it receives from the withholding agent.

(2) *Authorized foreign agent.* An agent is an authorized foreign agent only if—

(i) There is a written agreement between the withholding agent and the foreign person acting as agent;

(ii) The notification procedures described in paragraph (c)(3) of this section have been complied with;

(iii) Books and records and relevant personnel of the foreign agent are available (on a continuous basis, including after termination of the relationship) for examination by the IRS in order to evaluate the withholding agent's compliance with the provisions of chapters 3 and 61 of the Code, section 3406, and the regulations under those provisions; and

(iv) The U.S. withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that may otherwise be available, including under common law principles of agency in order to avoid tax liability under the Internal Revenue Code.

(3) *Notification.* A withholding agent that appoints an authorized agent to act on its behalf for purposes of § 1.871–14(c)(2), the withholding provisions of chapter 3 of the Code, section 3406 or other withholding provisions of the Internal Revenue Code, or the reporting provisions of chapter 61 of the Code, is required to file notice of such appointment with the Office of the Assistant Commissioner (International). Such notice shall be filed before the first payment for which the authorized agent acts as such. Such notice shall acknowledge the withholding agent liability as provided in paragraph (c)(2)(iv) of this section.

(4) *Liability of U.S. withholding agent.* An authorized foreign agent is subject to the same withholding and reporting obligations that apply to any withholding agent under the provisions of chapter 3 of the Code and the regulations thereunder. In particular, an authorized foreign agent does not benefit from the special procedures or exceptions that may apply to a qualified intermediary. A withholding agent acting through an authorized foreign agent is liable for any failure of the agent, such as failure to withhold an amount or make payment of tax, in the same manner and to the same extent as if the agent's failure had been the failure of the U.S. withholding agent. For this purpose, the foreign agent's actual knowledge or reason to know shall be imputed to the U.S. withholding agent. The U.S. withholding agent's liability shall exist irrespective of the fact that the authorized foreign agent is also a withholding agent and is itself separately liable for failure to comply with the provisions of the regulations under section 1441, 1442, or 1443. However, the same tax, interest, or penalties shall not be collected more than once.

(5) *Filing of returns.* See § 1.1461–1(b)(2)(iii) and (c)(4)(iii) regarding returns required to be made where a U.S. withholding agent acts through an authorized foreign agent.

(d) *United States obligations.* If the United States is a withholding agent for an item of interest, including original issue discount, on obligations of the United States or of any agency or instrumentality thereof, the withholding obligation of the United States is assumed and discharged by—

(1) The Commissioner of the Public Debt, for interest paid by checks issued through the Bureau of the Public Debt;

(2) The Treasurer of the United States, for interest paid by him or her, whether by check or otherwise;

(3) Each Federal Reserve Bank, for interest paid by it, whether by check or otherwise; or

(4) Such other person as may be designated by the IRS.

(e) *Assumed obligations.* If, in connection with the sale of a corporation's property, payment on the bonds or other obligations of the corporation is assumed by a person, then that person shall be a withholding agent to the extent amounts subject to withholding are paid to a foreign person. Thus, the person shall withhold such amounts under § 1.1441–1 as would be required to be withheld by the seller or corporation had no such sale or assumption been made.

* * * * *

(g) *Effective date.* Except as otherwise provided in paragraph (f)(3) of this section, this section applies to payments made after December 31, 1998.

Par. 13. Section 1.1441–8T is redesignated as § 1.1441–8 and amended as follows:

1. The section heading and paragraph (b) are revised.

2. Paragraphs (c), (d), (e) and (f) are added.

The revisions and additions read as follows:

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(b) *Reliance on claim of exemption by foreign government.* Absent actual knowledge or reason to know otherwise, the withholding agent may rely upon a claim of exemption made by the foreign government if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a beneficial owner in accordance with § 1.1441–1(e)(1)(ii). A Form W–8 furnished by a foreign government for purposes of claiming an exemption under this paragraph (b) is valid only if, in addition to other applicable requirements, it certifies that the income is, or will be, exempt from taxation under section 892 and the regulations under that section and whether the person whose name is on the certificate is an integral part of a foreign government (as defined in § 1.892–2T(a)(2)) or a controlled entity (as defined in § 1.892–2T(a)(3)).

(c) *Income of a foreign central bank of issue or the Bank for International Settlements*—(1) *Certain interest income.* Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from interest on deposits with persons carrying on the banking business if the bank is the owner of the obligations or deposits and does not hold the obligations or deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity by such bank. See § 1.895–1. Absent actual knowledge or reason to know that a foreign central bank of issue, or the Bank for International Settlements, is operating outside the scope of the exclusion granted by section 895 and the regulations under that section, the withholding agent may rely on a claim of exemption if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the foreign central bank of issue or the Bank for International

Settlements as the beneficial owner of the payment in accordance with § 1.1441–1(e)(1)(ii). A Form W–8 furnished by a foreign central bank of issue or the Bank for International Settlements for purposes of claiming an exemption under this paragraph (c)(1) is valid only if, in addition to other applicable requirements, it certifies that the person whose name is on the certificate is a foreign central bank of issue, or the Bank for International Settlements, and that the bank does not, and will not, hold the obligations or the bank deposits covered by the Form W–8 for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) *Bankers acceptances.* Interest derived by a foreign central bank of issue from bankers acceptances is exempt from tax under sections 871(i)(2)(C) and 881(d) and § 1.861–2(b)(4). With respect to bankers' acceptances, a withholding agent may treat a payee as a foreign central bank of issue without requiring a withholding certificate if the name of the payee and other facts surrounding the payment reasonably indicate that the payee or beneficial owner is a foreign central bank of issue, as defined in § 1.861–2(b)(4).

(d) *Exemption for payments to international organizations.* A payment to an international organization (within the meaning of section 7701(a)(18)) is exempt from withholding on any payment. A withholding agent may treat a payee as an international organization without requiring a withholding certificate if the name of the payee is one that is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the transaction reasonably indicate that the international organization is the beneficial owner of the payment.

(e) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold a valid withholding certificate described in paragraph (b) or (c)(1) of this section or other appropriate documentation at the time of payment. Further, the provisions of § 1.1441–1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form 8709 that is valid under the regulations in effect prior to January 1, 1999 (see 26 CFR part 1, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 14. Section 1.1441–9 is added to read as follows.

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

(a) *Exemption from withholding for exempt income.* No withholding is required under section 1441(a) or 1442, and the regulations under those sections, on amounts paid to a foreign organization that is described in section 501(c) to the extent that the amounts are not income includable under section 512 in computing the organization's unrelated business taxable income. See, however, § 1.1443–1 for withholding on payments of unrelated business income to foreign tax-exempt organizations and on payments subject to tax under section 4948. For a foreign organization to claim an exemption from withholding under section 1441(a) or 1442 based on its status as an organization described in section 501(c), it must furnish the withholding agent with a withholding certificate described in paragraph (b)(2) of this section. A foreign organization described in section 501(c) may choose to claim a reduced rate of withholding under the procedures described in other sections of the regulations under section 1441 and not under this section. In particular, if an organization chooses to claim benefits under an income tax treaty, the withholding procedures applicable to claims of such a reduced rate are governed solely by the provisions of § 1.1441–6 and not of this section.

(b) *Reliance on foreign organization's claim of exemption from withholding*—(1) *General rule.* A withholding agent may rely on a claim of exemption under this section only if, prior to the payment, the withholding agent can reliably associate the payment with a valid withholding certificate described in paragraph (b)(2) of this section.

(2) *Withholding certificate.* A withholding certificate under this paragraph (b)(2) is valid only if it is a Form W–8 and if, in addition to other applicable requirements, the Form W–8 includes the taxpayer identifying number of the organization whose name is on the certificate, and it certifies that the Internal Revenue Service (IRS) has issued a favorable determination letter (and the date thereof) that is currently in effect, what portion, if any, of the amounts paid constitute income includable under section 512 in computing the organization's unrelated business taxable income, and, if the organization is described in section 501(c)(3), whether it is a private foundation described in section 509. Notwithstanding the preceding sentence, if the organization cannot certify that it has been issued a favorable determination letter that is still in effect, its withholding certificate is nevertheless valid under this paragraph (b)(2) if the organization attaches to the withholding certificate an opinion that is acceptable to the withholding agent from a U.S. counsel concluding that the organization is described in section 501(c). If the determination letter or opinion of counsel to which the withholding certificate refers concludes that the organization is described in section 501(c)(3), and the certificate further certifies that the organization is not a private foundation described in section 509, an affidavit of the organization setting forth sufficient facts concerning the operations and support of the organization for the Internal Revenue Service (IRS) to determine that such organization would be likely to qualify as an organization described in section 509(a) (1), (2), (3), or (4) must be attached to the withholding certificate. An organization that provides an opinion of U.S. counsel or an affidavit may provide the same opinion or affidavit to more than one withholding agent provided that the opinion is acceptable to each withholding agent who receives it in conjunction with a withholding certificate. Any such opinion of counsel or affidavit must be renewed whenever the certificate to

which it is attached is required to be renewed.

(3) *Presumptions in the absence of documentation.* Notwithstanding paragraph (b)(1) of this section, if the organization's certification with respect to whether amounts paid constitute income includable under section 512 in computing the organization's unrelated business taxable income is not reliable or is lacking but all other certifications are reliable, the withholding agent may rely on the certificate but the amounts paid are presumed to be income includable under section 512 in computing the organization's unrelated business taxable income. If the certification regarding private foundation status is not reliable, the withholding agent may rely on the certificate but the amounts paid are presumed to be paid to a foreign beneficial owner that is a private foundation.

(4) *Reason to know.* Reliance by a withholding agent on the information and certifications stated on a withholding certificate is subject to the agent's actual knowledge or reason to know that such information or certification is incorrect as provided in § 1.1441–7(b). For example, a withholding agent must cease to treat a foreign organization's claim for exemption from withholding based on the organization's tax-exempt status as valid beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is not an organization described in section 501(c) or the date on which the IRS gives notice to the public that such foreign organization is not an organization described in section 501(c). Similarly, a withholding agent may no longer rely on a certification that an amount is not subject to tax under section 4948 beginning on the earlier of the date on which such agent knows that the IRS has given notice to such foreign organization that it is subject to tax under section 4948 or the date on which the IRS gives notice that such foreign organization is a private foundation within the meaning of section 509(a).

(c) *Failure to receive withholding certificate timely and other applicable procedures.* See applicable procedures described in § 1.1441–1(b)(7) in the event the withholding agent does not hold a valid withholding certificate or other appropriate documentation at the time of payment. Further, the provisions of § 1.1441–1(e)(4) shall apply to withholding certificates and other documents related thereto furnished under the provisions of this section.

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds a Form W–8, 1001 or 4224 or a statement that is valid under the regulations in effect prior to January 1, 1999,(see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid withholding certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a withholding certificate or statement that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998, by reason of the immediately preceding sentence). The rule in this paragraph(d)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 15. Sections 1.1442–1 and 1.1442–2 are revised to read as follows:

§ 1.1442–1 Withholding of tax on foreign corporations.

For regulations concerning the withholding of tax at source under section 1442 in the case of foreign corporations, foreign governments, international organizations, foreign tax-exempt corporations, or foreign private foundations, see §§ 1.1441–1 through 1.1441–9.

§ 1.1442–2 Exemption under a tax treaty.

For regulations providing for a claim of reduced withholding tax under section 1442 by certain foreign corporations pursuant to the provisions of an income tax treaty, see § 1.1441–6.

Par. 16. Section 1.1442–3 is added to read as follows:

§ 1.1442–3 Tax exempt income of a foreign tax-exempt corporations

For regulations providing for a claim of exemption for income exempt from tax under section 501(a) of a foreign tax-exempt corporation, see § 1.1441–9. See § 1.1443–1 for withholding rules applicable to foreign private foundations and to the unrelated business income of foreign tax-exempt organizations.

Par. 17. Section 1.1443–1 is revised to read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

(a) *Income includible under section 512 in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid to the organization includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441–1, 1.1441–4, and 1.1441–6 in the same manner as payments of the same amounts to any foreign person that is not a tax-exempt organization. Therefore, a foreign organization receiving amounts includible under section 512 in computing the organization's unrelated business taxable income may claim an exemption from withholding or a reduced rate of withholding with respect to that income in the same manner as a foreign person that is not a tax-exempt organization. See § 1.1441–9(b)(3) for presumption that amounts are includible under section 512 in computing the organization's unrelated business taxable income in the absence of a reliable certification.

(b) *Income subject to tax under section 4948*—(1) *In general.* The gross investment income (as defined in section 4940(c)(2)) of a foreign private foundation is subject to withholding under section 1443(b) at the rate of 4 percent to the extent that the income is from sources within the United States and is subject to the tax imposed by section 4948(a) and the regulations under that section. Withholding under this paragraph (b) is required irrespective of the fact that the income may be effectively connected with the conduct of a trade or business in the United States by the foreign organization. See § 1.1441–9(b)(3) for applicable presumptions that amounts are subject to tax under section 4948. The withholding imposed under this paragraph (b)(1) does not obviate a private foundation's obligation to file any return required by law with respect to such organization, such as the form that the foundation is required to file under section 6033 for the taxable year.

(2) *Reliance on a foreign organization's claim of foreign private foundation status.* For reliance by a withholding agent on a foreign organization's claim of foreign private foundation status, see § 1.1441–9 (b) and (c).

(3) *Applicable procedures.* A withholding agent withholding the 4-percent amount pursuant to paragraph (b)(1) of this section shall treat such

withholding as withholding under section 1441(a) or 1442(a) for all purposes, including reporting of the payment on a Form 1042 and a Form 1042–S pursuant to § 1.1461–1 (b) and (c). Similarly, the foreign private foundation shall treat the 4-percent withholding as withholding under section 1441(a) or 1442(a), including for purposes of claims for refunds and credits.

(4) *Claim of benefits under an income tax treaty.* The withholding procedures applicable to claims of a reduced rate under an income tax treaty are governed solely by the provisions of § 1.1441–6 and not by this section.

(c) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1998.

(2) *Transition rules.* For purposes of this section, a withholding agent that on December 31, 1998, holds an affidavit or opinion of counsel described in § 1.1443–1(b)(4)(i) in effect prior to January 1, 1999 (see § 1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1997) that is valid under these provisions may treat it as a valid withholding certificate until December 31, 1999. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

Par. 18. Section 1.1445–5 is amended by revising the second sentence of paragraph (b)(1) to read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(b) * * * (1) * * * For rules coordinating the withholding under section 1441 (or section 1442 or 1443) and under section 1445 on distributions from a corporation, see § 1.1441–3(b)(4). * * *

* * * * *

Par. 19. Sections 1.1461–1 and 1.1461–2 are revised to read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax with a Federal reserve bank or authorized financial institution as provided in § 1.6302–2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to paragraph (b) of this section has not been deposited pursuant to § 1.6302–2, the withholding agent shall pay the balance of tax due for such year at such place as the Internal Revenue Service (IRS) shall specify. The tax shall be paid when filing the return required under paragraph (b)(1) of this section for such year, unless the IRS specifies otherwise. See paragraph (b)(2) of this section when there are multiple withholding agents.

(2) *Penalties for failure to pay tax.* For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 3 of the Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(b) *Income tax return*—(1) *General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042–S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011–1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042–S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461–2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) *Multiple withholding agents*—(i) *General rule.* Except as otherwise provided in paragraph (b)(2)(ii), (iii), (iv), or (v) of this section, no Form 1042 is required to be filed under paragraph (b)(1) of this section if a return is filed by another withholding agent reporting the same income in compliance with the provisions of this paragraph (b) and any remaining tax due is paid by such other withholding agent with the return in accordance with the provisions of paragraph (a) of this section.

(ii) *Payment to a qualified intermediary.* A U.S. withholding agent making a payment to a qualified intermediary (as defined in § 1.1441–1(e)(5)(ii)) must file a return under paragraph (b)(1) of this section, regardless of whether the qualified intermediary assumes primary withholding responsibility for the payment, as described in § 1.1441–1(e)(5)(iv) and regardless of whether the qualified intermediary is also required to file a return under the terms of its agreement with the IRS. A qualified intermediary's agreement with the IRS shall specify the extent, if any, to which the intermediary is subject to filing requirements under this section.

(iii) *Payment to a non-qualified intermediary.* A withholding agent making a payment to a foreign intermediary that is not a qualified intermediary described in § 1.1441–1(e)(5)(ii) must file a return under paragraph (b)(1) of this section to report such payments. The foreign intermediary is not required to make a return to report the payments that it itself makes to the persons for whom it collects the payments to the extent that the withholding agent represents to the intermediary that it will file such a return or that it has done so.

(iv) *Payment to or through an authorized foreign agent.* Both the U.S. withholding agent making a payment to or through an authorized foreign agent (defined in § 1.1441–7(c)) and the authorized foreign agent are required to file a return under paragraph (b)(1) of this section.

(v) *Payments to foreign partnerships.* A withholding agent making a payment to a foreign partnership shall file a return under paragraph (b)(1) of this section in the same manner as is required for a withholding agent making a payment to a qualified intermediary.

(vi) *Payments to a U.S. branch of certain foreign banks, securities dealers, or insurance companies.* A withholding agent making a payment to a U.S. branch described in § 1.1441–1(b)(2)(iv) must file a return under paragraph (b)(1) of this section, irrespective of the fact that the branch is treated as a U.S. person or is presumed to receive income that is effectively connected with its conduct of a trade or business in the United States.

(3) *Payments to wholly-owned entities.* A withholding agent making a payment to a wholly-owned entity that

is disregarded for Federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall file a return under paragraph (b)(1) of this section.

(4) *Amended returns.* An amended return may be filed on a Form 1042X or such other form as the IRS may prescribe. An amended return must include such information as the form or accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to the payment) must make an information return on Form 1042–S (or such other form as the IRS may prescribe) to report the amounts specified in paragraph (c)(2) of this section that were paid during the preceding calendar year. One Form 1042–S shall be prepared for each beneficial owner (except as otherwise provided in paragraph (c)(4) of this section regarding multiple withholding agents). The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the item of income was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and to the transmittal form. Withholding certificates or other statements or documentation provided to a withholding agent are not required to be attached to the information return. Another copy of the Form 1042–S shall be furnished to the payee on or before March 15 of the calendar year following the year in which the item of income was paid.

The withholding agent shall retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates.

(ii) *Joint owners.* In the case of joint owners, a single Form 1042–S may be prepared. However, upon request of any one of the owners, the withholding agent shall furnish to such owner its own Form 1042–S. Where more than one Form 1042–S is issued with respect to a single payment to joint owners, the aggregate amount of items paid and tax withheld reported on the Forms 1042–S cannot exceed the amounts paid to the joint owners and tax withheld thereon. If a single Form 1042–S is prepared, the form shall state the name of only one owner and that name shall be that of any person whose status the withholding agent relied upon to determine the applicable rate of withholding tax.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, the amounts required to be reported on a Form 1042–S are amounts paid to foreign persons (including persons who are presumed to be foreign) that consist of amounts subject to withholding (as defined in § 1.1441–2(a)) under section 1441, 1442, or 1443. This includes (but is not limited to)—

(A) The entire amount of corporate distributions (whether deemed or actual) paid to a foreign person, irrespective of any estimate of the portion of the distribution that represents a taxable dividend;

(B) Amounts deemed paid to a foreign person as described in § 1.1441–2(d) (dealing with exceptions to withholding where no money or property is paid), except where the amount is exempt from withholding due to lack of knowledge;

(C) Amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in the United States, irrespective of the fact that no withholding certificate is required to be furnished by the payee or beneficial owner. In the case of amounts paid on a notional principal contract described in § 1.1441–4(a)(3) that are presumed to be effectively connected with the conduct of a trade or business in the United States, the amount required to be reported is limited to the net income from the notional principal contract as described in § 1.446–3(d). Effectively connected non-periodic payments are reportable for the year in which an actual payment is made;

(D) Interest (including original issue discount) that is not exempt from reporting as provided under § 1.6049–8, dealing with certain interest on deposits with banks paid to Canadian residents;

(E) Amounts representing interest paid on an obligation that is sold between interest payment dates;

(F) Amounts paid to foreign governments, international organizations, or the Bank for International Settlements, whether or not documentation must be provided;

(G) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations described in § 1.871–14(e)(2) to the extent the documentation requirements described in § 1.871–14(e)(3) and (4) are satisfied (taking into account the provisions of § 1.871–14(e)(4)(ii), if applicable).

(ii) *Exceptions to reporting.* The amounts listed in paragraphs (c)(2)(ii)(A) through

(G) of this section are not required to be reported on a Form 1042–S—

(A) Any item paid by a partnership, trust or estate to the extent the item is required to be reported by the partnership under section 6031 or by the trust or estate under sections 6012(a) and 6034A, and the regulations under those sections;

(B) Any item required to be reported on a Form W–2, including an item required to be shown on Form W–2 solely by reason of § 1.6041–2 (relating to return of information as to payments to employees) or § 1.6052–1 (relating to information regarding payment of wages in the form of group-term life insurance);

(C) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050P and the regulations under these sections;

(D) Amounts paid on a notional principal contract described in § 1.1441–4(a)(3)(i) that are not effectively connected with the conduct of a trade or business in the United States (or treated as not effectively connected pursuant to § 1.1441–4(a)(3)(ii));

(E) Amounts required to be reported on Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) or Form 8804 (Annual Return for Partnership Withholding Tax (Section 1446)). A withholding agent that must report a distribution partly on a Form 8288 or 8804 and partly on a Form 1042–S may elect to report the entire amount on a Form 8288 or 8804;

(F) Original issue discount for which no withholding is required under § 1.1441–2(b)(3); and

(G) Amounts described in § 1.1441–1(b)(4)(xviii) (dealing with certain amounts paid by the U.S. government).

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the beneficial owner (e.g., a beneficial owner withholding certificate or documentary evidence), as corrected and supplemented based on the withholding agent's actual knowledge. The Form 1042-S must include the following information, if applicable—

(i) The name, address, and taxpayer identifying number of the withholding agent;

(ii) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars;

(iii) The rate of withholding applied;

(iv) The name and permanent residence address of the beneficial owner (or of the payee if the beneficial owner is unknown, or of the person receiving the amount if the payee is also unknown);

(v) The taxpayer identifying number of the beneficial owner if required under § 1.1441–1(e)(4)(vii) to be stated on a beneficial owner withholding certificate (or if actually known to the withholding agent making the return). In the case of a financial institution, actual knowledge exists with respect to accounts maintained for customers only if such taxpayer identifying number was stated on a Form W–8 furnished for another payment made through the same account or through another account, the information for which can be retrieved through a centralized account information system (as described in § 1.1441–1(e)(4)(ix)) containing both accounts; and

(vi) Such information as the form or the instructions may require in addition to, or in lieu of, information required under this paragraph (c)(3).

(4) *Multiple withholding agents*—(i) *In general.* Except as otherwise provided in this paragraph (c)(4), no information return is required to be made under paragraph (c)(1)(i) of this section if a return is filed by another withholding agent reporting the same amount pursuant to the provisions of this paragraph (c).

(ii) *Payments to a qualified intermediary or a withholding foreign partnership.* A withholding agent making a payment to a qualified intermediary (described in § 1.1441–1(e)(5)(ii)) or to a withholding foreign partnership (described in § 1.1441–5(c)(2)(i)) must report the payment on a single Form 1042–S or as otherwise directed by the form or the accompanying instructions to the form and must provide a copy of the Form 1042–S to the intermediary or partnership (but is not required to provide the Form 1042–S to the beneficial owners or partners). The Form 1042-S must report the different categories of payments based on different types of income and applicable withholding rates.

(iii) *Payments to an authorized foreign agent*—(A) *Filing obligation of foreign authorized agent.* An authorized foreign agent (as described in § 1.1441–7(c)(2)) is subject to the filing requirements described in paragraph (c)(1)(i) of this section because it is a withholding agent. Therefore, to the extent the U.S. withholding agent for which it is acting is not reporting the information required under this paragraph (c), it must report the information required to be reported under paragraph (c)(3) or (4)(vi) of this section.

(B) *Filing obligations of the U.S. withholding agent.* A U.S. withholding agent making a payment to an authorized foreign agent is exempted from the requirement under paragraph (c)(4)(iv) of this section to make a return on Form 1042–S for each beneficial owner and may, instead, make a return on a single Form 1042–S to report the payment made to the authorized foreign agent. The exemption in this paragraph (c)(4)(iii)(B) shall apply only to the extent the authorized foreign agent complies with the filing requirements under paragraph (c)(4)(iii)(A) of this section.

(iv) *Payments to other intermediaries or foreign partnerships.* Payment of an amount to a foreign intermediary described in § 1.1441–1(e)(3)(i) that is not a qualified intermediary or to a foreign partnership that is not a withholding foreign partnership described in § 1.1441–5(c)(2)(i) may not be shown on a single Form 1042–S but must be reported on separate Forms 1042–S for each beneficial owner or payee whose name appears on a withholding certificate attached to the intermediary's or partnership withholding certificate that is from a qualified intermediary or a withholding foreign partnership. Payments to an intermediary for the account of undocumented owners or to a foreign partnership for the account of undocumented partners should be reported on a single Form 1042–S made out to the intermediary and bearing the mention ''unknown owners''.

(v) *Payments to a U.S. branch of certain foreign entities.* Payment of an amount to the U.S. branch of a foreign entity described in § 1.1441–1(b)(2)(iv) shall be reported—

(A) On a single Form 1042–S as effectively connected income if the withholding agent cannot reliably associate documentation with the payment to the U.S. branch;

(B) On a single Form 1042–S as an amount paid to an intermediary if the withholding agent can reliably associate the payment with a U.S. branch withholding certificate described in § 1.1441–1(e)(3)(v) furnished as evidence of an agreement between the branch and the withholding agent to treat the branch as a U.S. person; or

(C) On separate Forms 1042–S for each beneficial owner or payee whose name appears on a withholding certificate or other appropriate documentation attached to the U.S. branch withholding certificate.

(vi) *Required information.* An information return on a Form 1042–S by a withholding agent reporting payments to an intermediary, to a foreign partnership, or to a U.S. branch must contain the information contained in this paragraph (c)(4)(vi). The information on the Form 1042–S must be based upon the withholding certificates furnished by the payee, as corrected and supplemented by the withholding agent based on its actual knowledge or reason to know other facts:

(A) The name, address, and taxpayer identifying number of the withholding agent.

(B) A description of each category of income paid (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars.

(C) The rate of withholding applied.

(D) The basis for not withholding or withholding at a reduced rate.

(E) The name, address, and taxpayer identifying number of the payee.

(F) In the case of payments described in paragraph (c)(4)(iv) of this section, the information described in paragraphs (c)(3)(iv) and (v) of this section regarding the person for whom a Form 1042–S is required to be prepared under paragraph (c)(4)(iv).

(G) Such information as the form or instructions may require in addition to, or in lieu of, the information required under this paragraph (c)(4)(vi).

(5) *Payments to single-member entity.* A withholding agent that, upon reliance on a valid withholding certificate, treats a payment as made to a wholly-owned entity that is disregarded to federal tax purposes under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner and whose single owner is a foreign person shall make an information return on Form 1042–S in the name of the foreign single owner, using the owner's taxpayer identifying number if such a number is required to be stated on the form.

(6) *Special rules in the case of claims of treaty benefits by hybrid entities or their interest holders.* A withholding agent must make an information return on a Form 1042–S for each beneficial owner (within the meaning of the applicable tax treaty) upon whose withholding certificate or other appropriate documentation the

withholding agent relies to reduce the rate of withholding under a tax treaty. Therefore, in the case of concurrent and consistent claims of reduced rates under several tax treaties by the entity and by one or more interest holders, the withholding agent must make an information return for the entity and for each of the interest holders claiming to derive an allocable share of amounts paid to the entity as a resident of an applicable treaty country.

(7) *Effect of grace period on filing requirements.* A withholding agent who relies on the provisions of § 1.1441–1(b)(3)(iv) to treat the payee as a foreign person during a 90-day grace period while awaiting the documentation must make an information return on a Form 1042–S to report all payments to such person during the grace period even if such person is (or is presumed to be) a U.S. person based upon documentation furnished to the withholding agent when the grace period expired or subsequently, or based upon applicable presumptions in § 1.1441–1(b)(3).

(8) *Magnetic media reporting.* A withholding agent that makes 250 or more Form 1042–S information returns for a taxable year must file Form 1042–S returns on magnetic media. See § 301.6011–2 of this chapter for requirements applicable to a withholding agent that files Forms 1042–S with the IRS on magnetic media and publications of the IRS relating to magnetic media filing.

(d) *Report of taxpayer identifying numbers.* When so required under procedures that the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter), a withholding agent must attach to the Form 1042 a list of all the taxpayer identifying numbers (and corresponding names) that have been furnished to the withholding agent and upon which the withholding agent has relied to grant a reduced rate of withholding and that are not otherwise required to be reported on a Form 1042–S under the provisions of this section.

(e) *Indemnification of withholding agent.* A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 3 of the Code and the regulations under that chapter is treated for purposes of section 1461 and this paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. In addition, a withholding agent is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the grace period provisions set forth in § 1.1441–1(b)(3)(iv). This paragraph (e) does not apply to relieve a withholding agent from tax liability under chapter 3 of the Code or the regulations under that chapter.

(f) *Amounts paid not constituting gross income.* Any amount withheld in accordance with § 1.1441–3 shall be reported and paid in accordance with this section, even though the amount paid to the beneficial owner may not constitute gross income in whole or in part. For this purpose, a reference in this section and § 1.1461–2 to an amount shall, where appropriate, be deemed to refer to the amount subject to withholding under § 1.1441–3.

(g) *Extensions of time to file Forms 1042 and 1042–S.* The IRS may grant an extension of time in which to file a Form 1042 or a Form 1042–S. Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns (or such other form as the IRS may prescribe), must be used to request an extension of time for a Form 1042. Form 8809, Request for Extension of Time to File Information Returns (or such other form as the IRS may prescribe) must be used to request an extension of time for a Form 1042–S. The request must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require. It must be mailed or delivered not later than March 15 of the year following the end of the calendar year for which the return will be filed.

(h) *Penalties.* For penalties and additions to the tax for failure to file returns or furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections.

(i) *Effective date.* This section shall apply to returns required for payments made after December 31, 1998.

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* A withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code (Code) and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. Adjustments under this paragraph (a) may only be made within the time prescribed under paragraph (a)(2) or (3) of this section. After such time, an adjustment to the amount overwithheld can only be claimed by the beneficial owner with the Internal Revenue Service (IRS) pursuant to the procedures described in chapter 65 of the Code. For purposes of this section, the term overwithholding means any amount actually withheld (determined before application of the adjustment procedures under this section) from an item of income pursuant to chapter 3 of the Code or the regulations thereunder in excess of the actual tax liability due, regardless of whether such overwithholding was in error or appeared correct at the time it occurred.

(2) *Reimbursement of tax*—(i) *General rule.* Under the reimbursement procedure, the withholding agent repays the beneficial owner or payee for the amount overwithheld. In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of tax made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. Any such reduction that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(A) The withholding agent states, on a timely filed (not including extensions) Form 1042–S for the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayment; and

(B) The withholding agent states on a timely filed (not including extensions) Form 1042 for the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with § 1.6414–1.

(ii) *Record maintenance.* If the beneficial owner is repaid an amount of withholding tax under the provisions of this paragraph (a)(2), the withholding agent shall keep as part of its records a receipt showing the date and amount of repayment and the withholding agent must provide a copy of such receipt to the beneficial owner. For this purpose, a canceled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax overwithheld.

(3) *Set-offs.* Under the set-off procedure, the withholding agent may repay the beneficial owner by applying the amount overwithheld against any

amount which otherwise would be required under chapter 3 of the Code or the regulations thereunder to be withheld from income paid by the withholding agent to such person before the earlier of the due date (without regard to extensions) for filing the Form 1042–S for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042–S (or an amended form) for the calendar year of overwithholding and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code and the regulations thereunder.

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

Example 1. (i) N is a nonresident alien individual who is a resident of the United Kingdom. In December 1999, a domestic corporation C pays a dividend of $100 to N, at which time C withholds $30 and remits the balance of $70 to N. On February 10, 2000, prior to the time that C files its Form 1042, N furnishes a valid Form W–8 described in § 1.1441–1(e)(2)(i) upon which C may rely to reduce the rate of withholding to 15 percent under the provisions of the U.S.–U.K. tax treaty. Consequently, N advises C that its tax liability is only $15 and not $30 and requests reimbursement of $15. Although C has already deposited the $30 that was withheld, as required by § 1.6302–2(a)(1)(iv), C repays N in the amount of $15.

(ii) During 1999, C makes no other payments upon which tax is required to be withheld under chapter 3 of the Code; accordingly, its return on Form 1042 for such year, which is filed on March 15, 2000, shows total tax withheld of $30, an adjusted total tax withheld of $15, and $30 previously paid for such year. Pursuant to § 1.6414–1(b), C claims a credit for the overpayment of $15 shown on the Form 1042 for 1999. Accordingly, it is permitted to reduce by $15 any deposit required by § 1.6302–2 to be made of tax withheld during the calendar year 2000. The Form 1042–S required to be filed by C with respect to the dividend of $100 paid to N in 1999 is required to show tax withheld of $30 and tax released of $15.

Example 2. The facts are the same as in *Example 1.* In addition, during 2000, C makes payments to N upon which it is required to withhold $200 under chapter 3 of the Code, all of which is withheld in June 2000. Pursuant to § 1.6302–2(a)(1)(iii), C deposits the amount of $185 on July 15, 2000 ($200 less the $15 for which credit is claimed on the Form 1042 for 1999). On March 15, 2001, C Corporation files its return on Form 1042 for calendar year 2000, which shows total tax withheld of $200, $185 previously deposited by C, and $15 allowable credit.

Example 3. The facts are the same as in *Example 1.* Under § 1.6032–2(a)(1)(ii)), C is required to deposit on a quarter-monthly basis the tax withheld under chapter 3 of the Code. C withholds tax of $100 between February 8 and February 15, 2000, and deposits $75 [($100 x 90 percent) less $15] of the withheld tax within 3 banking days after February 15, 2000, and by depositing $10 [($100 − $15) less $75] within 3 banking days after March 15, 2000.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments made to a beneficial owner the tax that should have been withheld from previous payments to such beneficial owner. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See § 1.6302–2 for making deposits of tax or § 1.1461–1(a) for making payment of the balance due for a calendar year.

(c) *Definition.* For purposes of this section, the term *payment period* means the period for which the withholding agent is required by § 1.6302–2(a)(1) to make a deposit of tax withheld under chapter 3 of the Code.

(d) *Effective date.* This section applies to payments made after December 31, 1998.

§§ 1.1461–3 and 1.1461–4 [Removed]

Par. 20. Sections 1.1461–3 and 1.1461–4 are removed.

Par. 21. Sections 1.1462–1 and 1.1463–1 are revised to read as follows:

§ 1.1462–1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in § 1.1441–3(f)(1)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code (Code) on payments to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. Further, if a partnership withholds an amount under chapter 3 of the Code with respect to the distributive share of a partner that is a partnership or with respect to the distributive share of partners in an upper tier partnership, such amount is deemed to have been withheld by the upper tier partnership.

(c) *Effective date.* This section applies to payments made after December 31, 1998.

§ 1.1463–1 Tax paid by recipient of income.

(a) *Tax paid.* If the tax required to be withheld under chapter 3 of the Internal Revenue Code is paid by the beneficial owner of the income or by the withholding agent, it shall not be re-collected from the other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable. See § 1.1441–7(b)(7) for additional applicable rules.

(b) *Effective date.* This section applies to failures to withhold occurring after December 31, 1989.

Par. 23. Section 1.6041–1 is amended by:

1. Revising paragraph (a)(1).
2. Adding a sentence at the end of paragraph (a)(2) .
3. Revising paragraphs (d)(1) introductory text and (d)(3).
4. Adding a heading for paragraphs (d)(2) and (d)(4).
5. Adding paragraph (d)(5).

The additions and revisions read as follows:

§ 1.6041–1 Return of information as to payments of $600 or more

(a) *General rule*—(1) *Information returns required*—(i) *Payments required to be reported.* Except as otherwise provided in §§ 1.6041–3 and 1.6041–4, every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i) (A) or (B) of this section. For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.

(A) Salaries, wages, commissions, fees, and other forms of compensation

for services rendered aggregating $600 or more.

(B) Interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating $600 or more.

(ii) *Information returns required under other provisions of the Internal Revenue Code.* The payments described in paragraphs (a)(1)(i) (A) and (B) of this section shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a) (relating to dividends), section 6043(a)(2) (relating to distributions in liquidation), section 6044(a) (relating to patronage dividends), section 6045 (relating to brokers' transactions with customers), sections 6049(a) (1) and (2) (relating to interest), section 6050N(a) (relating to royalties), or section 6050P (a) or (b) (relating to cancellation of indebtedness). In addition, the payments described in paragraphs (a)(1)(i) (A) and (B) of this section shall not include amounts excepted from the definition of dividends under section 6042(b)(2) and § 1.6042–3(b)(1), amounts described in section 6044(b), amounts excepted from reporting under § 1.6045–1(g), amounts excepted from the definition of interest under section 6049(b)(2) (C) or (D), § 1.6049–4(c), or 1.6049–5(b)(6) through (15). Notwithstanding the preceding sentence, interest with respect to a notional principal contract excluded from the definition of interest under § 1.6049–5(b)(15) is reportable under this section. The term *interest* as used in this paragraph (a)(1)(ii) otherwise includes all interest, other than interest coming within the definition of interest provided in § 1.6049–5(a). For example, a closely held corporation borrows money from one of its officers on a promissory note not in registered form bearing annual stated interest of $300. The corporation also pays royalties to the officer amounting to $400 a year. An information return is required under this paragraph (a)(1) to report the payments to the officer because the interest does not come within the definition of interest in § 1.6049–5(a) and the aggregate of interest and royalties exceeds $600.

(2) * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations).

* * * * *

(d) * * * (1) *In general.* Amounts paid in respect of life insurance, endowment, or annuity contracts are required to be reported in returns of information under this section—

* * * * *

(2) *Professional fees.* * * *

(3) *Prizes and awards.* Amounts paid as prizes and awards that are required to be included in gross income under section 74 and § 1.74–1 when paid in the course of a trade or business are required to be reported in returns of information under this section.

(4) *Disability payments.* * * *

(5) *Notional principal contracts.* Amounts paid after December 31, 1998, with respect to notional principal contracts referred to in §§ 1.863–7 or 1.988–2(e) to persons who are not described in § 1.6049–4(c)(1)(ii) are required to be reported in returns of information under this section. However, a payment made outside the United States (as defined in § 1.6049–5(e)) by a non-U.S. payor or a non-U.S. middleman, or by a U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business) or is a foreign branch of a U.S. bank is not reportable under this section if, in the case of a person that is a U.S. payor, a U.S. middleman, or a foreign branch of a U.S. institution, the payor has no actual knowledge that the payee is a U.S. person. The amount required to be reported under this paragraph (d)(5) is limited to the net income from the notional principal contract as described in § 1.446–3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of § 1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see § 1.6049–5(b)(15)). See § 1.6041–4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, § 1.1461–1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of § 1.6049–5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See § 1.6049–4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in § 1.6049–4(f)(4). See § 1.6049–5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

* * * * *

Par. 24. Section 1.6041–2 is amended by revising paragraph (c) to read as follows:

§ 1.6041–2 Return of information as to payments to employees.

* * * * *

(c) *Payments to foreign persons.* See § 1.6041–4 for reporting exemptions regarding payments to foreign persons. See § 1.6049–5(d) for determining whether a payment is made to a foreign person.

Par. 25. Section 1.6041–3 is amended by:

1. Revising the introductory text of the section.
2. Revising paragraphs (a) and (b).
3. Removing the semicolon at the end of paragraphs (d) through (f), and (h) through (j), and adding a period in its place; and removing the language ''; and'' at the end of paragraph (o), and adding a period in its place.
4. Removing paragraphs (c) and (l).
5. Redesignating paragraphs (d), (e), (f), (g), (h), (i), (j), (k), (m), (n), (o), and (p) as paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively.
6. Revising newly designated paragraphs (f) and (j).
7. Adding new paragraphs (o) and (p), and paragraph (q).

The addition and revisions read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

Returns of information are not required under section 6041 and §§ 1.6041–1 and 1.6041–2 for payments described in paragraphs (a) through (q) of this section. See § 1.6041–4 for reporting exemptions regarding payments to foreign persons. See § 1.6041–4 for reporting exemptions regarding foreign persons.

(a) Payments of income required to be reported on Forms 1120–S, 941, W–2, and W–3 (however, see § 1.6041–2(a) with respect to Forms W–2 and W–3).

(b) Payments by a broker to his customer (but for reporting requirements as to certain of such payments, see sections 6042, 6045, and 6049 and the regulations thereunder in this part).

* * * * *

(f) Compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see § 1.6031–1).

* * * * *

(j) Payments of interest on corporate bonds (but for reporting requirements as

to payments of interest on certain corporate bonds, see § 1.6049–5).

* * * * *

(o) Payments to individuals as scholarships or fellowship grants within the meaning of section 117(b)(1), whether or not ''qualified scholarships'' as described in section 117(b). This exception does not apply to any amount of a scholarship or fellowship grant that represents payment for services within the meaning of section 117(c). Instead, these amounts are required to be reported as wages on Form W–2. See § 1.1461–1(c) for applicable reporting requirements for amounts paid to foreign persons.

(p) Per diem of certain alien trainees described under section 1441(c)(6).

(q) Payments made to the following persons:

(1) A corporation described in § 1.6049–4(c)(1)(ii)(A), except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. However, no reporting is required where payment is made to a hospital or extended care facility described in section 501(c)(3) which is exempt from taxation under section 501(a) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United States, or a political subdivision, agency or instrumentality of any of the foregoing. For reporting requirements as to payments by cooperatives, and to certain other payments, see sections 6042, 6044, and 6049 and the regulations thereunder in this part.

(2) An organization exempt from taxation under section 501(a), as described in § 1.6049–4(c)(1)(ii)(B)(*1*), or an individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(3) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(4) A State, the District of Columbia, a possession of the United States, or any political subdivision of any of the foregoing, as described in § 1.6049–4(c)(1)(ii)(E).

(5) A foreign government or political subdivision of a foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(6) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(7) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H) and the Bank for International Settlements.

(8) Any wholly owned agency or instrumentality of any person described in paragraph (q) (2), (3), (4), (5), (6), or (7) of this section.

Par. 26. Section 1.6041–4 is revised to read as follows:

§ 1.6041–4 Foreign-related items and other exceptions

(a) *Exempted foreign-related items*— (1) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c). For purposes of this paragraph (a)(1), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code and the regulations under that chapter.

(2) Returns of information are not required for payments of amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) made by a non-U.S. payor or non-U.S. middleman outside the United States. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(3) Returns of information are not required for amounts paid by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6041–1 and were not so reported.

(4) Returns of information are not required for amounts paid with respect to notional principal contracts referred to in § 1.863–7 or 1.988–2(e) which the payor may treat as effectively connected income of a foreign payee under the provisions of § 1.1441–4(a)(3) or if the payee provides a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swap and Derivatives Association (ISDA) Agreement, including the Schedule thereto) or in the confirmation on the particular notional principal contract transaction that the counterparty is a foreign person. See, however, § 1.1461–1(c)(2)(i) for applicable reporting requirements.

(5) Returns of information are not required for the period that the amounts paid represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (a)(5) shall terminate when payment is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(b) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (a) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (a)(1) of this section furnished by each joint owner upon which the payor or middleman can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(c) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(d) *Effective date.* The provisions of this section apply to payments made after December 31, 1998.

Par. 27. Section 1.6041–7 is amended by revising the section heading and adding a sentence to the end of paragraph (a) to read as follows:

§ 1.6041–7 Magnetic media requirement.

(a) * * * High-volume filers of information returns must file their returns on magnetic media. See section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration

Regulations) for the requirements for filing on magnetic media.

* * * * *

Par. 28. Section 1.6041–8 is added to read as follows:

§ 1.6041–8 Cross-reference to penalties.

For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041(a) or (b), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041(d), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 29. Section 1.6041A–1 is added to read as follows:

§ 1.6041A–1 Returns regarding payments of remuneration for services and certain direct sales.

(a) through (c) [Reserved].

(d) *Exceptions to return requirement.* [Reserved].

(1) and (2) [Reserved].

(3) *Foreign transactions*—(i) *In general.* No return shall be required under section 6041A with respect to payments described in this paragraph (d)(3).

(A) Returns of information are not required for payments that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c). For purposes of this paragraph (d)(3)(i)(A), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent.*

(B) Returns of information are not required for payments of remuneration for services and certain direct sales from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) if payments made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(ii) *Payor.* The term *payor* has the same meaning as described in § 1.6049–4(a)(2).

(iii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (d)(3)(i) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (d)(3)(i)(A) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner.

(iv) *Conversion into United States dollars of amount paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(v) *Effective date.* The provisions of this paragraph (d)(3) apply to payments made after December 31, 1998.

(e) [Reserved].

(f) *Statements to be furnished to persons with respect to whom information is required to be furnished*—(1) [Reserved].

(2) *Time for furnishing statement.* [Reserved].

(3) *Contents of statement.* [Reserved].

(g) [Reserved].

(h) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6041A(a) or (b), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6041A(e), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 30. Section 1.6042–2 is amended by:

1. Revising the section heading, adding introductory text to paragraph (a)(1), and revising paragraphs (a)(1)(i) and (a)(1)(ii).

2. Removing the language ''1099M'' in the first sentence of paragraph (a)(1)(iii) and adding ''1099A'' in its place.

3. Removing the language ''1087'' each time it appears in the second sentence of paragraph (a)(4) and adding ''1099'' in each place, and removing the last sentence.

4. Revising paragraph (d).

5. Revising the heading of paragraph (e) and adding a sentence to the end of paragraph (e).

The revisions and addition read as follows:

§ 1.6042–2 Returns of information as to dividends paid.

(a) *Requirement of reporting*—(1) *In general.* An information return on Form 1099 shall be made under section 6042(a) by—

(i) Every person who makes a payment of dividends (as defined in § 1.6042–3) to any other person during a calendar year. The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identifying number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of dividends paid to the other person during the calendar year aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in § 1.6049–4(c)(1)(ii) unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter.

(ii) Every person, except to the extent that he acts as a nominee described in paragraph (a)(1)(iii) of this section, who receives payments of dividends as a nominee on behalf of another person shall make a return of information under this section for the calendar year of the payment . The information return shall show the aggregate amount of the dividends, the name, address, and taxpayer identification number of the person on whose behalf the dividends are received, the amount of tax deducted and withheld under section 3406 from the dividends, if any, and such other information as required by the forms. An information return is generally not required if the amount of the dividends received on behalf of the other person during the calendar year aggregates less than $10. However, a return of information is not required under this section if—

(A) The record owner is, pursuant to section 6012(a) (3) or (4) and § 1.6012–3, required to file a fiduciary return on

Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406;

(B) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is, pursuant to section 6012(a) (3) or (4) and § 1.6012–3, required to file a fiduciary return on Form 1041 that is filed for the estate or trust disclosing the name, address, and identifying number of both the record owner and the actual owner and furnishes Form K–1 to each actual owner containing the information required to be shown on the form, including amounts withheld under section 3406; or

(C) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return but only if the name, address, and identifying number of the record owner are included on or with the annual return filed for the tax exempt organization).

* * * * *

(d) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6042(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations).

Par. 31. Section 1.6042–3 is amended by:

1. Revising paragraphs (a) introductory text and (a)(2).

2. Removing the concluding text immediately following paragraph (a)(2).

3. Adding paragraph (a)(3).

4. Revising paragraph (b).

5. Removing the authority citation at the end of the section.

The addition and revision read as follows:

§ 1.6042–3 Dividends subject to reporting.

(a) *In general.* Except as provided in paragraph (b) of this section, the term *dividend* for purposes of this section and §§ 1.6042–2 and 1.6042–4 means the amounts described in the following paragraphs (a) (1) through (3) of this section—

* * * * *

(2) Any payment made by a stockbroker to any person as a substitute for a dividend. Such a payment includes any payment made in lieu of a dividend to a person whose stock has been borrowed. See § 1.6045–2(h) for coordination of the reporting requirements under sections 6042 and 6045(d) with respect to such payments; and

(3) A distribution from a regulated investment company (irrespective of the fact that any part of the distribution may not represent ordinary income (i.e., may, for example, represent a capital gain dividend as defined in section 852(b)(3)(C)).

(b) *Exceptions*—(1) *In general.* For purposes of §§ 1.6042–2 and 1.6042–4, the amounts described in paragraphs (b)(1)(i) through (vii) of this section are not dividends.

(i) Amounts paid by an insurance company to a policyholder, other than a dividend upon its capital stock.

(ii) Payments (however denominated) by a mutual savings bank, savings and loan association, or similar organization, in respect of deposits, investment certificates, or withdrawable or repurchasable shares. See, however, section 6049 and the regulations under that section for provisions requiring reporting of these payments.

(iii) Distributions or payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d) (2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c). For purposes of this paragraph (b)(1)(iii), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code).

(iv) Distributions or payments from sources outside the United States (as determined under the provisions of part I, subchapter N, chapter 1 of the Code and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman. For a definition of non-U.S. payor and non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(v) Distributions or payments for the period that the amounts represent assets blocked as described in § 1.1441–2(e)(3). The exemption in this paragraph (b)(1)(v) shall terminate when payment is deemed to occur in accordance with the rules of § 1.1441–2(e)(3).

(vi) Payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6042–2 and were not so reported.

(vii) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049–4(c)(1)(ii), unless a tax is withheld under section 3406 and is not refunded by the payor in accordance with § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(2) *Payor.* The term *payor* has the same meaning as described in § 1.6049–4(a)(2).

(3) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (b) are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor or middleman cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (b)(1)(iii) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (b)(3), the grace period described in

§ 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(4) *Conversion into United States dollars of amounts paid in foreign currency.* For rules concerning foreign currency conversion, see § 1.6049–4(d)(3)(i).

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 1998.

(ii) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which it is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the preceding sentence). The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

* * * * *

Par. 32. Section 1.6042–4 is amended by revising paragraphs (d)(2)(i)(F) and (f) to read as follows:

§ 1.6042–4 Statement to recipients of dividend payments.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(F) Any document concerning the solicitation of the Form W–9, as described in § 31.3406(h)–3(a) of this chapter, or of the Form W–8 as described in § 1.1441–1(e)(1).

* * * * *

(f) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6042(c), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

§ 1.6043–2 [Amended]

Par. 33. In § 1.6043–2, paragraph (a), the first, second, and last sentences are amended by removing the reference to ''1099L'' and adding ''966'' in each place.

Par. 34. Section 1.6044–2 is amended by:

1. Revising the section heading

2. Adding two sentences at the end of paragraph (a)(1).

3. Revising paragraph (e).

4. Revising the heading for paragraph (f) and adding a sentence at the beginning of paragraph (f).

The revisions and additions read as follows:

§ 1.6044–2 Returns of information as to payments of patronage dividends.

(a) *Requirement of reporting*—(1) *In general.* * * * The organization is required to make an information return regardless of the amount of the payment if the tax imposed by section 3406 is required to be withheld. Thus, in the case of any amount subject to backup withholding under section 3406 and not refunded by the payor before the due date of the information return in accordance with the regulations under section 3406, an information return shall be made even if the payment is not generally reportable because it is made to an exempt recipient described in § 1.6049–4(c)(1)(ii) or the amount paid during the calendar year to the recipient aggregates less than $10.

* * * * *

(e) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6044(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(f) *Magnetic media requirement.* For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Procedure and Administration Regulations). * * *

Par. 35. In § 1.6044–3, paragraph (c) is revised to read as follows:

§ 1.6044–3 Amounts subject to reporting.

* * * * *

(c) *Exceptions.* An amount described in paragraph (a) of this section does not include—

(1) Any amount described in § 1.6042–3(b); or

(2) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049–4(c)(1)(ii).

* * * * *

Par. 36. In § 1.6044–5, paragraph (c) is revised to read as follows:

§ 1.6044–5 Statements to recipients of patronage dividends.

* * * * *

(c) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6044(e), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

Par. 37. Section 1.6045–1 is amended by:

1. Revising the heading of paragraph (a), paragraph (a) introductory text, and paragraph (a)(1).

2. Removing paragraph (a)(12) and redesignating paragraph (a)(13) as paragraph (a)(12).

3. Adding new paragraph (a)(13).

4. Paragraph (b) is amended by redesignating *Example (1)* through *Example (8)* as *Example 1* through *Example 8*, respectively; removing newly designated *Example* 1(ii); and redesignating *Example 1*(iii) through (vi) as *Example 1*(ii) through (v), respectively.

5. Paragraph (c) is amended by:

a. Redesignating paragraphs (c)(5)(i)(*a*) through (c)(5)(i)(*f*) as paragraphs (c)(5)(i)(A) through (c)(5)(i)(F), respectively.

b. Redesignating paragraph (c)(5)(ii) and *Example (1)* through *Example (4)* as paragraph (c)(5)(iii) and *Example 1* through *Example 4*, respectively.

c. Adding new paragraph (c)(5)(ii).

6. Paragraph (c)(6) is amended by:

a. Redesignating paragraphs (c)(6)(i)(*a*) and (c)(6)(i)(*b*) as paragraphs (c)(6)(i)(A) and (c)(6)(i)(B), respectively.

b. Redesignating paragraphs (c)(6)(ii)(*a*) and (c)(6)(ii)(*b*) as paragraphs (c)(6)(ii)(A) and (c)(6)(ii)(B), respectively.

7. Revising paragraphs (d)(4), (d)(6), (f)(2)(iii) last sentence of introductory text, and (g).

8. In paragraph (h)(2), redesignating *Example (1)* and *Example (2)* as paragraph (h)(2) *Example 1* and *Example 2*, respectively.

9. Revising paragraphs (j), (k), and (l).

10. Removing the authority citation at the end of the section.

The revisions and additions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section, § 1.6045–2, and § 5f.6045–1 of this chapter:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5). In addition, a broker does not include an international organization described in § 1.6049–4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

* * * * *

(13) The term *person* includes any governmental unit and any agency or instrumentality thereof.

* * * * *

(c) * * *

(5) * * *

(ii) *Determination of profit or loss from foreign currency contracts.* A broker effecting a closing transaction in foreign currency contracts (as defined in section 1256(g)) shall report information with respect to such contracts in the manner prescribed in paragraph (c)(5)(i) of this section. If a foreign currency contract is closed by making or taking delivery, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the spot price for the contract currency at the time and place specified in the contract. If a foreign currency contract is closed by entry into an offsetting contract, the net realized profit or loss for purposes of paragraph (c)(5)(i)(B) of this section is determined by comparing the contract price to the price of the offsetting contract. The net unrealized profit or loss in a foreign currency contract for purposes of paragraphs (c)(5)(i) (C) and (D) of this section is determined by comparing the contract price to the broker's price for similar contracts at the close of business of the relevant year.

* * * * *

(d) * * *

(4) *Sale date.* With respect to sales of property that are reportable under this section, a broker must report a sale as occurring on the date the sale is entered on the books of the broker.

* * * * *

(6) *Conversion into United States dollars of proceeds paid in foreign currency*—(i) *Conversion rules.* When a payment is made in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988–5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(6)(i) of this section, the amount subject to reporting shall be the integrated amount computed under § 1.988–5(a), (b) or (c) if—

(*1*) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in § 1.988–1(c)) and hedges all or a part of such sale as provided in § 1.988–5(a), (b) or (c) with the same broker; and

(*2*) The taxpayer complies with the requirements of § 1.988–5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective date.* The provisions of this paragraph (d)(6)(ii) apply to transactions entered into after December 31, 1998.

* * * * *

(f) * * *

(2) * * *

(iii) *Definition.* * * * A barter exchange may treat a member or client as a corporation (and therefore as a corporate member or client) if such member or client provides an exemption certificate as described in § 31.3406(h)–3(a) of this chapter or provided that—

* * * * *

(g) *Exempt foreign persons*—(1) *Brokers.* No return of information is required to be made by a broker with respect to a customer who is considered to be an exempt foreign person under this paragraph (g)(1). A broker may treat a customer as an exempt foreign person under the circumstances described in paragraphs (g)(1)(i) through (iii) of this section.

(i) With respect to a sale effected at an office of a broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person if the broker can, prior to the payment, associate the payment with documentation upon which it can rely in order to treat the customer as a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii), or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d) (2), (3), (4), or (5). For purposes of this paragraph (g)(1)(i), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman) shall apply. The provisions of § 1.1441–1 shall apply by substituting the terms *broker* and *customer* for the terms *withholding agent* and *payee* and without regard for the fact that the provisions apply to amounts subject to withholding under chapter 3 of the Internal Revenue Code (Code). The provisions of § 1.6049–5(d) shall apply by substituting the terms *broker* and *customer* for the terms *payor* and *payee.* For purposes of this paragraph (g)(1)(i), the broker may rely on a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) only to the extent that the certificate includes a certification that the beneficial owner has not been and, at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains.

(ii) With respect to a redemption or retirement of stock or an obligation (the interest or original issue discount on, which is described in § 1.6049–5(b) (6), (7), (10), or (11) or the dividends on, which are described in § 1.6042–3(b)(1)(iv)) that is effected at an office of a broker outside the United States by the issuer (or its paying or transfer agent), the broker may treat the customer as an exempt foreign person if the broker is not also acting in its capacity as a custodian, nominee, or other agent of the payee.

(iii) With respect to a sale effected by a broker at an office of the broker either inside or outside the United States, the broker may treat the customer as an exempt foreign person for the period that those proceeds are assets blocked, as described in § 1.1441–2(e)(3). For purposes of this paragraph (g)(1)(iii) and section 3406, a sale is deemed to occur

in accordance with paragraph (d)(4) of this section. The exemption in this paragraph (g)(1)(iii) shall terminate when payment of the proceeds is deemed to occur in accordance with the provisions of § 1.1441–2(e)(3).

(2) *Barter exchange.* No return of information is required by a barter exchange with respect to a client or a member that the barter exchange may treat as a foreign person pursuant to the procedures described in paragraph (g)(1) of this section.

(3) *Applicable rules*—(i) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (g) (1)(i) or (2) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the broker or barter exchange cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, or with documentation described in paragraph (g)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (g)(3)(i), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(ii) *Special rules for determining who the customer is.* For purposes of this paragraph (g), the determination of who the customer is shall be made on the basis of the provisions in § 1.6049–5(d) by substituting in that section the terms *payor* and *payee* with the terms *broker* and *customer.*

(iii) *Place of effecting sale*—(A) *Sale outside the United States.* For purposes of this paragraph (g), a sale is considered to be effected by a broker at an office outside the United States if, in accordance with instructions directly transmitted to such office from outside the United States by the broker's customer, the office completes the acts necessary to effect the sale outside the United States. The acts necessary to effect the sale may be considered to have been completed outside the United States without regard to whether—

(*1*) Pursuant to instructions from an office of the broker outside the United States, an office of the same broker within the United States undertakes one or more steps of the sale in the United States; or

(*2*) The gross proceeds of the sale are paid by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account.

(B) *Sale inside the United States.* For purposes of this paragraph (g), a sale that is considered to be effected by a broker at an office outside the United States under paragraph (g)(3)(iii)(A) of this section shall nevertheless be considered to be effected by a broker at an office inside the United States if either—

(*1*) The customer has opened an account with a United States office of that broker;

(*2*) The customer has transmitted instructions concerning this and other sales to the foreign office of the broker from within the United States by mail, telephone, electronic transmission or otherwise (unless the transmissions from the United States have taken place in isolated and infrequent circumstances);

(*3*) The gross proceeds of the sale are paid to the customer by a transfer of funds into an account (other than an international account as defined in § 1.6049–5(e)(4)) maintained by the customer in the United States or mailed to the customer at an address in the United States;

(*4*) The confirmation of the sale is mailed to a customer at an address in the United States; or

(*5*) An office of the same broker within the United States negotiates the sale with the customer or receives instructions with respect to the sale from the customer.

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441–1(e)(3)(i), is an exempt foreign person, except when the broker has actual knowledge or reason to know (within the meaning of § 1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person. For an example of this exception, see § 1.6049–5(d)(3)(iv) *Example* 7. In addition, if a foreign intermediary (acting as an intermediary) or a U.S. branch receives a payment from a payor or middleman, which payment the payor or middleman can associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii), (iii), or (v), or in § 1.1441–5(c)(3)(iii) furnished by such intermediary or U.S. branch, then the intermediary or U.S. branch is not required to report such payment when it, in turn, pays the amount to the person whose name is on the certificate furnished by the intermediary or U.S. branch to the payor or middleman, unless, and to the extent, the intermediary or U.S. branch knows that the payment is required to be reported under this section and was not so reported. For purposes of the preceding sentence, a foreign intermediary is one that is described in § 1.1441–1(e)(3)(i) and a U.S. branch is one that is described in § 1.1441–1(b)(2)(iv).

(4) *Examples.* The application of the provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman described in § 1.6049–5(c)(5) that regularly issues and retires its own debt obligations. A is an individual whose residence address is inside the United States, who holds a bond issued by FC that is in registered form (within the meaning of section 163(f) and the regulations under that section). The bond is retired by FP, a foreign corporation that is a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of FC. FP mails the proceeds to A at A's U.S. address. The sale would be considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section except that the proceeds of the sale are mailed to a U.S. address. For that reason, the sale is considered to be effected at an office of the broker inside the United States under paragraph (g)(3)(iii)(B) of this section. Therefore, FC is a broker under paragraph (a)(1) of this section with respect to this transaction because, although it is not a U.S. payor or U.S. middleman, as described in § 1.6049–5(c)(5), it is deemed to effect the sale in the United States. FP is a broker for the same reasons. However, under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter, FP, rather than FC, is required to report the payment because FP is responsible for paying the holder the proceeds from the retired obligations. Under paragraph (g)(1)(i) of this section, FP may not treat A as an exempt foreign person and must make an information return under section 6045 with respect to the retirement of the FC bond, unless FP obtains the certificate or documentation described in paragraph (g)(1)(i) of this section.

Example 2. The facts are the same as in *Example 1* except that FP mails the proceeds to A at an address outside the United States. Under paragraph (g)(3)(iii)(A) of this section, the sale is considered to be effected at an office of the broker outside the United States. Therefore, under paragraph (a)(1) of this section, neither FC nor FP is a broker with respect to the retirement of the FC bond. Accordingly, neither is required to make an information return under section 6045.

Example 3. The facts are the same as in *Example 2* except that FP is also the agent of A. The result is the same as in *Example 2.* Neither FP nor FC are brokers under paragraph (a)(1) of this section with respect to the sale since the sale is effected outside the United States and neither of them are U.S. payors (within the meaning of § 1.6049–5(c)(5)).

Example 4. The facts are the same as in *Example 1* except that the registered bond held by A was issued by DC, a domestic corporation that regularly issues and retires its own debt obligations. Also, FP mails the proceeds to A at an address outside the United States. Interest on the bond is not

described in paragraph (g)(1)(ii) of this section. The sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section. DC is a broker under paragraph (a)(1)(i)(B) of this section. DC is not required to report the payment under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States. Accordingly, FP is not a broker under paragraph (a)(1) of this section.

Example 5. The facts are the same as in *Example 4* except that FP is also the agent of A. DC is a broker under paragraph (a)(1) of this section. DC is not required to report under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter. FP is not required to make an information return under section 6045 because FP is not a U.S. payor described in § 1.6049–5(c)(5) and the sale is effected outside the United States and therefore FP is not a broker under paragraph (a)(1) of this section.

Example 6. The facts are the same as in *Example 4* except that the bond is retired by DP, a broker within the meaning of paragraph (a)(1) of this section and the designated paying agent of DC. DP is a U.S. payor under § 1.6049–5(c)(5). DC is not required to report under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter. DP is required to make an information return under section 6045 because it is the person responsible for paying the proceeds from the retired obligations unless DP obtains the certificate or documentary evidence described in paragraph (g)(1)(i) of this section.

Example 7. Customer A owns U.S. corporate bonds issued in registered form after July 18, 1984 and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y.

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under § 5f.6045–1(c)(3)(ii), because X is the person responsible for paying the proceeds from the sale to A. However, the portion of the payment that represents interest accrued on the obligation since the last payment date and that is received as part of the total sales proceeds from the transaction is reportable under § 1.1461–1 (b) and (c)(2)(i)(E), as an amount paid to a foreign person that is subject to withholding under chapter 3 of the Code within the meaning of § 1.1441–2(a) (even though no withholding is required under chapter 3 of the Code based on § 1.1441–3(b)(2)(i), unless § 1.1441–3(b)(2)(ii) applies). The multiple broker exception under the regulations under section 6045 does not affect a withholding agent's obligation to report an amount otherwise required to be reported under § 1.1461–1 (b) and (c). Under § 1.1461–1(c)(3), Y must file Form 1042–S in the name of X who, under § 1.1441–1(b)(3)(v)(A), is presumed to be acting for its own account because Y cannot associate the payment of interest with a valid intermediary Form W–8 described in § 1.1441–1(e)(3) (ii) or (iii) from X.

(ii) *X's obligations to withhold and report.* X may also have reporting and withholding obligations when it credits A's account with the sales proceeds. Although the sale is considered to be effected at an office outside the United States under paragraph (g)(3)(iii)(A) of this section, X is a broker with respect to the sale because, as a wholly-owned subsidiary of a U.S. company, it meets the definition of a broker under paragraph (a)(1) of this section. Under the presumptions described in § 1.6049–5(d)(2), X, as a U.S. payor, must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore, the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment, based on the exemption under § 31.3406(g)–1(e), unless X has actual knowledge that A is a U.S. person who is not an exempt recipient. X is also a withholding agent with respect to the portion of the sales proceeds that represents accrued interest on the bonds. Based on the presumptions under §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii)(D), X must presume that A is a foreign person with respect to the interest portion of the payment, because the interest amount is an amount subject to withholding, within the meaning of § 1.1441–2(a) (even though a withholding agent is not required to withhold on such amounts). Thus, X is required to file a Form 1042 and 1042–S with respect to the interest portion of the payment. Y s filing of a Form 1042–S with respect to that portion of the payment to X does not meet the conditions for the multiple withholding agent exception under § 1.1461–1(c)(4)(i) because Y did not report the payment to X as a payment to an intermediary.

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 1998.

(ii) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the preceding sentence). The rule in this paragraph (g)(b)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates and, therefore, to require new withholding certificates conforming to the requirements described in this section.

* * * * *

(j) *Time and place for filing; cross-reference to penalty.* Forms 1096 and 1099 required under this section shall be filed after the last calendar day of the reporting period elected by the broker or barter exchange and on or before the end of the second calendar month following the close of the calendar year of such reporting period with the appropriate Internal Revenue Service Center, the address of which is listed in the instructions for Form 1096. See paragraph (l) of this section for the requirement to file certain returns on magnetic media. For provisions relating to the penalty provided for the failure to file timely a correct information return under section 6045(a), see § 301.6721–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(k) *Requirement and time for furnishing statement; cross-reference to penalty*—(1) *General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5), (d), (f), or (p) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 with respect to such person filed with the Internal Revenue Service Center. A statement

shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required by this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements required to be furnished under this paragraph (k) for a calendar year shall be furnished on or before January 31 of the following calendar year.

(3) *Cross-reference to penalty.* For provisions for failure to furnish timely a correct payee statement, see § 301.6724–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) *Magnetic media requirement.* For information returns filed after December 31, 1996, see § 301.6011–2 of this chapter (Procedure and Administration Regulations) for rules relating to filing information returns on magnetic media. A broker or barter exchange that fails to file a Form 1099 under this section on magnetic media, when required, may be subject to a penalty for each such failure. See paragraph (j) of this section.

* * * * *

§ 1.6045–1T [Removed]

Par. 38. Section 1.6045–1T is removed.

Par. 39. Section 1.6045–2 is amended as follows:

1. Paragraph (b)(2) is amended by:

a. Removing the period at the end of paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C), and adding semicolons in each place.

b. Removing the period and the end of paragraph (b)(2)(i)(D) and adding a semicolon in its place.

c. Removing the language ‘‘, or’’ in paragraph (b)(2)(i)(E) and adding a semicolon in its place.

d. Removing the period at the end of paragraph (b)(2)(i)(F) and adding ‘‘, or’’ in its place.

e. Adding paragraph (b)(2)(i)(G).

2. Revising paragraph (g)(2).

3. Adding paragraph (g)(4).

The revision and additions read as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(b) * * *

(2) * * * (i) * * *

(G) A foreign central bank of issue, as defined in § 1.6049–4(c)(1)(ii)(H), or the Bank for International Settlements.

* * * * *

(g) * * *

(2) *Magnetic media requirement.* For the requirement to submit the information required by paragraph (a) of this section and by Form 1099 on magnetic media for information returns filed after December 31, 1996, see § 301.6011–2 of this chapter (Procedure and Administration Regulations). A broker or barter exchange that fails to file on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

(4) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6045(d) and § 1.6045–2(g)(1), including a failure to file on magnetic media, see § 301.6721–1 of this chapter. For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6045(d) and § 1.6045–2(a), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

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§ 1.6045–2T [Removed]

Par. 40. Section 1.6045–2T is removed.

Par. 41. Section 1.6049–4 is amended by:

1. Removing the reference ‘‘section 3451’’ and adding ‘‘section 3406’’ each place it appears in the following locations in § 1.6049–4:

a. Paragraph (b)(2) introductory text, third sentence.

b. Paragraph (b)(2)(iv).

c. Paragraph (b)(4), last sentence.

d. Paragraph (c)(2)(i).

e. Paragraph (c)(2)(ii) concluding text.

f. Paragraph (e)(4), second and last sentences.

g. Paragraph (e)(5)(iv).

h. Paragraph (f)(4)(i), fourth sentence.

2. Revising paragraphs (a), (b)(1), (b)(3), and (c)(1).

3. Removing the reference ‘‘§ 1.6049–5(c)’’ in paragraphs (b)(5)(i) last sentence, and (d)(2) and adding ‘‘§ 1.6049–5(f)’’ in its place.

4. Revising paragraph (d)(3).

5. Revising the heading for paragraph (d)(7) and adding a sentence to the end of the paragraph.

6. Removing the reference ‘‘§ 1.6049–5(b)(1)(ii)’’ in the first sentence of paragraph (d)(8) and adding ‘‘1.6049–5(b)(2)’’ in its place.

7. Removing the reference ‘‘paragraph (d)(10)(i)’’ in paragraph (d)(9)(ii) introductory text, and adding ‘‘paragraph (d)(9)(i)’’ in its place.

8. Removing the reference ‘‘paragraph (c)(1)(K)’’ in the first sentence of paragraph (f)(4)(i) and adding ‘‘paragraph (c)(1)(ii)(M)’’ in its place; and revising the last two sentences of paragraph (f)(4)(i).

9. Revising the last sentence of the *Example* in paragraph (f)(4)(ii).

10. Adding paragraph (g)(3).

The additions and revisions read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

(a) *Requirement of reporting*—(1) *In general.* Except as provided in paragraph (c) of this section, an information return shall be made by a payor, as defined in paragraph (a)(2) of this section, of amounts of interest and original issue discount paid after December 31, 1982. Such return shall contain the information described in paragraph (b) of this section.

(2) *Payor.* A payor is a person described in paragraph (a)(2) (i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year; however, persons not treated as payors for purposes of § 31.3406(a)–2 of this chapter shall not be treated as payors for purposes of this paragraph (a)(2).

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), including middlemen treated as payors under § 31.3406(a)–2 of this chapter, or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

(b) *Information to be reported*—(1) *Interest payments.* Except as provided in paragraphs (b) (3) and (5) of this section, in the case of interest other than original issue discount treated as interest under § 1.6049–5(f), an information return on Form 1099 shall be made for the calendar year showing the aggregate amount of the payments, the name, address, and taxpayer identification number of the person to whom paid, the amount of tax deducted and withheld under section 3406 from

the payments, if any, and such other information as required by the forms. An information return is generally not required if the amount of interest paid to a person aggregates less than $10 or if the payment is made to a person who is an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee (i.e., exempt recipient) has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter (Employment Tax Regulations). For reporting interest paid to a Canadian nonresident alien individual, see § 1.6049–8.

* * * * *

(3) *Returns made by middleman*—(i) *In general.* Except as provided in paragraph (b)(5) of this section, every person acting as a middleman (as defined in paragraph (f)(4) of this section) shall make an information return for the calendar year. In the case of interest payments (other than original issue discount and other than interest described in § 1.6049–8), the information return shall be made on Form 1099 and shall show the aggregate amount of the interest, the name, address, and taxpayer identification number of the person on whose behalf received, the amount of tax withheld under section 3406, if any, and such other information as required by the forms. In the case of original issue discount, the information return shall show the information required to be shown for the person on whose behalf received, as described in paragraph (b)(2) of this section. See § 1.6049–5(f) to determine whether a middleman is required to make an information return with respect to original issue discount. A middleman shall make an information return regardless of whether the middleman receives a Form 1099. A middleman shall not be required to make an information return if the payment of interest aggregates less than $10 or if the payment is made to an exempt recipient described in paragraph (c)(1)(ii) of this section, unless the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), in which case the payor must make a return under this section, unless the payor refunds the amount withheld pursuant to § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Forwarding of interest coupons and original issue discount obligations.* In the case of a middleman who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States, the middleman shall make an information return on Form 1099 for the calendar year showing, in the case of an interest coupon, the information required under paragraph (b)(3)(i) of this section and, in the case of a discount obligation, information required under paragraph (b)(2) of this section. For purposes of this paragraph (b)(3)(ii), a middleman is considered to forward an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States if the middleman forwards the coupon or obligations outside the United States on or after the date when the payee is entitled to be paid or at an earlier date that is within 90 days of such date or if the middleman has actual knowledge that the coupon or obligation is being forwarded outside the United States for presentation, collection, or payment outside the United States. However, the transfer, although subject to information reporting under this section, is not subject to backup withholding under section 3406.

(iii) *Example.* The following example illustrates the provisions of paragraph (b)(3)(ii) of this section:

Example. Individual F, who is entitled to payment on an interest coupon, instructs an office of Bank M in the United States to forward the coupon to Bank N for collection by Bank N outside the United States. Bank M in the United States forwards the interest coupon to Bank N outside the United States. Bank M is required to make an information return for the calendar year under paragraph (b)(3)(ii) of this section showing the aggregate amount of the interest coupon forwarded, the name, address of the permanent residence, and the taxpayer identification number, if any, of Individual F and such other information as the form requires.

* * * * *

(c) *Information returns not required*—(1) *Payment to exempt recipient*—(i) *In general.* No information return is required with respect to any payment made to an exempt recipient described in paragraph (c)(1)(ii) of this section, except to the extent otherwise provided in § 1.6049–5(d)(3) (ii) and (iii). However, if the payor backup withholds under section 3406 on such payment (because, for example, the payee has failed to furnish a Form W–9 on request), then the payor is required to make a return under this section, unless the payor refunds the amount withheld in accordance with § 31.6413(a)–3 of this chapter (Employment Tax Regulations).

(ii) *Exempt recipient defined.* The term *exempt recipient* means any person described in paragraphs (c)(1)(ii) (A) through (Q) of this section. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (c)(1)(ii) require a payee to file a certificate. A payor may in any case require a payee not otherwise required to file a certificate under this paragraph (c)(1)(ii) to file a certificate in order to qualify as an exempt recipient. See § 31.3406(h)–3 (a)(1)(iii) and (c)(2) of this chapter for the certificate that a payee must provide when a payor requires it in order to treat the payee as an exempt recipient under this paragraph (c)(1)(ii). A payor may treat a payee as an exempt recipient based upon a properly completed form as described in § 31.3406(h)–3(e)(2) of this chapter, its actual knowledge that the payee is a person described in this paragraph (c)(1)(ii), or the indicators described in this paragraph (c)(1)(ii).

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (c)(1), the term *corporation* includes a partnership all of whose members are corporations described in this paragraph (c)(1), but only if the partnership files with the payor a certificate meeting the certification requirements of paragraphs (c)(2)(ii)(A) (*1*) through (*5*) of this section. Absent actual knowledge otherwise, a payor may treat a payee as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (c)(1)(ii)(A) (*1*), (*2*), (*3*), or (*4*), of this section are met before a payment is made.

(*1*) The name of the payee contains an unambiguous expression of corporate status that is Incorporated, Inc., Corporation, Corp., P.C., (but not Company or Co.) or contains the term *insurance company, indemnity company, reinsurance company,* or *assurance company,* or its name indicates that it is an entity listed as a per se corporation under § 301.7701–2(b)(8)(i) of this chapter.

(*2*) The payor has on file a corporate resolution or similar document clearly indicating corporate status. For this purpose, a similar document includes a copy of Form 8832, filed by the entity to elect classification as an association under § 301.7701–3(b) of this chapter.

(*3*) The payor receives a Form W–9 which includes an EIN and a statement from the payee that it is a domestic corporation.

(*4*) The payor receives a withholding certificate described in § 1.1441–1(e)(2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

(B) *Tax exempt organization—*(*1*) *In general.* Any organization that is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A payor may treat an organization as an exempt recipient under this paragraph (c)(1)(ii)(B) without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is allowed, if the name of the organization contains an unambiguous indication that it is a tax-exempt organization, or if the organization is known to the payor to be a tax-exempt organization.

(*2*) *Examples.* The application of the provisions of this paragraph (c)(1)(ii)(B) may be illustrated by the following examples:

Example 1. The following persons maintain accounts at M Bank: N College, O University, and P Church. M may treat N, O, and P as exempt recipients even though such persons have not filed an exemption certificate with M because the names of the organizations contain an unambiguous indication that they are tax exempt organizations.

Example 2. Q is listed in the current edition of Internal Revenue Service Publication 78 as an organization for which deductions are permitted for charitable contributions under section 170(c). Such listing has not been revoked by an announcement published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). A payor may treat Q as an exempt recipient even though Q has not filed an exemption certificate with the payor.

Example 3. Employer R maintains a section 403(b)(7) custodial account with Regulated Investment Company S on behalf of R's employees. S may treat the account as an exempt recipient even though R or its employees have not filed an exemption certificate with S.

(C) *Individual retirement plan.* An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A payor may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph (c)(1) without requiring a certificate.

(D) *United States.* The United States Government and any wholly-owned agency or instrumentality thereof are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1).

(E) *State.* A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A payor may treat a person as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (c)(1) or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision or a wholly-owned agency or instrumentality of any one or more of the foregoing (for example, an account held in the name of ''Town of S'' or ''County of T'' may be treated as held by an exempt recipient under this paragraph (c)(1)(ii)(E)).

(F) *Foreign government.* A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A payor may treat a foreign government or a political subdivision thereof as an exempt recipient under this paragraph (c)(1) without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the payor to be a foreign government or a political subdivision thereof (for example, an account held in the name of the ''Government of V'' may be treated as held by a foreign government).

(G) *International organization.* An international organization and any wholly-owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). A payor may treat a payee as an international organization without requiring a certificate if the payee is designated as an international organization by executive order (pursuant to 22 U.S.C. 288 through 288(f)).

(H) *Foreign central bank of issue.* A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See § 1.895–1(b)(1). A payor may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient) without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue or if its name reasonably indicates that it is a foreign central bank of issue.

(I) *Securities or commodities dealer.* A dealer in securities, commodities, or notional principal contracts, that is registered as such under the laws of the United States or a State or under the laws of a foreign country is an exempt recipient. A payor may treat a dealer as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in this paragraph (c)(1) (for example, a registered broker-dealer or a person listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc.).

(J) *Real estate investment trust.* A real estate investment trust, as defined in section 856 and § 1.856–1, is an exempt recipient. A payor may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940.* An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1), (or during such portion of the taxable year that it is in existence), is an exempt recipient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence. A payor may treat such an entity as an exempt recipient under this paragraph (c)(1) without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund.* A common trust fund, as defined in section 584(a), is an exempt recipient. A payor may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the payor to be a common trust fund.

(M) *Financial institution.* A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank,

homestead association, credit union, industrial loan association or bank, or other similar organization, whether organized in the United States or under the laws of a foreign country is an exempt recipient. A financial institution also includes a clearing organization defined in § 1.163–5(c)(2)(i)(D)(*8*) and the Bank for International Settlements. A payor may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name (including a foreign name, such as ''Banco'' or ''Banque'') reasonably indicates the payee is a financial institution described in the preceding sentence. In the case of a foreign person, a payor may also treat a person on such list as the Internal Revenue Service may publish or approve (such as in the Thomson Bank Directory or a list approved by the Federal Reserve Board).

(N) *Trust.* A trust which is exempt from tax under section 664(c) (i.e., a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947(a)(1) (relating to certain charitable trusts) is an exempt recipient. A payor which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(O) *Nominees or custodians.* A nominee or custodian.

(P) *Brokers.* A broker as defined in section 6045(c) and § 1.6045–1(a)(1).

(Q) *Swap dealers.* A dealer in notional principal contracts as defined in § 1.446–3(c)(4)(iii).

(iii) *Exempt recipient no longer exempt.* Any person who ceases to be an exempt recipient shall, no later than 10 days after such cessation, notify the payor in writing when it ceases to be an exempt recipient unless it reasonably appears that the person formerly qualifying as an exempt recipient will not thereafter receive a reportable payment from the payor. If a payor treats a person as an exempt recipient by requiring the exempt recipient to file a certificate claiming exempt status, that person shall revoke the certificate as provided in the preceding sentence. If the exempt recipient terminates its relationship with the payor prior to the time that the notice of change in status is otherwise required, the exempt recipient is not required to notify the payor. If, however, the person who formerly qualified as an exempt recipient later reinstates the relationship with the payor, the person must, prior to receiving a reportable payment from such relationship, notify the payor that it no longer qualifies as an exempt recipient in case the payor relies upon the previous treatment.

* * * * *

(d) * * *

(3) *Conversion into United States dollars of amounts paid in foreign currency*—(i) *Conversion rules.* When a payment is made in foreign currency, the U.S. dollar amount of the payment shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a withholding agent may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts withheld and from year to year. Such convention cannot be changed without the consent of the Commissioner or the Commissioner's delegate.

(ii) *Special rule for § 1.988–5(a) transactions where the payor on both components of a qualified hedging transaction is the same person*—(A) *In general.* Interest or original issue discount on a qualified debt instrument that is part of a qualified hedging transaction under § 1.988–5(a) shall be computed for section 6049 reporting purposes under the rules described in § 1.988–5(a)(9)(ii) if—

(*1*) The payor on the qualified debt instrument and the counterparty to the § 1.988–5(a) hedge are the same person; and

(*2*) The payee complies with the requirements of § 1.988–5(a) and so notifies its payor prior to the date required for filing Form 1099 as required by this section.

(B) *Effective date.* The provisions of this paragraph (d)(3)(ii) apply to transactions entered into after December 31, 1998.

* * * * *

(7) *Magnetic media requirement.* * * * For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and § 301.6011–2 of this chapter (Regulations on Procedure and Administration).

* * * * *

(f) * * *

(4) * * * (i) * * * A person shall be considered to be a middleman as to any portion of an interest payment made to such person which portion is actually owned by another person, whether or not the other person's name is also shown on the information return filed with respect to such interest payment, except that a husband or wife will not be considered as acting in the capacity of a middleman with respect to his or her spouse. A person who, from within the United States, forwards an interest coupon or discount obligation on behalf of a payee for presentation, collection or payment outside the United States is also a middleman for purposes of this section (but the transfer, although subject to information reporting under this section, does not make the payment subject to backup withholding under section 3406).

(ii) * * *

Example. * * * Broker B is required to make an information return showing the amount of original issue discount treated as paid to A under § 1.6049–5(f).

(g) * * *

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6049(a) and § 1.6049–4(a)(1), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Par. 42. Section 1.6049–5 is amended by:

1. Removing the reference ''section 3451'' in the third sentence of paragraph (a)(6) and adding ''section 3406'' in its place.

2. Removing the last sentence of paragraph (a)(6).

3. Revising paragraph (b).

4. Redesignating paragraph (c) as paragraph (f).

5. Adding new paragraphs (c), (d), (e) and (g).

The revisions and additions read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(b) *Interest excluded from reporting requirement.* The term *interest* or *original issue discount* (OID) does not include—

(1) Interest on any obligation issued by a natural person as defined in § 1.6049–4(f)(2), irrespective of whether such interest is collected on behalf of the holder of the obligation by a middleman.

(2) Interest on any obligation if such interest is exempt from taxation under section 103(a), relating to certain governmental obligations, or interest which is exempt from taxation under any other provision of law without regard to the identity of the holder. The holder of a tax exempt obligation that is not in registered form must provide

written certification to the payor (other than the issuer of the obligation) that the obligation is exempt from taxation. A statement that interest coupons are tax exempt on the envelope or shell commonly used by financial institutions to process such coupons, signed by the payee, will be sufficient for this purpose if the envelope is properly completed (i.e., shows the name, address, and taxpayer identification number of the payee). A payor may rely on such written certification in treating such interest as tax exempt for purposes of section 6049. See § 1.6049–4(d)(8) with respect to the requirement that the issuer of a taxable obligation shall make an information return if such issuer receives an envelope which improperly claims that the interest coupons contained therein are tax exempt.

(3) Interest on amounts held in escrow to guarantee performance on a contract or to provide security. However, interest on amounts held in escrow with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(4) Interest that a governmental unit pays with respect to tax refunds.

(5) Interest on deposits for security, such as deposits posted with a public utility company. However, interest on deposits posted for security with a person described in paragraph (a)(2) or (3) of this section is interest subject to reporting under section 6049.

(6) Amounts from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code (Code) and the regulations under those provisions) paid outside the United States by a non-U.S. payor or a non-U.S. middleman (as defined in paragraph (c)(5) of this section). See paragraph (e) of this section for circumstances in which a payment is considered to be made outside the United States.

(7) Portfolio interest, as defined in § 1.871–14(b)(1), paid with respect to obligations in bearer form described in section 871(h)(2)(A) or 881(c)(2)(A) or with respect to a foreign-targeted registered obligation described in § 1.871–14(e)(2) for which the documentation requirements described in § 1.871–14(e)(3) and (4) have been satisfied (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(8) Portfolio interest described in § 1.871–14(c)(1)(ii), paid with respect to obligations in registered form described in section 871(h)(2)(B) or 881(c)(2)(B) that is not described in paragraph (b)(7) of this section.

(9) Any amount paid by an international organization described in § 1.6049–4(c)(1)(ii)(G) (or its paying, transfer, or other agent that is not also a payee's agent) with respect to an obligation of which the international organization is the issuer.

(10)(i) Amounts paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian or nominee or other agent of the payee, collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor) with respect to an obligation that: Has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); has a maturity (at issue) of 183 days or less; satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(3)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(D); and has on its face the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and regulations thereunder) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) of the Internal Revenue Code and the regulations thereunder).

(ii) If the obligation is in registered form, it must be registered in the name of an exempt recipient described in § 1.6049–4(c)(1)(ii). For purposes of this paragraph (b)(10), a middleman may treat an obligation as described in section 163(f)(2)(B)(i) and (ii)(I) and the regulations under that section if the obligation, or coupons detached therefrom, whichever is presented for payment, contains the statement described in this paragraph (b)(10).

(11) Amounts paid with respect to an account or deposit with a U.S. or foreign branch of a domestic or foreign corporation or partnership that is paid with respect to an obligation described in either paragraph (b)(11)(i) or (ii) of this section, if the branch is engaged in the commercial banking business; and the interest or OID is paid outside the United States (other than by a U.S. middleman (as defined in paragraph (c)(5) of this section) that acts as a custodian, nominee, or other agent of the payee, and collects the amount for, or on behalf of, the payee, regardless of whether the middleman is also acting as agent of the payor).

(i) An obligation is described in this paragraph (b)(11)(i) if it is not in registered form (within the meaning of section 163(f) and the regulations under that section), is described in section 163(f)(2)(B) and issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D), and, in the case of a U.S. branch, is part of a larger single public offering of securities. For purposes of this paragraph (b)(11)(i), a middleman may treat an obligation as described in section 163(f)(2)(B) if the obligation, and any detachable coupons, contains the statement described in section 163(f)(2)(B)(ii)(II) and the regulations under that section.

(ii)(A) An obligation is described in this paragraph (b)(11)(ii) if it produces income described in section 871(i)(2)(A); has a face amount or principal amount of not less than $500,000 (as determined based on the spot rate on the date of issuance if in foreign currency); satisfies the requirements of sections 163(f)(2)(B)(i) and (ii)(I) and the regulations thereunder (as if the obligation would otherwise be a registration-required obligation within the meaning of section 163(f)(2)(A)) and is issued in accordance with the procedures of § 1.163–5(c)(2)(i)(C) or (D) (however, an original issue discount obligation with a maturity of 183 days or less from the date of issuance is not required to satisfy the certification requirement of § 1.163–5(c)(2)(i)(D)(3)). For purposes of this paragraph (b)(11)(ii), a middleman may treat an obligation as described in sections 163(f)(2)(b) (i) and (ii) and the regulations under that section if the obligation, or any detachable coupon, contains the statement described in paragraph (b)(11)(ii)(b) of this section.

(B) The obligation must have on its face, and on any detachable coupons, the following statement (or a similar statement having the same effect):

> By accepting this obligation, the holder represents and warrants that it is not a United States person (other than an exempt recipient described in section 6049(b)(4) and regulations under that section) and that it is not acting for or on behalf of a United States person (other than an exempt recipient described in section 6049(b)(4) and the regulations under that section).

(C) If the obligation is in registered form, it must be registered in the name

of an exempt recipient described in § 1.6049–4(c)(1)(ii).

(12) Returns of information are not required for payments that a payor can, prior to payment, reliably associate with documentation upon which it may rely to treat the payment as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with paragraph (d)(1) of this section or presumed to be made to a foreign payee under paragraph (d) (2), (3), (4), or (5) of this section. However, such payments may be reportable under § 1.1461–1 (b) and (c). The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Code. In the event of a conflict between the provisions of § 1.1441–1 and paragraph (d) of this section in determining the foreign status of the payee, the provisions of § 1.1441–1 shall govern for payments of amounts subject to withholding under chapter 3 of the Code and the provisions of paragraph (d) of this section shall govern in other cases. This paragraph (b)(12) does not apply to interest paid to a Canadian nonresident alien individual as provided in § 1.6049–8.

(13) Amounts for the period that the debt obligation with respect to which the interest arises represents an asset blocked as described in § 1.1441–2(e)(3). Payment of such amounts, including interest that is past due and OID on obligations that mature on or before the date that the assets are no longer blocked, is deemed to occur in accordance with the rules of § 1.1441–2(e)(3).

(14) Payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6049–4 and were not so reported.

(15) Amounts of interest as determined under the provisions of § 1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment with respect to a notional principal contract). Such amounts are governed by the provisions of section 6041. See § 1.6041–1(d)(5).

(c) *Applicable rules*—(1) *Documentary evidence for offshore accounts.* A payor may rely on documentary evidence described in this paragraph (c)(1) instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) in the case of a payment made outside the United States to an offshore account or, in the case of broker proceeds described in § 1.6045–1(c)(2), in the case of a sale effected outside the United States (as defined in § 1.6045–1(g)(3)(iii)(A)). For purposes of this paragraph (c)(1), an offshore account means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States (i.e., other than in any of the fifty States or the District of Columbia) and outside of U.S. possessions. Thus, for example, an account maintained in a foreign country at a branch of a U.S. bank or of a foreign subsidiary of a U.S. bank is an offshore account. For the definition of a payment made outside the United States, see paragraph (e) of this section. A payor may rely on documentary evidence if the payor has established procedures to obtain, review, and maintain documentary evidence sufficient to establish the identity of the payee and the status of that person as a foreign person (including, but not limited to, documentary evidence described in § 1.1441–6(c) (3) or (4)); and the payor obtains, reviews, and maintains such documentary evidence in accordance with those procedures. A payor maintains the documents reviewed by retaining the original, certified copy, or a photocopy (or microfiche or similar means of record retention) of the documents reviewed and noting in its records the date on which and by whom the document was received and reviewed. Documentary evidence furnished for the payment of an amount subject to withholding under chapter 3 of the Code must contain all of the information that is necessary to complete a Form 1042–S for that payment.

(2) *Other applicable rules.* The provisions of § 1.1441–1(e)(4)(i) through (ix) (regarding who may sign a certificate, validity period of certificates, retention of certificates, etc.) shall apply (by substituting the term *payor* for the term *withholding agent* and disregarding the fact that the provisions under § 1.1441–1(e)(4) only apply to amounts subject to withholding under chapter 3 of the Code) to withholding certificates and documentary evidence furnished for purposes of this section. See § 1.1441–1(b)(2)(vii) for provisions dealing reliable association of a payment with documentation.

(3) *Standards of knowledge.* A payor may not rely on a withholding certificate or documentary evidence described in paragraph (c)(1) or (4) of this section if it has actual knowledge or reason to know that any information or certification stated in the certificate or documentary evidence is unreliable. A payor has reason to know that information or certifications are unreliable only if the payor would have reason to know under the provisions of § 1.1441–7(b)(2)(ii) and (3) that the information and certifications provided on the certificate or in the documentary evidence are unreliable or, in the case of a Form W–9 (or an acceptable substitute), it cannot reasonably rely on the documentation as set forth in § 31.3406(h)–3(e) of this chapter (see the information and certification described in § 31.3406(h)–3(e)(2)(i) through (iv) of this chapter that are required in order for a payor reasonably to rely on a Form W–9). The provisions of § 1.1441–7(b)(2)(ii) and (3) shall apply for purposes of this paragraph (c)(3) irrespective of the type of income to which § 1.1441–7(b)(2)(ii) is otherwise limited. The exemptions from reporting described in paragraphs (b)(10) and (11) of this section shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of this paragraph (c) for payments to offshore accounts maintained at a bank or other financial institution of amounts that are not subject to withholding under chapter 3 of the Code, other than amounts described in (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. bank deposit interest). Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds).

(i) *Alternative documentary evidence.* In the case of payments to which this paragraph (c)(4) applies, the payor may, instead of a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, rely on a customer's declaration of foreign status made on an account opening form that contains the statement described in this paragraph (c)(4)(i) (or such substitute statement as

the Internal Revenue Service may prescribe) if the mailing and permanent residence address of the customer is in the country in which the branch or office is located and, under the local laws, regulations, or practices applicable to the type of account or transaction described in this paragraph (c)(4), it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section or, it is customary to obtain such documentary evidence, but it is not customary to request that it be renewed periodically. Reliance on the documentary evidence described in this paragraph (c)(4)(i) is permitted only if there are no indications that the person opening the account is a U.S. person (e.g., permanent residence address is in a foreign country, the person does not have a mailing address in the United States, the person is not employed by a U.S.-based multinational organization). If reliance is not permitted because there are indications of U.S. status (e.g., the person's permanent residence address is in the United States, the person changes his mailing address to the United States, the person is employed by a U.S.-based multinational organization) then the payor must obtain either documentary evidence described in paragraph (c)(1) of this section or a Form W–8 described in § 1.1441–1(e)(2)(i) in order to treat the customer as a foreign payee. The form or documentary evidence must be renewed every three years in accordance with the renewal procedures set forth in § 1.1441–1(e)(4)(ii)(A) for as long as indicia of U.S. status continue to be present. The statement referred to in this paragraph (c)(4)(i) must appear near the signature line and must read as follows:

> By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. federal income tax and that he/she/it is not acting for or on behalf of a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.

(ii) *Continuous validity of declaration of foreign status subject to due diligence by financial institution.* A declaration of foreign status described in paragraph (c)(4)(i) of this section does not expire if the financial institution complies with the mailing requirement described in paragraph (c)(4)(iii) of this section, unless the financial institution becomes aware of circumstances indicating that the customer may be a U.S. person (including indications described in § 1.1441–7(b)(2)(ii), dealing with due diligence standards applicable to financial institutions). If circumstances indicate that the customer may be a U.S. person, then the financial institution may rely on the foreign status of the customer only if it obtains documentary evidence from the customer that is described in paragraph (c)(1) of this section or a beneficial withholding certificate described in § 1.1441–1(e)(2)(i). Such documentary evidence or certificate does not expire after the three-year validity period otherwise prescribed for such documentation but must be renewed each time new circumstances occur indicating that the customer may be a U.S. person.

(iii) *Negative confirmation of change of status.* In order for a declaration of foreign status to remain valid, the financial institution must include the following statement on a year-end statement mailed to the customer:

> You have declared to us that you are not a U.S. person and, unless you notify us to the contrary, we will continue to rely on that declaration to treat the account as owned by a non-U.S. person. You have an obligation to notify us if your status changes and you become a U.S. citizen or a U.S. resident. A U.S. person who fails to report earnings on the account could be subject to penalties under U.S. law.

(iv) *Special rule when non-renewable documentary evidence is customary.* If it is customary in the country in which the branch or office is located to obtain documentary evidence described in paragraph (c)(1) of this section, but it is not customary for such documentary evidence to be renewed, then a payor must request such documentary evidence in lieu of the statement described in paragraph (c)(4)(i) of this section. All other requirements described in paragraphs (c)(4)(ii) and (c)(4)(iii) of this section shall apply.

(v) *Exception for existing accounts.* The rules of paragraphs (c)(4)(i) and (iv) of this section shall apply only to accounts opened on or after January 1, 1999.

(5) *U.S. payor, U.S. middleman, non-U.S. payor, and non-U.S. middleman.* The terms *payor* and *middleman* have the meanings ascribed to them under § 1.6049–4(a). A *non-U.S. payor* or *non-U.S. middleman* means a payor or middleman other than a U.S. payor or U.S. middleman. The term *U.S. payor* or *U.S. middleman* means—

(i) A person described in section 7701(a)(30) (including a foreign branch or office of such person);

(ii) The government of the United States or the government of any State or political subdivision thereof (or any agency or instrumentality of any of the foregoing);

(iii) A controlled foreign corporation within the meaning of section 957(a);

(iv) A foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons (as defined in § 1.1441–1(c)(2)) who, in the aggregate hold more than 50 percent of the income or capital interest in the partnership or if, at any time during its tax year, it is engaged in the conduct of a trade or business in the United States;

(v) A foreign person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of its taxable year preceding the collection or payment (or such part of such period as the person has been in existence), was effectively connected with the conduct of trade or business within the United States; or

(vi) A U.S. branch of a foreign bank or a foreign insurance company described in § 1.1441–1(b)(2)(iv).

(6) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section:

Example 1. FC is a foreign corporation that is not engaged in a trade or business in the United States during the current calendar year. D, an individual who is a resident and citizen of the United States, holds a registered obligation issued by FC in a public offering. Interest is paid on the obligation within the United States by DC, a U.S. corporation that is the designated paying agent of FC. D does not have an account with DC. Although interest paid on the obligation issued by FC is foreign source, the interest paid by DC to D is considered to be interest for purposes of information reporting under section 6049 because it is paid in the United States.

Example 2. The facts are the same as in *Example 1* except that D is a nonresident alien individual who has furnished DC with a Form W–8 in accordance with the provisions of § 1.1441–1(e)(1)(ii). By reason of paragraph (b)(12) of this section, the payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049. Therefore, DC is not required to make an information return under section 6049.

Example 3. The facts are the same as in *Example 2* except that D has not furnished a Form W–8 and DC pays interest on the obligation at its branch outside the United States. The payment of interest by DC to D is not considered to be a payment of interest for purposes of information reporting under section 6049 because DC, although a U.S. person is not a middleman or a payor within the meaning of § 1.6049–4(a) and (f)(4). Thus, the amount is described in paragraph (b)(6) of this section. Therefore, DC is not required to make an information return under section 6049.

Example 4. The facts are the same as in *Example 3* except that the obligation of FC is held in a custodial account for D by FB,

a foreign branch of a U.S. financial institution. By reason of paragraph (c)(5) of this section, FB is considered to be a U.S. middleman. Therefore, FB is required to make an information return unless FB may treat D as a beneficial owner that is a foreign person in accordance with the provisions of § 1.1441–1(e)(1)(ii).

Example 5. The facts are the same as in *Example 4* except that the FC obligation is held for D by NC, in a custodial account at NC's foreign branch. NC is a foreign corporation that is a non-U.S. middleman described in paragraph (c)(5) of this section. Under paragraph (b)(6) of this section, the payment by NC to D is not considered to be a payment of interest for purposes of section 6049. Therefore, NC is not required to make an information return under section 6049 with respect to the payment.

(d) *Determination of status as U.S. or foreign payee and applicable presumptions in the absence of documentation*—(1) *Identifying the payee.* The provisions of § 1.1441–1(b)(2) shall apply (by substituting the term *payor* for the term *withholding agent*) to identify the payee for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of payments of amounts that are not subject to withholding under chapter 3 of the Code. Amounts are not subject to withholding under chapter 3 of the Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds). The exceptions to the application of § 1.1441–1(b)(2) to amounts that are not subject to withholding under chapter 3 of the Code are as follows:

(i) The provisions of § 1.1441–1(b)(2)(ii), dealing with payments to a U.S. agent of a foreign person, shall not apply. Thus, a payment to a U.S. agent of a foreign person is treated as a payment to a U.S. payee.

(ii) Payments to U.S. branches of certain banks or insurance companies described in § 1.1441–1(b)(2)(iv) shall be treated as payments to a foreign payee, irrespective of the fact that the U.S. branch may have arranged with the payor to be treated as a U.S. person for payments of amounts subject to withholding and irrespective of the fact that the branch is treated as a U.S. payor for purposes of paragraph (c)(5) of this section.

(2) *Presumptions of U.S. or foreign status in the absence of documentation*—(i) *In general.* For purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of § 1.1441–1(b)(3)(i), (ii), (iii), (vii), (viii), and (ix) shall apply (by substituting the term *payor* for the term *withholding agent*) to determine the status of a payee as a U.S. or a foreign person and its relevant characteristics (e.g., as an owner or intermediary, or as an individual, corporation, or flow-through entity), irrespective of whether the payments are subject to withholding under chapter 3 of the Code. In addition, the rules of § 1.1441–1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by substituting the term *payor* for the term *withholding agent.* For this purpose, the documentary evidence described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with amounts reportable under section 6042, 6045, or 6049 with respect to publicly traded securities, or under section 6050N in the case of royalties from a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a) may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, choose, in its discretion, to treat the account as owned by a foreign person if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441–1(e)(2)(i) or (3)(i) (by way of a facsimile copy of the certificate or other non-qualified electronic transmission of the information required to be stated on the certificate), or the payor holds a withholding certificate that is no longer reliable. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account. In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the grace period begins on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account if the account holder already holds an account at the branch location at which the new account is opened. It shall also be treated as an existing account if an account is held at another branch location if the institution maintains a coordinated account information system described in § 1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins, the date that the documentation is provided, or the last day of the calendar year in which the grace period begins. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is less than 31 percent of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441–1(e)(4)(iv). See § 1.1092(d)–1 for a definition of the term *publicly*

traded for purposes of this paragraph (d)(2)(ii).

(iii) *Joint owners.* Amounts paid to accounts held jointly for which a certificate or documentation is required as a condition for being exempt from reporting under paragraph (b) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)–1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (b)(12) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (d)(2)(iii), the grace period described in paragraph (d)(2)(ii) of this section shall apply only if each payee qualifies for such grace period.

(3) *Payments to foreign intermediaries*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that are subject to withholding under chapter 3 of the Code, the provisions of § 1.1441–1(b) (2)(v) and (3)(v) shall apply (by substituting the term *payor* for the term *withholding agent*) to identify the payee and determine the applicable presumptions for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* Amounts that are not subject to withholding under chapter 3 of the Code that the payor may treat as paid to a foreign intermediary in accordance with § 1.1441–1(b)(3)(v)(A) shall be treated as made to an exempt recipient described in § 1.6049–4(c)(1)(ii) (M), (O), (P), or (Q) except to the extent that the payor has actual knowledge that any person for whom the intermediary is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient. If the payor does not have sufficient reliable information regarding the portion of the payment to the foreign intermediary that is allocable to such presumed U.S. payee, then the payor shall treat the maximum portion of the payment that could be allocable to such presumed U.S. payee as so allocable.

(iii) *Special rule for payments of certain short-term original issue discount and bank deposit interest*—(A) *General rule.* A payment of U.S. source original issue discount on an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in sections 871(g)(1)(B) or 881(a)(3) or of U.S. source interest (including original issue discount) on deposits with banks and other financial institutions described in sections 871(i)(2)(A) or 881(d) that the payor may treat as paid to a foreign intermediary in accordance with the provisions of § 1.1441–1(b)(3)(v)(A) shall be treated as paid to an exempt recipient only to the extent that the payor can treat the payment as made to a foreign person that is a beneficial owner in accordance with the provisions of § 1.1441–1(e)(1)(ii), or can treat as a payment to a U.S. beneficial owner in accordance with the provisions of § 1.1441–1(d)(4) (except to the extent that the payment is associated with a Form W–9 described in § 1.1441–1(d)(2) relating to a U.S. payee who is not an exempt recipient), or can rely on the payee's claim that the payee assumes withholding responsibility in accordance with § 1.1441–1(e)(5)(iv).

(B) *Payee has not furnished reliable documentation.* If the payment is made to a person described in § 1.6049–4(c)(1)(ii) that the payor may treat as an exempt recipient without requiring documentation and the payor may not treat the payee as a foreign intermediary in accordance with the provisions of § 1.1441–1(b)(3)(v)(A), then the payee shall be treated as an exempt recipient only if the payor can treat the person as a U.S. person, or if the person has furnished a certificate as a U.S. branch described in § 1.1441–1(b)(2)(iv), or the person has furnished a certificate such that the payor can treat the payment as a payment made to a foreign person that is a beneficial owner, or if the payor can treat the person as a foreign person that has furnished an indication to the payor that such person is receiving the payment for its own account. A payor must treat the payee as a foreign person for purposes of this paragraph (d)(3)(iii) if the payor has actual knowledge of the person's employer identification number and that number begins with the two digits ''98,'' if the payor's communications with the person are mailed to an address in a foreign country, or if the payment is made outside the United States (as defined in paragraph (e) of this section). The payor may treat as a U.S. person any person not described in the preceding sentence for purposes of this paragraph (d)(3)(iii). If the payee is treated as a foreign person under this paragraph (d)(3)(iii)(B), it must be treated as not acting for its own account unless it furnishes an indication of beneficial ownership in any manner that the payor and the person may choose, provided the indication is documented in the payor's records. The indication is not required to be under penalties of perjury. The provisions of this paragraph (d)(3)(iii) shall not apply to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in paragraphs (b)(7), (10) and (11) of this section (relating to certain obligations issued in bearer form).

(iv) *Examples.* The rules of this paragraph (d)(3) are illustrated by the following example:

Example 1. A payor, X, makes a payment to Y of U.S. source interest on debt obligations issued prior to July 18, 1984. Therefore, the interest does not qualify as portfolio interest under sections 871(h) or 881(d). Y is a non-qualified foreign intermediary that has furnished to X a valid intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. Y's withholding certificate does not contain reliable information regarding B and C's share of the payment. B's withholding certificate (attached to Y's withholding certificate) indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate (attached to Y's withholding certificate) indicates that C is a foreign corporation not entitled to a reduced rate of withholding. Under paragraph (b)(12) of this section, X may rely on the withholding certificates to determine the status of A, B, and C for purposes of deciding whether the amounts paid are interest within the meaning of this section. However, because X cannot reliably determine how much of the payment is allocable to B and C, it must presume under paragraph (d)(3)(i) of this section and § 1.1441–1(b)(3)(v)(C) that 80 percent of the payment (i.e., all of the payment less A's share) is allocable to C because the rate of withholding applicable to the payment to C is the highest of the withholding rates applicable to B and C. Thus, based on such presumption, X may treat C as a foreign payee under paragraph (b)(12) of this section and, therefore, may treat the payment as not being interest reportable under § 1.6049–4(a).

Example 2. The facts are the same as in *Example 1,* except that X can reliably determine C's allocable share, but cannot reliably determine A's and B's share. No withholding is required under chapter 3 of the Code or under section 3406 on the payment to A or B since A is a U.S. person who has furnished a valid Form W–9 and B is an exempt recipient (as defined in

§ 1.6049–4(c)(1)(ii)(B)) and a foreign tax-exempt organization exempt from chapter 3 withholding (see § 1.1441–9). However, X estimates that A, as a U.S. person, is subject to a higher U.S. tax liability with respect to the payment than B is, since B is a foreign tax-exempt organization. Therefore, X must presume under paragraph (d)(3)(i) of this section and § 1.1441–1(b)(3)(v)(C) that 70 percent of the payment (i.e., all of the payment less C's share) is allocable to A. Consequently, X must report all of the payment on the Form 1099 filed for A under § 1.6049–4(a).

Example 3. A payor, X, makes a payment of foreign source interest to Y, a non-qualified foreign intermediary that has furnished an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a withholding certificate described in § 1.1441–1(e)(3)(iii) for Z, that is also a non-qualified foreign intermediary. Beneficial owner certificates are attached to Z's certificate. Under paragraph (d)(1) of this section, X must rely on the provisions of § 1.1441–1(b)(2)(v) to treat the payment as made to the persons whose withholding certificates are attached to Z's certificate to the extent both Y and Z have reliably certified in accordance with § 1.1441–1(e)(3)(iii)(D) that the certificates that each of them has attached to their respective intermediary withholding certificate represent all of the persons to whom the intermediary withholding certificate relates. X must rely on the provisions of § 1.1441–1(b)(2)(v) even though the payment is not an amount subject to withholding under chapter 3 of the Code.

Example 4. A payor, X, makes a payment to Y of foreign source interest and U.S. source dividends. Y has furnished to X a qualified intermediary withholding certificate described in § 1.1441–1(e)(3)(ii) for itself. Y indicates that 10 percent of each type of payments is allocable to the category described in § 1.1441–1(e)(5)(v)(B)(*3*), relating to assets owned by persons for whom the qualified intermediary does not hold the documentation. X has no actual knowledge that the persons owning the assets are U.S. persons. With respect to the payment of foreign source interest (an amount that is not subject to withholding under chapter 3 of the Code), X must, under paragraph (d)(3)(ii) of this section, treat the payment as made to a foreign payee. Such treatment is effective for purposes of paragraph (b)(12) of this section, meaning that the 10-percent amount is not treated as interest for purposes of reporting under § 1.6049–4(a). With respect to the amount of U.S. source dividends, X must, under paragraph (d)(3)(i) of this section, treat the payment as made to a foreign payee (based upon paragraph (d)(3)(i)'s cross-reference to § 1.1441–1(b)(3)(v)(B)). Such treatment is effective for purposes of § 1.6042–3(b)(1)(iii), meaning that the 10-percent amount is not treated as a dividend for purposes of reporting under § 1.6042–2(a).

Example 5. A payor, X, makes a payment of foreign source interest to Y, a non-qualified foreign intermediary that has furnished an intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached beneficial owner Forms W–8. In its withholding certificate, Y represents to X that 30 percent of the payment is allocable to a U.S. person who has not furnished a Form W–9 and whom Y cannot treat as an exempt recipient. Under paragraph (d)(3)(ii) of this section, X must treat 70 percent of the payment as made to a foreign payee. X, however, may not rely on the rule of paragraph (d)(3)(ii) of this section to treat the remainder of the payment as made to a foreign payee because X has actual knowledge that the remainder of the payment is allocable to a U.S. person. Under paragraph (d)(3)(ii) of this section, X must treat 30 percent of the payment as made to a U.S. payee who is not an exempt recipient.

Example 6. A payor, X, holds a valid withholding certificate from Y, a qualified intermediary, with which it reliably associates payments made to A, a U.S. individual who maintains an account relationship with Y and who has furnished a valid Form W–9 to Y. Y has furnished A's Form W–9 to X who has set up a separate account for those assets held in Y's name, and which Y has indicated are allocable to A. The assets consist of 10,000 shares of stock of domestic corporation T, publicly traded on a U.S. stock exchange. When dividends are paid on the T stock held in the Y/A account, X credits the dividend amounts to the account and reports the dividend amounts credited to that account on a Form 1099–DIV under section 6042, treating A as the payee in accordance with paragraph (d)(1) of this section (cross-referencing § 1.1441–1(b)(2)(v)). When A later instructs Y to sell the shares, X effects the sale and credits the Y/A account with the gross proceeds from the sale of 10,000 shares of the T stock. Under § 1.6045–1(c)(2) and paragraph (d)(3)(ii) of this section, X must report the gross proceeds credited to the Y/A account on a Form 1099–-B made in the name of A since it has actual knowledge that the gross proceeds are paid to a U.S. person who is not an exempt recipient. See section 1.6045–1(g)(3)(iv).

Example 7. A payor, X, holds a valid withholding certificate from Y, a non-qualified intermediary, and can reliably associate a payment of U.S. short-term OID and proceeds from the sale of shares with the certificate. Y has not attached any certificates or documentary evidence to its certificate and informs X that the payment is allocable to persons for whom it holds no documentation. Under paragraph (d)(3)(iii) of this section, X must, for purposes of this section and section 3406, treat the payment of short-term OID as made to a U.S. payee who is not an exempt recipient. However, under paragraph (d)(3)(ii) of this section, the payment of gross proceeds from the sale of shares is treated as made to a foreign payee. X must rely on this treatment for purposes of determining its reporting obligations under section 6045 and the regulations under that section (see § 1.6045–1(g)(1)(i)) and, consequently, its withholding obligations under section 3406 and the regulations under that section.

(4) *Determination of partnership and partners status in the absence of documentation*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that are subject to withholding under chapter 3 of the Code, the provisions of §§ 1.1441–1(b)(3)(ii) and 1.1441–5(c)(1), and (d) shall apply (by substituting the term *payor* for the term *withholding agent*) to determine the status of the payee as a partnership, as a domestic or foreign partnership, and the status of its partners for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(4) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of amounts that are not subject to withholding under chapter 3 of the Code, the provisions of §§ 1.1441–1(b)(3)(ii) and 1.1441–5(c)(1), and (d) shall also apply (by substituting the term *payor* for the term *withholding agent*), subject to the following exceptions—

(A) If, in the absence of documentation, the payor treats the payee as a partnership in accordance with the presumptions set forth in § 1.1441–1(b)(3)(ii), the presumptions of § 1.1441–5(d)(2) shall not apply to treat the partnership as a foreign partnership; instead, the person treated as a partnership shall be presumed to be a domestic partnership; and

(B) In the case of payments described in § 1.1441–5(d)(3)(i) (dealing with lacking or unreliable documentation regarding the status of partners) or in § 1.1441–5(d)(3)(iii), dealing with lacking or unreliable information regarding the number of partners represented by the withholding certificate), the partners are presumed to be U.S. payees who are not exempt recipients and not foreign payees.

(5) *Presumptions for payments to or by foreign trusts or estates.* [Reserved]

(e) *Determination of whether amounts are considered paid outside the United States*—(1) *In general.* For purposes of section 6049 and this section, an amount is considered to be paid by a payor or middleman outside the United States if the payor or middleman completes the acts necessary to effect payment outside the United States. See paragraphs (e)(2), (3), and (4) of this section for further clarification of where amounts are considered paid. A payment shall not be considered to be made within the United States for purposes of section 6049 merely by reason of the fact that it is made on a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account. However, without regard to the location

of the account from which the amount is drawn, an amount that is described in paragraph (e)(1) (i) or (ii) of this section and paid by transfer to an account maintained by the payee in the United States or by mail to a United States address is not considered to be paid outside the United States.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in an interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of a payee, collects the amount for or on behalf of the payee.

(2) *Amounts paid with respect to deposits or accounts with banks and other financial institutions.* Notwithstanding paragraph (e)(1) of this section, an amount paid by a bank or other financial institution with respect to a deposit or with respect to an account with the institution is considered paid at the branch or office at which the amount is credited unless the amount is collected by the financial institution as the agent of the payee. However, an amount will not be considered to be paid at the branch or office where the amount is considered to be credited unless the branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business; the business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal business hours; and the branch or office receives deposits and engages in one or more of the other activities described in § 1.864–4(c)(5)(i). In addition, an amount paid by a bank or other financial institution with respect to a deposit or an account with the institution is not considered paid at a branch or office outside the United States if the customer has transmitted instructions to an agent, branch, or office of the institution from inside the United States by mail, telephone, electronic transmission, or otherwise concerning the deposit or account (unless the transmission from the United States has taken place in isolated and infrequent circumstances).

(3) *Coupon bonds and discount obligations in bearer form.* Notwithstanding paragraph (e)(1) of this section, an amount paid with respect to a bond with coupons attached (including a certificate of deposit with detachable interest coupons) or a discount obligation that is not in registered form (within the meaning of section 163(f) and the regulations thereunder) is considered to be paid where the coupon or the discount obligation is presented to the payor or its paying agent for payment. However, without regard to where the coupon or discount obligation is presented for payment, an amount paid with respect to either a bond with coupons attached or a discount obligation by transfer to an account maintained by the payee in the United States or by mail to the United States is considered paid in the United States if the payment is described in paragraphs (e)(3) (i) and (ii) of this section.

(i) The amount is paid by an issuer or the paying agent of the issuer and the obligation is either—

(A) Issued by a U.S. payor, as defined in paragraph (c)(5) of this section;

(B) Registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(C) Listed on an exchange that is registered as a national securities exchange in the United States or included in a interdealer quotation system in the United States.

(ii) The amount is paid by a U.S. middleman (as defined in paragraph (c)(5) of this section) that, as a custodian, nominee, or other agent of payee, collects the amount for or on behalf of the payee.

(4) *Foreign-targeted registered obligations.* Notwithstanding paragraph (e)(1) of this section, where the payor is the issuer or the issuer's agent, an amount is considered paid outside the United States with respect to a foreign-targeted registered obligation, as described in § 1.871–14(e)(2), if either the amount is paid by transfer to an account maintained by the registered owner outside the United States, or by mail to an address of the registered owner outside the United States, or by credit to an international account. For purposes of this paragraph (e)(4), the term *international account* means the book-entry account of a financial institution (within the meaning of section 871(h)(4)(B)) or of an international financial organization with the Federal Reserve Bank of New York for which the Federal Reserve Bank of New York maintains records that specifically identifies an international financial organization or a financial institution (within the meaning of section 871(h)(4)(B)) as either a non-United States person or a foreign branch of a United States person as registered owner. An international financial organization is a central bank or monetary authority of a foreign government or a public international organization of which the United States is a member to the extent that such central bank, authority, or organization holds obligations solely for its own account and is exempt from tax under section 892 or 895.

(5) *Examples.* The application of the provisions of this paragraph (e) are illustrated by the following examples:

Example 1. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (c)(5) of this section. A holds FC coupon bonds that are not in registered form under section 163(f) and the regulations thereunder, that were issued by FC in a public offering outside the United States, that are not registered under the Securities Act of 1933 (15 U.S.C. 77a), and that are neither listed on an exchange that is registered as a national securities exchange in the United States nor included in an interdealer quotation system. DC, a U.S. corporation that is engaged in a commercial banking business, is the designated fiscal agent for FC. FB, a foreign branch of DC, is the designated paying agent with respect to the bonds issued by FC. A does not have an account with FB. A presents a coupon from a FC bond for payment to FB at its office outside the United States. FB pays A with a check drawn against a bank account maintained in the United States. For purposes of section 6049, the place of payment of interest on the FC bond by FB to A is considered to be outside the United States under paragraph (e)(3) of this section.

Example 2. The facts are the same as in *Example 1* except that A presents the coupon to FB at its office outside the United States with instructions to transfer funds in payment to a bank account maintained by A in the United States. FB transfers the funds in accordance with A's instructions. Even though the amount is credited to an account in the United States, the place of payment of interest on the FC bonds is considered to be outside the United States under paragraph (e)(3) of this section because the coupon is presented for payment outside the United States; because FC is a foreign person that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section; because FB is not acting as A's agent; and because the obligation is not registered under the Securities Act of 1933 (15 U.S.C. 77a), listed on a securities exchange that is registered as a national securities exchange in the United States, or included in an interdealer quotation system.

Example 3. FC is a foreign corporation that is not a U.S. payor or U.S. middleman, as defined in paragraph (d)(1) of this section. B, a United States citizen, holds a bond issued by FC in registered form under section 163(f) and the regulations thereunder and registered under the Securities Act of 1933 (15 U.S.C. 77a). The bond is not a foreign-targeted registered obligation as defined in § 1.871–14(e)(2). DB, a United States branch of a

foreign corporation engaged in the commercial banking business, is the registrar of the bonds issued by FC. DB supplies FC with a list of the holders of the FC bonds. Interest on the FC bonds is paid to B and other bondholders by checks prepared by FC at its principal office outside the United States, and B's check is mailed from there to his designated address in the United States. The bond is described in paragraph (e)(1)(i)(B) of this section. The place of payment to B by FC of the interest on the FC bonds is considered to be inside the United States under paragraph (e)(1) of this section.

Example 4. The facts are the same as in Example 3 except that the checks are prepared and mailed in the United States by DC, a U.S. corporation engaged in the commercial banking business that is the designated paying agent with respect to the bonds issued by FC, and B's check is mailed to his designated address outside the United States. For purposes of section 6049, the place of payment by DC of the interest on the FC bonds is considered to be within the United States under paragraph (e)(1) of this section.

Example 5. Individual C deposits funds in an account with FB, a foreign country X branch of DB, a U.S. corporation engaged in the commercial banking business. FB maintains an office and employees in foreign country X, accepts deposits, and conducts one or more of the other activities listed in § 1.864–4(c)(5)(i). The terms of C's deposit provide that it will be payable in six months with accrued interest. On the day that the interest is credited to C's account with FB, C telephones DB from inside the United States and asks DB to direct FB to transfer the funds in his account with FB to an account C maintains in the United States with DB. Transmissions from the United States concerning this account have taken place in isolated and infrequent circumstances. Under paragraph (e)(2) of is section, FB is considered to have paid the interest on C's deposit outside the United States.

Example 6. The facts are the same as in *Example 5* except that C has placed his deposit with FB for an indefinite period of time. Interest will be credited to C's account daily. C has instructed FB to wire the interest at 90-day intervals to C's account with DB within the United States. FB is considered to have paid the interest credited to A's account within the United States under paragraph (e)(2) of this section because the regular crediting of the account disqualifies the transmission from being isolated or infrequent.

Example 7. DC, a U.S. corporation engaged in the commercial banking business, maintains FB, a branch in foreign country X. FB has an office and employees in foreign country X, accepts deposits, and engages in one or more of the other activities listed in § 1.864–4(c)(5)(i). D, a United States citizen, purchases a certificate of deposit issued in 1980 by FB. The certificate of deposit has a maturity of 20 years and has detachable interest coupons payable at six-month intervals. D presents some of the coupons at the U.S. office of DC and receives payment in cash. Because the coupon is presented to DC for payment within the United States, DC is considered to have made the payment within the United States under paragraph (e)(3) of this section.

Example 8. FB is recognized by both foreign country X and by the Federal Reserve Bank as a foreign country X branch of DC, a U.S. corporation engaged in the commercial banking business. A local foreign country X bank serves as FB's resident agent in Country X. FB maintains no physical office or employees in foreign country X. All the records, accounts, and transactions of FB are handled at the United States office of DC. E deposits funds in an amount maintained with FB. Interest earned on the deposit is periodically credited to E's account with FB by employees of DC. For purposes of section 6049, the place of payment of the interest on E's deposit with FB is considered to be within the United States by reason of paragraphs (e)(1) and (2) of this section.

Example 9. DC is a U.S. corporation. a holds bonds that were issued by DC in registered form under section 163(f) and the regulations thereunder and that are foreign-targeted registered obligations as defined in § 1.871–14(e)(2). DB, a commercial banking business, is the registrar of bonds issued by DC. Interest on the DC bonds is paid to a and other bondholders by check prepared by DB at its principal office inside the United States and mailed from there to a's address outside the United States. The check is drawn on a United States account maintained by DC with DB within the United States. The place of payment to a by DB of the interest on the DC bonds is considered to be outside the United States under paragraph (e)(4) of this section.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 1998.

(2) *Transition rules.* A payor that, on December 31, 1998, holds a valid Form W–8 or other form upon which it is permitted to rely to hold the payee as a foreign person pursuant to the regulations in effect prior to January 1, 1999 (see 26 CFR parts 1 and 35a, revised April 1, 1997), may treat it as a valid certificate until its validity expires under those regulations or, if earlier, until December 31, 1999. Further, the validity of a Form W–8 or other form that is dated prior to January 1, 1998, is valid on January 1, 1998, and would expire at any time during 1998, is extended until December 31, 1998 (and is not extended after December 31, 1998 by reason of the immediately preceding sentence). The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the three preceding sentences, a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates and, therefore, may require new withholding certificates conforming to the requirements described in this section.

Par. 43. Section 1.6049–6 is amended by:

1. Removing the language, ''a reasonable facsimile thereof'' in the first sentence of paragraph (d) and adding ''an acceptable substitute'' in its place.

2. Revising paragraph (e)(3).

The revision reads as follows:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.

* * * * *

(e) * * *

(3) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6049(c) and § 1.6049–6(a), see § 301.6722–1 of this chapter (Procedure and Administration Regulations). See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

* * * * *

Par. 44. Section 1.6049–7 is amended by revising paragraph (c)(4) to read as follows:

§ 1.6049–7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.

* * * * *

(c) * * *

(4) A foreign central bank of issue (as defined in § 1.895–1(b)(1)) or the Bank for International Settlements;

* * * * *

Par. 45. In § 1.6049–8, paragraph (a) is amended by removing the last two sentences and adding four sentences in their place to read as follows:

§ 1.6049–8 Interest and original issue discount paid to residents of Canada.

(a) *Interest subject to reporting requirement.* * * * The payor or middleman may rely upon the permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) as stated on the Form W–8 described in § 1.1441–1(e)(2)(i) in order to determine whether the payment is made to a Canadian nonresident alien individual. If the permanent residence address stated on the certificate is in Canada, or if the payor has actual knowledge of the individual's residence address in Canada, the payor must presume that the individual resides in Canada. Amounts described in this paragraph (a) are not subject to backup withholding

under section 3406. See § 31.3406(g)-1(d) of this chapter.

* * * * *

Par. 46. Section 1.6050A–1 is amended by

1. Removing the language ''Form 1099F'' each place it appears and adding ''Form 1099-MISC'' in its place in paragraphs (a) introductory text, (a) concluding text, (b) and (c)(1) first and second sentences.

2. Adding paragraph (d) to read as follows:

§ 1.6050A–1 Reporting requirements of certain fishing boat operators.

* * * * *

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050A(a) and § 1.6050A–1(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050A(b) and § 1.6050A–1(c), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

§ 1.6050H–1 [Amended]

Par. 47. Section 1.6050H–1 is amended by:

1. Removing the language § 35a.9999–4T, Q/A–5(iii) and adding § 1.6049–5(c) in its place in paragraph (d)(2)(ii)(A).

2. Removing the language ''§ 1.6049–5(b)(2)(iv) and adding § 1.1441–1(e)(1) in its place in paragraph (d)(2)(ii)(B).

Par. 48. Section 1.6050N–1 is amended by:

1. Revising the section heading.

2. Revising paragraphs (c) and (d).

3. Adding paragraph (e).

The addition and revisions read as follows:

§ 1.6050N–1 Statement to recipients of royalties paid after December 31, 1986.

* * * * *

(c) *Exempted foreign-related items*—(1) *In general.* No return shall be required under paragraph (a) of this section for payments of the items described in paragraphs (c)(1)(i) through (iv) of this section.

(i) Returns of information are not required for payments of royalties that a payor can, prior to payment, associate with documentation upon which it may rely to treat as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2), (3), (4), or (5). However, such payments may be reportable under § 1.1461–1(b) and (c).

For purposes of this paragraph (c)(1)(i), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. See § 1.1441–1(b)(3)(iii)(B) and (C) for special payee rules regarding scholarships, grants, pensions, annuities, etc. The provisions of § 1.1441–1 shall apply by substituting the term *payor* for the term *withholding agent* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code.

(ii) Returns of information are not required for payments of royalties from sources outside the United States (determined under Part I of subchapter N and the regulations under these provisions) made outside the United States by a non-U.S. payor or non-U.S. middleman. For a definition of non-U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(iii) Returns of information are not required for payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported and were not so reported.

(2) *Definitions*—(i) *Payor.* For purposes of this section, the term *payor* shall have the meaning ascribed to it under § 1.6049–4(a).

(ii) *Joint owners.* Amounts paid to joint owners for which a certificate or documentation is required as a condition for being exempt from reporting under this paragraph (c) of this section are presumed made to U.S. payees who are not exempt recipients if, prior to payment, the payor cannot reliably associate the payment either with a Form W–9 furnished by one of the joint owners in the manner required in §§ 31.3406(d)-1 through 31.3406(d)-5 of this chapter, or with documentation described in paragraph (c)(1)(i) of this section furnished by each joint owner upon which it can rely to treat each joint owner as a foreign payee or foreign beneficial owner. For purposes of applying this paragraph (c)(2)(ii), the grace period described in § 1.6049–5(d)(2)(ii) shall apply only if each payee qualifies for such grace period.

(d) *Cross-reference to penalties.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050N(a), see § 301.6721–1 of this chapter (Procedure and Administration Regulations). For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6050N(b) and § 1.6050N–1(a), see § 301.6722–1 of this chapter. See § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(e) *Effective date*—This section, except paragraph (c) , is applies to payee statements due after December 31, 1995, without regard to extensions. For further guidance regarding the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996 (see Rev. Proc. 84–70 (1984–2 C.B. 716) and § 601.601(d)(2) of this chapter). The provisions of paragraph (c) of this section apply to payments made after December 31, 1998.

Par. 49. Section 1.6071–1, is amended by revising paragraphs (c)(7), (c)(8),(c)(11), (c)(13), and (c)(15) to read as follows:

§ 1.6071–1 Time for filing returns and other documents.

* * * * *

(c) * * *

(7) For provisions relating to the time for filing information returns by persons making certain payments, see § 1.6041–2(a)(3) and § 1.6041–6.

(8) For provisions relating to the time for filing information returns regarding payments of dividends, see § 1.6042–2(c).

* * * * *

(11) For provisions relating to the time for filing information returns with respect to payments of patronage dividends, see § 1.6044–2(d).

* * * * *

(13) For provisions relating to the time for filing information returns regarding certain payments of interest, see § 1.6049–4(g).

* * * * *

(15) For provisions relating to the time for filing the annual information

return on Form 1042–S of the tax withheld under chapter 3 of the Code (relating to withholding of tax nonresident aliens and foreign corporations and tax-free covenant bonds), see § 1.1461–1(c).

* * * * *

Par. 50. In § 1.6091–1, paragraph (b)(15) is revised to read as follows:

§ 1.6091–1 Place for filing returns or other documents.

* * * * *

(b) * * *

(15) For the place for filing information returns on Forms 1042–S with respect to certain amounts paid to foreign persons, see instructions to the form.

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 51. The authority for part 31 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.3401(a)(6)–1 also issued under 26 U.S.C. 1441(c)(4) and 26 U.S.C. 3401(a)(6). * * *

Par. 52. Section 31.3401(a)(6)–1 is amended by:

1. Revising the section heading.

2. Revising the paragraph heading and first sentence of paragraph (e).

3. Adding paragraph (f).

4. Removing the authority citation at the end of the section.

The addition and revisions read as follows:

§ 31.3401(a)(6)–1 Remuneration for services of nonresident alien individuals.

* * * * *

(e) *Exemption from income tax for remuneration paid for services performed before January 1, 1999.* Remuneration paid for services performed within the United States by a nonresident alien individual before January 1, 1999, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. * * *

(f) *Exemption from income tax for remuneration paid for services performed after December 31, 1998.* Remuneration paid for services performed within the United States by a nonresident alien individual after December 31, 1998, is excepted from wages and hence is not subject to withholding if such remuneration is, or will be, exempt from the income tax imposed by chapter 1 of the Internal Revenue Code by reason of a provision of the Internal Revenue Code or an income tax convention to which the United States is a party. An employer may rely on a claim that the employee is entitled to an exemption from tax if it complies with the requirements of § 1.1441–1(e)(1)(ii) of this chapter (for a claim based on a provision of the Internal Revenue Code) or § 1.1441–4(b)(2) of this chapter (for a claim based on an income tax convention).

§ 31.3406–0 [Amended]

Par. 53. Section 31.3406–0 is amended by removing the entries in the table for § 31.3406(h)–2, paragraphs (e)(1) and (e)(2).

Par. 54. Section 31.3406(d)–3 is amended by:

1. Adding two sentences at the end of paragraph (a).

2. Removing the words ''30-day'' in the first sentence, revising the word ''these'' to ''the 30-day'', and adding the word ''may'' immediately before the words ''apply only if'' in the second sentence, and revising the word ''those'' to ''the'' in the third sentence in paragraph (b).

3. Revising paragraph (c).

The addition and revision read as follows:

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) * * * For payments made after December 31, 1998, see § 1.6049–5(d)(2)(ii) of this chapter for the application of a 90-day grace period in lieu of the 30-day grace period described in this paragraph (a) if, at the beginning of the 90-day grace period, certain conditions are satisfied. If the grace period provisions of § 1.6049–5(d)(2)(ii) or § 1.1441–1(b)(3)(iv) of this chapter are applied with respect to a new account, the grace period provisions of this paragraph (a) shall not apply to that account.

* * * * *

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 (or an acceptable substitute) or other evidence of foreign status (pursuant to relevant regulations under an applicable Internal Revenue Code section without regard to the requirement to furnish a taxpayer identifying number, and the certifications described in §§ 31.3406(d)–1(b)(3) and 31.3406(d)–2), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident. The 30-day rules described in paragraph (a) or (b) of this section may apply only if the payee does not qualify for, or the payor does not apply, the 90-day grace period described in § 1.6049–5(d)(2)(ii) or § 1.1441–1(b)(3)(iv) of this chapter.

Par. 55. In § 31.3406(g)–1, paragraph (e) is added to read as follows:

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

* * * * *

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after December 31, 1998, a payor is not required to backup withhold under section 3406 on a reportable payment that qualifies for the documentary evidence rule described in § 1.6049–5(c)(1) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to notional principal contracts, see § 1.6041–1(d)(5) of this chapter.

Par. 56. Section 31.3406(h)–2 is amended by:

1. Revising paragraph (a)(3)(i).

2. Revising the penultimate sentence in paragraph (d)

3. Removing the heading of paragraph (e)(1).

4. Removing the paragraph designation (e)(1).

5. Removing paragraph (e)(2).

The revisions read as follows:

§ 31.3406(h)–2 Special rules.

(a) * * *

(3) *Joint foreign payees*—(i) *In general.* If the relevant payee listed on a jointly owned account or instrument provides a Form W–8 or documentary evidence described in § 1.1441–1(e)(1)(ii) regarding its foreign status, withholding under section 3406 applies unless every joint payee provides the statement regarding foreign status (under the provisions of chapters 3 or 61 of the Internal Revenue Code and the regulations under those provisions) or any one of the joint owners who has not

established foreign status provides a taxpayer identification number to the payor in the manner required in §§ 31.3406(d)–1 through 31.3406(d)–5. See § 1.6049–5(d)(2)(iii) of this chapter for corresponding joint payees provisions.

* * * * *

(d) * * * If its payee is not subject to withholding under section 3406, the payor must pay or credit the full amount of the payment to the payee, unless, with respect to payments made after December 31, 1998, the payor chooses to apply prior withholding under section 3406 to an amount required to be withheld under another section of the Internal Revenue Code (such as under section 1441) to the extent permitted under procedures prescribed by the Internal Revenue Service (see § 601.601(d)(2) of this chapter). * * *

* * * * *

Par. 57. Section 31.6413(a)–3 is amended as follows:

1. Paragraph (a)(1)(ii) is amended by removing the language ''or'' at the end of the paragraph.

2. In paragraph (a)(1)(iii), the parenthetical ''(including the certification relating to foreign status described in § 1.6049–5(b)(2)(iv) of this chapter or § 1.6045–1(g)(1) of this chapter)'' is removed and ''(including the documentation described in § 1.1441–1(e)(1)(ii), 1.6045–1(g)(3), or 1.6049–5(c) of this chapter)'' is added in its place.

3. Paragraph (a)(1)(iii) is further amended by removing the period at the end of the paragraph and adding ''; or'' in its place.

4. Paragraph (a)(1)(iv) is added.

5. Paragraphs (a)(2) and (b)(2) are revised.

The addition and revisions read as follows:

§ 31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) * * * (1) * * *

(iv) The amount is withheld because a payor imposed backup withholding on a payment made to a person because the payee failed to furnish the documentation described in § 1.1441–1(e)(1)(ii) of this chapter and the payee subsequently furnishes, completes, or corrects the documentation. The documentation must be furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.

(2) For purposes of paragraph (a)(1) of this section (other than erroneous withholding occurring under the circumstances described in paragraph (a)(1)(iv) of this section), if a payor or broker withholds because the payor or broker has not received a taxpayer identifying number or required certification and the payee subsequently provides a taxpayer identifying number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) * * *

(2) *Adjustment after the deposit of the tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

(ii) *Erroneous withholding from a payee that is a foreign person.* Where a payor withholds in error from a payee that is a nonresident alien or foreign person, as described in paragraph (a)(1)(iv) of this section, the payor may refund some or all of the amount subject to backup withholding under section 3406. A refund may be paid in accordance with the requirements of this paragraph (b)(2)(ii) where the documentation is furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount of the refund will be the amount erroneously withheld less the amount of tax required to be withheld, if any, under chapter 3 of the Internal Revenue Code and the regulations under that chapter. With respect to the amount of the payment to the foreign person and the amount of tax required to be withheld under chapter 3 of the Internal Revenue Code (and the regulations thereunder), returns must be made in accordance with the requirements of § 1.1461–1 (b) and (c) of this chapter.

Par. 58. Effective October 14, 1997, § 31.9999–0 is added to read as follows:

§ 31.9999–0 Effective dates.

In general, the provisions of §§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4, and 35a.9999–5 of this chapter apply before January 1, 1997. The provisions of those sections remain applicable after December 31, 1996, and before January 1, 1999, however, for purposes of § 301.6724–1 of this chapter, relating to due diligence safe harbor, and for international transactions, including transactions involving a foreign payee, a foreign payor, a foreign office of a U.S. bank or broker, or a payment from sources without the United States. See §§ 31.3406–0 through 31.3406(i)–1 of this chapter for rules that apply to other transactions after December 31, 1996.

§ 31.9999–0 [Removed]

Par. 59. Effective January 1, 1999, § 31.9999–0 is removed.

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 60. The authority for part 35a is amended by removing the entries for §

§ 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T, and 35a.9999–5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 35a.9999–0T [Removed]

Par. 60a. Effective October 14, 1997 § 35a.9999–0T is removed.

Par. 61. Effective October 14, 1997 § 35a.9999–0 is added to read as follows:

§ 35a.9999–0 Effective date.

See § 31.9999–0 of this chapter for applicability dates for §§ 35a.9999–1 through 35a.9999–5.

Par. 62. Effective January 1, 1999, §§ 35a.9999–0, 35a.9999–1, 35a.9999–2, 35a.9999–3, 35a.9999–3A, 35a.9999–4T and 35a.9999–5 are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 63. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 301.6402–3 also issued under 95 Stat. 357 amending 88 Stat. 2351. * * *

Par. 64. Section 301.6109–1 is amended as follows:

1. Paragraphs (b)(2)(iv) and (b)(2)(v) are revised.

2. Paragraph (b)(2)(vi) is added.

3. Paragraph (c) is revised.

The revisions and addition read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(iv) A foreign person that makes a return of tax (including income, estate, and gift tax returns), an amended return, or a refund claim under this title but

excluding information returns, statements, or documents;

(v) A foreign person that makes an election under § 301.7701–3(c); and

(vi) A foreign person that furnishes a withholding certificate described in § 1.1441–1(e)(2) or (3) of this chapter or § 1.1441–5(c)(2)(iv) or (3)(iii) of this chapter to the extent required under § 1.1441–1(e)(4)(vii) of this chapter.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), or (vi) of this section, such person must request the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

* * * * *

Par. 65. Section 301.6114–1 is amended by:

1. Revising paragraph (a)(1)(ii).

2. Revising paragraph (b)(4)(ii) introductory text

3. Removing the period at the end of paragraph (b)(4)(ii)(B)(*7*) and adding ''; or'' in its place

4. Adding paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D).

5. Revising paragraph (c)(1)(i).

6. Adding paragraph (c)(6).

The revisions and addition read as follows:

§ 301.6114–1 Treaty-based return positions.

(a) * * * (1) * * *

(ii) If a return of tax would not otherwise be required to be filed, a return must nevertheless be filed for purposes of making the disclosure required by this section. For this purpose, such return need include only the taxpayer's name, address, taxpayer identifying number, and be signed under penalties of perjury (as well as the subject disclosure). Also, the taxpayer's taxable year shall be deemed to be the calendar year (unless the taxpayer has previously established, or timely chooses for this purpose to establish, a different taxable year). In the case of a disclosable return position relating solely to income subject to withholding (as defined in § 1.1441–2(a) of this chapter), however, the statement required to be filed in paragraph (d) of this section must instead be filed at times and in accordance with procedures published by the Internal Revenue Service.

* * * * *

(b) * * *

(4) * * *

(ii) A treaty exempts from tax, or reduces the rate of tax on, fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442 that a foreign person receives from a U.S. person, but only if described in paragraphs (b)(4)(ii)(A) and (B) of this section, or in paragraph (b)(4)(ii)(C) or (D) of this section as follows—

* * * * *

(C) For payments made after December 31, 1998, with respect to a treaty that contains a limitation on benefits article, that—

(*1*) The treaty exempts from tax, or reduces the rate of tax on income subject to withholding (as defined in § 1.1441–2(a) of this chapter) that is received by a foreign person (other than a State, including a political subdivision or local authority) that is the beneficial owner of the income and the beneficial owner is related to the person obligated to pay the income within the meaning of sections 267(b) and 707(b), and the income exceeds $500,000; and

(*2*) A foreign person (other than an individual or a State, including a political subdivision or local authority) meets the requirements of the limitation on benefits article of the treaty; or

(D) For payments made after December 31, 1998, with respect to a treaty that imposes any other conditions for the entitlement of treaty benefits, for example as a part of the interest, dividends, or royalty article, that such conditions are met;

* * * * *

(c) * * *

(1) * * *

(i) Notwithstanding paragraph (b)(4) or (5) of this section, that a treaty has reduced the rate of withholding tax otherwise applicable to a particular type of fixed or determinable annual or periodical income subject to withholding under section 1441 or 1442, such as dividends, interest, rents, or royalties to the extent such income is beneficially owned by an individual or a State (including a political subdivision or local authority);

* * * * *

(6) This section does not apply to amounts required to be reported under section 6038A on a Form 5472 (or successor form) to the extent permitted under the form or accompanying instructions.

* * * * *

Par. 66. Section 301.6402–3 is amended by:

1. Revising paragraph (e).

2. Removing the authority citation at the end of the section.

The revision reads as follows:

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code (Code). Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Code, a copy of the Form 1042–S required to be provided to the beneficial owner pursuant to § 1.1461–1(c)(1)(i) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042–S must include the taxpayer identifying number of the beneficial owner even if not otherwise required. No claim of refund or credit under chapter 65 of the Code may be made by the taxpayer for any amount that the payor has repaid to the taxpayer pursuant to § 1.1461–2(a)(2) of this chapter, that was subject to a set-off pursuant to § 1.1461–2(a)(3) of this chapter, or in accordance with the provisions of an agreement that a qualified intermediary described in § 1.1441–1(e)(5)(ii) has in effect with the Internal Revenue Service. Upon request, a taxpayer must also submit such documentation as the Commissioner (or delegate), the District Director, or the Assistant Commissioner (International),

may require establishing that the taxpayer is the beneficial owner of the income for which a claim of refund or credit is being made.

Par. 67. In § 301.6721–0, the table is amended by adding entries for § 3012.6724–1, paragraphs (g)(1), (g)(2), and (g)(3) to read as follows:

§ 301.6721–0 Table of Contents.

* * * * *

§ 301.6724–1 Reasonable cause.

* * * * *

(g) * * *

(1) In general.

(2) Special rules relating to TINs.

(3) Effective dates.

* * * * *

Par. 68. In § 301.6724–1, paragraph (g) is revised to read as follows:

§ 301.6724–1 Reasonable cause.

* * * * *

(g) *Due diligence safe harbor*—(1) *In general.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723.

(2) *Special rules relating to TINs.* The following questions and answers provide guidance on the exercise of due diligence for an exception to a penalty under sections 6721 through 6723 for a failure to provide a correct TIN on any information return (as defined in § 301.6721–1(g)), payee statement (as defined in § 301.6722–1(d)), document (as described in § 301.6723–1(a)(4)), or the failure merely to provide a TIN as described in § 301.6723–1(a)(4)(ii).

General Rule

Q–1. Is a payor subject to a penalty for a failure to provide a correct TIN on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the TIN furnished to the payor is the payee's correct number, the payor provided that number on an information return, and the number is later determined not to be the payee's correct number?

A–1. A payor is not subject to a penalty for failure to provide the payee's correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the payor was his correct number, and the payor included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

Due Diligence Defined for Accounts Opened and Instruments Acquired After December 31, 1983

Q–2. In order for a payor of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the payor take?

A–2. (1) In general, the payor of an account or instrument that is not a pre-1984 account nor a window transaction must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS to satisfy the due diligence requirement. Therefore, if a payor permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the payor will be liable for the $50 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the payor exercises due diligence in processing such number, i.e., the payor uses the same care in processing the TIN provided by the payee that a reasonably prudent payor would use in the course of the payor's business in handling account information such as account numbers and balances.

(2) Once notified by the IRS (or a broker) that a number is incorrect, a payor is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the payor has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions described in § 31.3406(d)–5(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A) (i) through (iv).

Q–3. Is a payor as described in A–2 liable for the penalty if the payor obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

A–3. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

Special Rules

Q–4. With respect to an instrument transferred without the assistance of a broker, is a payor liable for the penalty for filing an information return with a missing or an incorrect TIN if the payor records on its books a transfer of a readily tradable instrument in a transaction in which the payor was not a party?

A–4. Generally, a payor as described in Q–4 will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the payor if the payor records on its books a transfer in which the payor was not a party. This exception applies until the calendar year in which the payor receives a certified TIN from the payee.

Q–5. Is the payor described in A–4 required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year?

A–5. There is no requirement on the payor to solicit the TIN in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in A–4.

Q–6. Is a payor as described in Q–4 considered to have exercised due diligence if the payee provides a TIN to the payor (whether or not certified), the payor uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

A–6. A payor as described in Q–4 who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in A–4 where the transfer is accompanied with a TIN provided that the payor uses the same care in processing the TIN provided by a payee that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. Thus, a payor will not be liable for the penalty if the payor uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is later determined to be incorrect. However, a payor will not be considered as having exercised due diligence under A–4 after the IRS or a broker notifies the payor that the

number is incorrect unless the payor undertakes the required additional actions described in the second paragraph of A–2.

Q–7. Is a payor liable for a penalty for filing an information return with a missing or an incorrect TIN with respect to a post-1983 account or instrument if the payor could have met the due diligence requirements but for the fact that the payor incurred an undue hardship?

A–7. A payor of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the payor could have satisfied the due diligence requirements but for the fact that the payor incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the payor by fire or other casualty (or the place of business of the payor's agent who under a pre-existing written contract had agreed to fulfill the payor's due diligence obligations with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the payor). Undue hardship will also be found to exist if the payor could have met the due diligence requirements only by incurring an extraordinary cost.

Q–8. How does a payor obtain a determination from the IRS that the payor has met the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the payor is subject to the penalty?

A–8. A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the payor could have satisfied the due diligence requirements but for the occurrence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the payor either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A payor may request an undue hardship determination from the district director or the director of the Internal Revenue Service Center where the payor is required to remit the penalty under section 6721(a).

Q–9. Is a pre-1984 account or instrument of a payor that is exchanged for an account or instrument of another payor as a result of a merger of the other payor or acquisition of the accounts or instruments of such payor transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

A–9. No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee.

Q–10. May the acquiring taxpayer described in A–9 rely upon the business records and past procedures of the merged payor or the payor whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

A–10. Yes. The acquiring payor may rely upon the business records and past procedures of the merged payor or of the payor whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

Q–11. To what extent may a payor rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 1999 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1997).

A–11. A payor may rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 1999 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1997) solely for the definitions of terms or phrases used in this paragraph (g)(2).

(3) *Effective dates.* This paragraph (g) is effective for information returns (as defined in section 6724(d)(1)) required to be filed, payee statements (as defined in section 6724(d)(2)) required to be furnished, and specified information (as described in section 6724(d)(3)) required to be reported after December 31, 1998. See § 301.6724–1(g) in effect prior to January 1, 1999 (see § 301.6724–1(g) as contained in 26 CFR part 301, revised April 1, 1997) for substantially similar rules applicable prior to January 1, 1999.

* * * * *

PART 502—[REMOVED]

Par. 70. Part 502 is removed.

PART 503—[REMOVED]

Par. 71. Part 503 is removed.

PART 509—SWITZERLAND

Par. 72. The authority citation for ''Subpart—General Income Tax'' is removed and a general authority citation for part 509 is added to read as follows:

Authority: 26 U.S.C. 62, 3791 and 7805.

Par. 73. Part 509 is amended as follows:

§§ 509.1 through 509.10

[Removed]

1. Subpart—Withholding of Tax consisting of §§ 509.1 through 509.10 is removed.

§ 509.103 [Amended]

2. In § 509.103, paragraph (e) is removed and reserved.

§ 509.117 [Amended]

3. In § 509.117, paragraph (a) is removed and reserved.

§ 509.119 [Removed]

§ 509.122 [Removed]

4. Sections 509.119 and 509.122 are removed.

PART 513—IRELAND

Par. 74. The authority citation for part 513 is revised to read as follows:

Authority: 26 U.S.C. 62.

Par. 75. Part 513 is amended as follows:

§ 513.1 [Removed]

1. Section 513.1 is removed.

2. Sections 513.2, 513.3, 513.4 and 513.5 are revised to read as follows:

§ 513.2 Dividends.

The fact that the payee of the dividend is not required to pay Irish tax on such dividend because of the application of reliefs or exemptions under Irish revenue laws does prevent the application of the reduction in rate of United States tax with respect to such dividend. If the dividend would have been subject to Irish tax had the payee thereof derived an income large enough to require payment of tax then liability to Irish tax exists for the purpose of the reduction in rate of United State tax. As to what constitutes a permanent establishment, see Article II(1)(i) of the convention.

§ 513.3 Interest.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

§ 513.4 Patent and copyright royalties and film rentals.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

§ 513.5 Natural resource royalties and real property rentals.

The provisions of § 513.2 relating to the degree of liability to Irish tax in the case of dividends are equally applicable with respect to the income falling within the scope of this section.

PART 514—FRANCE

Par. 76. The authority citation for part 514 is added to read as set forth below and the authority citation preceding § 514.1 is removed.

Authority: 26 U.S.C. 7805.

Par. 77. Part 514 is amended as follows:

1. The undesignated centerheading preceding § 514.1 is removed.

§§ 514.20 and 514.21 [Removed]

2. Sections 514.20 and 514.21 are removed.

§ 514.22 [Amended]

3. In § 514.22, paragraph (c) is removed.

§§ 514.23 through 514.32 [Removed]

4. Sections 514.23 through 514.32 are removed.

§§ 514.101 through 514.117 [Removed]

5. Subpart—General Income Tax consisting of sections 514.101 through 514.117 is removed.

PART 516—[REMOVED]

Par. 78. Part 516 is removed.

PART 517—[REMOVED]

Par. 79. Part 517 is removed.

PART 520—[REMOVED]

Par. 80. Part 520 is removed.

PART 521—[AMENDED]

Par. 81. The authority citation for part 521 is revised to read as follows:

Authority: 26 U.S.C. 62, 143, 144, 211, and 231.

Par. 82. Part 521 is amended as follows:

§§ 521.1–521.8 [Removed]

1. Subpart—Withholding of Tax consisting of §§ 521.1 through 521.8 is removed.

§ 521.103 [Amended]

2. In § 521.103, paragraph (d) is removed and reserved.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 83. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 84. In § 602.101, paragraph (c) is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1441–8T	1545–1053
* * * * *	
1.1461–3	1545–0054
	1545–0055
	1545–0096
	1545–0795
1.1461–4	1545–0054
	1545–0055
	1545–0096
* * * * *	
35a.9999–3	545–0112
* * * * *	
Part 502	1545–0844
Part 503	1545–0837
* * * * *	
Part 516	1545–0841
Part 517	1545–0849
Part 520	1545–0833
* * * * *	

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

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1441–1	1545–1484
1.1441–4	1545–1484
* * * * *	
11.1441–8	1545–1484
	1545–1053
1.1441–9	1545–1484
* * * * *	
31.3401(a)(6)	1545–1484
301.6114–1	1545–1484
* * * * *	

3. Revising entries in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1441–5	1545–0096
	1545–0795
	1545–1484
1.1441–6	1545–0055
	1545–0795
	1545–1484
* * * * *	
1.1461–1	1545–0054
	1545–0055
	1545–0795
	1545–1484
* * * * *	
301.6402–3	1545–0055
	1545–0073
	1545–0091
	1545–0132
	1545–1484
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 28, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25998 Filed 10–6–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8735]

RIN 1545–AP71

Certain Payments Made Pursuant to a Securities Lending Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the taxation of certain payments made pursuant to a cross-border securities lending transaction. These regulations provide guidance concerning the source, character, and income tax treaty treatment of such payments and affect

United States payors and recipients and foreign payors and recipients.

DATES: These regulations are effective October 14, 1997.

Applicability: These regulations are applicable to payments made after November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ramon Camacho or Paul Epstein at (202) 622–3870 (not a toll-free number) of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1992, the IRS published proposed amendments (INTL–106–89) to the Income Tax Regulations (26 CFR part 1) under sections 861, 871, 881, 894, and 1441 of the Internal Revenue Code of 1986 (Code) in the **Federal Register** (57 FR 860). A public hearing was scheduled but was subsequently cancelled because no one requested to testify. However, several written comments were received. After consideration of all of the comments, the regulations proposed by INTL–106–89 are adopted by this Treasury decision, as modified.

Explanation of Provisions

I. The 1992 Proposed Regulations

On January 9, 1992, the Internal Revenue Service (IRS) issued proposed regulations that provided guidance on the source and character of substitute payments made in cross-border securities lending transactions. In general, the regulations proposed to source substitute payments by reference to the source of the payments (dividend or interest) for which they substitute. In addition, the regulations proposed to characterize substitute payments under a transparency rule. Under the transparency rule, substitute payments are treated as having the same character as the dividend or interest income for which they substitute.

Under the proposed regulations, the source rule applies for all purposes of the Code in cross-border securities lending transactions. In contrast, the transparency rule addressing the character of substitute payments applies only for purposes of determining the tax liability under sections 871 and 881 and nonresident alien withholding under chapter 3 of the Code and for treaty purposes. Generally, public comments welcomed the transparency rule because it eliminated unjustifiable tax biases between similar economic investments. After considering all the public comments, the proposed regulations are adopted as final regulations by this Treasury decision, substantially as proposed.

II. The Final Regulations

1. General rule

The final regulations, like the proposed regulations, provide that a substitute payment made with respect to a securities lending or sale-repurchase transaction is sourced using the general rules governing the source of interest or dividend income contained in sections 861 and 862. The definitions of securities lending transactions and sale-repurchase transactions are provided in §§ 1.861–2(a)(7) and 1.861–3(a)(6) of the regulations. These provisions define a substitute payment as a payment made to the transferor of a security of an amount equal to any distributions of dividends or interest which the owner of the transferred security would normally receive. The regulations also provide that substitute interest or dividend payments have the same character as interest or dividend income, respectively, for purposes of applying sections 864(c)(4)(B), 871, 881, 894, 4948(a) and the withholding provisions under chapter 3 of the Internal Revenue Code.

2. Scope of regulation

Some commentators questioned whether a sale-repurchase transaction is considered a transaction that is substantially similar to a securities lending transaction for purposes of the proposed regulations. They noted that most sale-repurchase transactions contractually permit the purchaser to deal freely with the underlying securities, specifying only that substantially identical securities be returned on the repurchase date. In such cases the purchaser must also make substitute payments to the seller. The final regulations clarify that substitute payments made in a sale-repurchase transaction are sourced and characterized in the same manner that substitute payments are sourced and characterized in securities lending transactions.

The final regulations only address the tax treatment of substitute payments received by the transferor in securities lending or sale-repurchase transactions. The regulations do not address the treatment of fees or interest paid to the transferee in such transactions. For example, the transparency rule does not extend to characterize the interest component of the repurchase price of a sale-repurchase agreement, which is treated as interest and sourced under the general source rules for interest contained in sections 861 and 862. See Rev. Rul. 74–27 (1974–1 C.B. 24); Rev. Rul. 77–59 (1977–1 C.B. 196); *Nebraska Department of Revenue* v. *Loewenstein,* 115 S. Ct. 557 (1994).

In response to comments, the final regulations apply for purposes of determining the source of substitute payments, regardless of whether the recipient of the income is U.S. or foreign. When source is determined under these regulations, it applies for all purposes of the Code (e.g., foreign tax credit limitations under sections 904 and 906). However, with respect to the characterization of substitute payments, the IRS and Treasury believe that it is appropriate, and more consistent with existing guidance regarding the treatment of substitute payments, to apply the transparency rule only with respect to foreign taxpayers and only for limited purposes. Accordingly, the transparency rule applies to determine character only for certain purposes of sections 864, 871, 881, 894, 4948(a) and chapter 3 of the Code. For example, under this rule, substitute payments to a foreign person with respect to stocks and securities that, absent the securities lending transaction, would give rise to foreign source effectively connected income in the hands of such person, will retain their character as dividend or interest income for purposes of determining whether the income is effectively connected to the U.S. trade or business of such person.

The transparency rule does not apply, however, to characterize the U.S. source income of U.S. trades or businesses of foreign taxpayers. Accordingly, U.S. source effectively connected income of foreign taxpayers and U.S. source income of U.S. taxpayers will be treated the same. In this regard, the final regulations do not affect existing guidance applicable to both U.S. and foreign taxpayers concerning the characterization of substitute payments for purposes of other sections not specifically identified in these final regulations. See, e.g., ev. Rul. 60–177 (1960–1 C.B. 9), (substitute payments are ineligible for the dividends received deduction under section 243); Rev. Rul. 80–135 (1980–1 C.B. 18), (substitute payments are ineligible for the tax-exemption on state and local bonds under section 103).

Because the transparency rule does not apply for purposes of sections 901 and 903, nothing in the final regulations affects the determination required under § 1.901–2(f) concerning the identity of the person by whom a foreign tax is considered paid for purposes of sections 901 and 903.

3. Substitute payments on portfolio debt instruments

Under the final regulations, substitute interest payments made with respect to a debt instrument, the interest on which qualifies as portfolio interest under section 871(h) or section 881(c) in the hands of the lender, is characterized as portfolio interest if, in the case of an obligation in registered form, the lender provides the withholding agent with a beneficial owner withholding certificate or documentary evidence in accordance with § 1.871–14(c) and no exception from the portfolio interest exemption applies. For example, if a bank lends securities in a transaction that the facts and circumstances indicate in substance is an extension of credit pursuant to a loan agreement in the ordinary course of the bank's trade or business, the substitute payment may be characterized as interest which would not qualify as portfolio interest under section 881(c)(3)(A).

4. Tax treaties

Some commentators noted that the transparency rule adversely affects foreign taxpayers that might otherwise rely on a different characterization of substitute payments in order to claim benefits under certain income tax treaties. The transparency rule would eliminate these benefits in a number of cases. Those commentators questioned the government's authority to issue regulations that would characterize substitute payments as dividend or interest income in light of U.S. income tax treaty provisions.

The IRS and Treasury believe that the transparency rule in general is properly issued pursuant to the general grant of authority under section 7805 because it eliminates opportunities for abuse that arise from a rule that would characterize substitute payments in a manner different from the treatment of the underlying payment. A transparency approach provides uniform results for economically similar investments.

Moreover, the IRS and Treasury believe that, in the absence of a transparency rule, many taxpayers would use securities lending transactions in order to avoid tax under tax treaties or under the Code. For this reason, authority to characterize substitute payments for Code and treaty purposes in the manner proposed in 1992 also is amply provided in section 7701(l), which was enacted after these comments were received. Section 7701(l) provides a broad grant of authority to issue regulations recharacterizing multiple party financing arrangements to prevent the avoidance of any tax.

In this regard, the legislative history provides that ''the committee seeks to bolster the Treasury's ability to prevent unwarranted avoidance of tax through multiple-party financial engineering as well as to provide a mechanism for issuing additional guidance to taxpayers entering into financial transactions.'' See H.R. Rep. No. 103–111, 103rd Cong., 1st Sess. 729 (1993). The committee also made clear that this authority was not limited to the types of back-to-back loan transactions addressed in prior rulings. See Rev. Rul. 84–152 (1984–2 C.B. 381); Rev. Rul. 84–153 (1984–2 C.B. 383); Rev. Rul. 87–89 (1987–2 C.B. 195). Section 7701(l) in fact has been applied to a broad range of financial transactions. See, e.g., Prop. Regs. § 1.7701(l)–2 (treatment of obligation-shifting transactions); and Notice 97–21 (IRB 1997–11, March 17, 1997), (tax avoidance using self-amortizing investments in conduit financing entities).

The 1992 proposed regulation under section 894 provided that where an income tax convention refers to United States law, the relevant law is the section or sections of the Internal Revenue Code and regulations thereunder governing the tax which is the subject of the provision. Some commentators have suggested that the proposed securities lending regulations would be invalid for purposes of characterizing dividends that are specifically defined by treaties. However, under conduit principles and additional authority to characterize payments pursuant to section 7701(l), the regulations adopted under § 1.894–1(c) address the identity of the owner of dividend and interest income for treaty purposes as opposed to the character of the payments received under varying treaty definitions. These regulations therefore are consistent with the government's authority under treaties to determine the identity of the beneficial owner of income.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect entities engaged in cross-border multiple-party financing arrangements. These regulations affect the tax treatment of substitute payments made with respect to stocks and debt securities. The primary participants who engage in cross-border multiple party financing arrangements of this type are large regulated commercial banks and brokerage firms. In addition, comments received in response to the notice of proposed rulemaking were from law associations, other associations that represent large regulated financial companies or from individuals. Accordingly, Treasury and IRS do not believe that a substantial number of small entities engages in cross-border multiple party financing arrangements of the type covered by these regulations. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Ramon Camacho of the Office of the Associate Chief Counsel (International).

However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.861–2 also issued under 26 U.S.C. 863(a).
Section 1.861–3 also issued under 26 U.S.C. 863(a). * * *
Section 1.864–5 also issued under 26 U.S.C. 7701(l). * * *
Section 1.871–7 also issued under 26 U.S.C. 7701(l). * * *
Section 1.881–2 also issued under 26 U.S.C. 7701(l). * * *
Section 1.894–1 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. Section 1.861–2 is amended by adding a sentence at the end of paragraph (a)(1); adding paragraph (a)(7); and revising paragraph (e) to read as follows:

§ 1.861–2 Interest.

(a) * * * (1) * * * See paragraph (a)(7) of this section for special rules concerning substitute interest paid or

accrued pursuant to a securities lending transaction.

* * * * *

(7) A substitute interest payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to an interest payment which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. A substitute interest payment shall be sourced in the same manner as the interest accruing on the transferred security for purposes of this section and § 1.862–1. See also §§ 1.864–5(b)(2)(iii), 1.871–7(b)(2), 1.881–2(b)(2) and for the character of such payments and § 1.894–1(c) for the application tax treaties to these transactions.

* * * * *

(e) *Effective dates.* Except as otherwise provided, this section applies with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Paragraph (a)(7) of this section is applicable to payments made after November 13, 1997.

Par. 3. Section 1.861–3 is amended by adding a sentence at the end of paragraph (a)(1); adding paragraph (a)(6); and removing the first sentence of paragraph (d) and adding three sentences in its place to read as follows:

§ 1.861–3 Dividends.

(a) * * * (1) * * * See also paragraph (a)(6) of this section for special rules concerning substitute dividend payments received pursuant to a securities lending transaction.

* * * * *

(6) *Substitute dividend payments.* A substitute dividend payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. A substitute dividend payment shall be sourced in the same manner as the distributions with respect to the transferred security for purposes of this section and § 1.862–1. See also §§ 1.864–5(b)(2)(iii), 1.871–7(b)(2) and 1.881–2(b)(2) for the character of such payments and § 1.894–1(c) for the application of tax treaties to these transactions.

* * * * *

(d) * * * Except as otherwise provided in this paragraph this section applies with respect to dividends received or accrued after December 31, 1966. Paragraph (a)(5) of this section applies to certain dividends from a DISC or former DISC in taxable years ending after December 31, 1971. Paragraph (a)(6) of this section is applicable to payments made after November 13, 1997. * * *

Par. 4. Section 1.864–5 is amended by redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii) and adding new paragraph (b)(2)(ii) to read as follows:

§ 1.864–5 Foreign source income effectively connected with U.S. business.

* * * * *

(b) * * *

(2) * * *

(ii) *Substitute payments.* For purposes of this paragraph (b)(2), a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person subject to tax under this paragraph (b) pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) with respect to a security (as defined in § 1.864–6(b)(2)(ii)(c)) shall have the same character as interest income paid or accrued with respect to the terms of the transferred security. Similarly, for purposes of this paragraph (b)(2), a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–3(a)(6)) with respect to a stock shall have the same character as a distribution received with respect to the transferred security. This paragraph (b)(2)(ii) is applicable to payments made after November 13, 1997.

* * * * *

Par. 5. Section 1.871–7 is amended by redesignating the text of paragraph (b) as paragraph (b)(1); adding a paragraph heading for newly designated paragraph (b)(1); adding paragraph (b)(2); and removing the first sentence of paragraph (f) and adding two sentences in its place to read as follows:

§ 1.871–7 Taxation of nonresident alien individuals not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income*—(1) General rule.

* * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) shall have the same character as interest income paid or accrued with respect to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–3(a)(6)) shall have the same character as a distribution received with respect to the transferred security. Where, pursuant to a securities lending transaction or a sale-repurchase transaction, a foreign person transfers to another person a security the interest on which would qualify as portfolio interest under section 871(h) in the hands of the lender, substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided that in the case of interest on an obligation in registered form (as defined in § 1.871–14(c)(1)(i)), the transferor complies with the documentation requirement described in § 1.871–14(c)(1)(ii)(C) with respect to the payment of the substitute interest and none of the exceptions to the portfolio interest exemption in sections 871(h) (3) and (4) apply. See also § 1.861–2(b)(2) and 1.894–1(c).

* * * * *

(f) * * * Except as otherwise provided in this paragraph, this section shall apply for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. * * *

Par. 6. Section 1.881–2 is amended by redesignating the text of paragraph (b) as paragraph (b)(1); adding a paragraph heading for newly designated paragraph (b)(1); adding a paragraph (b)(2); and removing the first sentence of paragraph (e) and adding two sentences in its place to read as follows:

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income*—(1) *General rule.*

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in § 1.861–2(a)(7)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) shall have the same character as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in § 1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in § 1.861–2(a)(7)) shall have the same character as a distribution received with respect to the transferred security. Where, pursuant to a securities lending transaction or a sale-repurchase transaction, a foreign person transfers to another person a security the interest on which would qualify as portfolio interest under section 881(c) in the hands of the lender, substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided that in the case of interest on an obligation in registered form (as defined in § 1.871–14(c)(1)(i)), the transferor complies with the documentation requirement described in § 1.871–14(c)(1)(ii)(C) with respect to the payment of substitute interest and none of the exceptions to the portfolio interest exemption in sections 881(c) (3) and (4) apply. See also §§ 1.871–7(b)(2) and 1.894–1(c).

* * * * *

(e) * * * Except as otherwise provide in this paragraph, this section applies for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. * * *

Par. 7. Section 1.894–1 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(c) *Substitute interest and dividend payments.* The provisions of an income tax convention dealing with interest or dividends paid to or derived by a foreign person include substitute interest or dividend payments that have the same character as interest or dividends under § 1.864–5(b)(2)(ii), 1.871–7(b)(2) or 1.881–2(b)(2). The provisions of this paragraph (c) shall apply for purposes of securities lending transactions or sale-repurchase transactions as defined in § 1.861–2(a)(7) and § 1.861–3(a)(6).

(d) *Effective dates.* Paragraphs (a) and (b) of this section apply for taxable years beginning after December 31, 966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Paragraph (c) of this section is applicable to payments made after November 13, 1997.

§ 1.7701(l)–1 [Amended]

Par. 10. Section 1.7701(l)–1 is amended as follows:

1. Paragraph (a) is amended by removing the paragraph designation (a) and the heading.

2. Paragraph (b) is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 28, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25999 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114000–97]

RIN–1545–AV41

Withholding on Interest in the Case of Sales of Obligations Between Interest Payment Dates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice of proposed rulemaking provides guidance regarding the obligation to withhold on interest paid with respect to obligations in the case of the sale of obligations between interest payment dates. These regulations would affect United States and foreign withholding agents and recipients. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments and outlines of oral comments to be presented at the public hearing scheduled for January 26, 1998, at 10 a.m. must be received by January 5, 1998.

ADDRESSES: Send submission to: CC:DOM:CORP:R (REG–114000–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20224. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–114000–97), Courier desk, Internal Revenue Service, 1111 Constitution Avenue, 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 hearing scheduled for January 26, 1998, will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lilo Hester at (202) 622–3840 (not a toll-free number); concerning submissions and the hearing, Evangelista Lee, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In this issue of the **Federal Register**, the IRS and Treasury are publishing final withholding and reporting regulations under chapter 3 of the Internal Revenue Code (Code) and other sections of the Code. Section 1.1441–3(b)(2) of the final regulations provides that no withholding is required upon interest accrued on the date of a sale of debt obligations when the sale occurs between two interest payment dates, even though the amount is treated as interest under § 1.61–7 (c) or (d) and is subject to tax under section 871 or 881. In contrast, § 1.1441–2(b)(3) of the final regulations provides that withholding is required on amounts of original issue discount in the event of a sale of an original issue discount obligation or a payment on such an obligation, subject to certain exceptions. The IRS and Treasury believe that, in view of these provisions, the exemption from withholding on non-OID amounts is no longer justified. A withholding agent that pays amounts to a foreign person in connection with the sale of an obligation between interest payments dates is in the same position as a withholding agent that pays amounts to a foreign person in connection with the sale of an original issue discount obligation. The withholding exemption for sale of debt obligations between interest payment dates provides an easy avenue for the avoidance of the documentation requirements imposed under sections 871(h) and 881(c) for purposes of qualifying interest on registered debt obligations as portfolio interest. For this reason, and in order to create parity with the tax treatment of original issue discount obligations under chapter 3 of the Code, it is no longer appropriate to continue this exemption.

Under § 1.1441–2(b)(3), a withholding agent must withhold on an amount of original issue discount to the extent that it has actual knowledge of the proportion of the amount of the payment that is taxable to the beneficial owner under section 871(a)(1)(C) or 881(a)(3)(A). A withholding agent has actual knowledge if it knows how long the beneficial owner has held the obligation, the terms of the obligation, and the extent to which the beneficial owner purchased the obligation at a premium. A withholding agent is treated as having knowledge if the information is reasonably available. Special rules are provided for withholding agents with which the beneficial owner does not maintain a direct account relationship. Further, the regulations under § 1.1441–2(b)(3) dealing with original issue discount provide that, in the case of an obligation that would qualify as portfolio interest if documentation were provided to the withholding agent, withholding is required on the entire amount of stated interest, if any, and original issue discounts, if no such documentation is provided, irrespective of whether the withholding agent has knowledge of the portion of the payment representing taxable original issue discount. For this purpose, the withholding agent may rely upon the IRS List of Original issue Discount Instruments contained in IRS Publication 1212 (available from the IRS Distribution Centers).

In response to comments, the provisions in § 1.1441–3(b)(1) are proposed to be modified to reduce the amount upon which withholding is required. No obligation to withhold is imposed under current law on the payment of stated interest on an obligation that was purchased between interest payment dates. Under § 1.61–7(c), interest received on the interest payment date is treated as a return of basis to the extent it represents accrued unpaid interest as of the date of purchase as reflected in the new holder's basis for the obligation. Therefore, when the new holder receives a payment of the stated interest, the holder s tax liability is limited to the amount of interest accrued after the date of purchase (subject to additional adjustments reflecting possible acquisition premiums or market discounts). Because of the difficulty for a withholding agent to determine the amount accrued to the holder and other adjustments affecting the actual amount taxable to the holder, withholding on the entire amount of stated interest is required under the current withholding regulations under § 1.1441–3(b)(1).

Commentators have asked that the withholding agent be permitted to withhold on the amount that it knows is taxable. The final withholding regulations did not modify the proposed regulations on this point because the Treasury and IRS consider that withholding on the entire amount is justified if withholding on sales of obligations between interest payment dates is not required. However, because these proposed regulations require withholding, the regulations permit a withholding agent to adjust the amount of withholding at the time of payment of stated interest to account for earlier withholding.

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 also has 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 regulation does 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 comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 26, 1998, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Ave, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by January 5, 1998.

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.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1441–3, paragraph (b) is revised to read as follows:

§ 1.1441–3 Determination of amount to be withheld.

* * * * *

(b) *Withholding on payments on certain obligations*—(1) *Withholding at time of payment of interest.* When making a payment on an interest-bearing obligation, a withholding agent must withhold under § 1.1441–1 upon the gross amount of stated interest payable on the interest payment date, regardless of whether the payment constitutes a return of capital or the payment of income within the meaning of section 61, unless the withholding agent has knowledge of the actual amount of interest paid. For this purpose, the withholding agent may rely on information provided by the issuer (or its paying agent), on a representation from the beneficial owner, or on information that the withholding agent has in its records. To the extent an amount was withheld on an amount of capital rather than interest, see rules for adjustments, refunds, or credits under § 1.1441–1(b)(8).

(2) *No withholding between interest payment dates*—(i) *General rule.* A withholding agent is not required to withhold under § 1.1441–1 upon interest accrued on the date of a sale of debt obligations when that sale occurs between two interest payment dates (even though the amount is treated as interest under § 1.61–7(c) or (d) and is subject to tax under section 871(a) or 881(a)), unless the withholding agent has knowledge of the amount paid as interest. For purposes of this paragraph (b)(2)(i), a withholding agent is treated as having knowledge in the same manner as a withholding agent has knowledge for purposes of § 1.1441–2(b)(3)(ii), dealing with withholding on original issue discount. In addition, notwithstanding lack of knowledge (within the meaning of § 1.1441–2(b)(3)(ii)), withholding is required on the entire amount of stated interest paid with respect to the obligation as determined as of the date of original issue if the withholding agent, pursuant to the provisions in § 1.1441–1(b)(3), treats the payment as made to a foreign payee because it cannot associate the payment with required documentation and the amount would qualify as portfolio interest. See § 1.1441–1(b)(8) for adjustments to any amount that has been overwithheld as a result of this provision.

(ii) *Applicable rules.* Any exemption from withholding pursuant to paragraph (b)(2)(i) of this section applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6049 and backup withholding under section 3406. See § 1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. Any exemption from withholding under paragraph (b)(2)(i) of this section is not a determination that the accrued interest is not fixed or determinable annual or periodical income. See § 1.61–7(c) regarding the character of payments received by the acquirer of an obligation subsequent to such acquisition (that is, as a return of capital or interest accrued after the acquisition).

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26000 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107872–97]

RIN 1545–AV27

Electronic Transmission of Form W–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the submission of Form W–8, a withholding certificate, needed for purposes of chapters 3 and 61 of the Internal Revenue Code (Code) and other withholding or reporting provisions of the Code, such as section 3402, 3405, or 3406. The proposed regulations provide guidance to withholding agents and payors who wish to establish an electronic system for use by beneficial owners or payees in furnishing Form W–8. The proposed regulations state the general requirements that such an electronic system must satisfy so that a withholding agent or payor may rely on a Form W–8 transmitted through such a system. These regulations affect withholding agents and payors that establish electronic systems and beneficial owners and payees who use these systems.

DATES: Written comments and requests for a public hearing must be received by January 12, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–107872–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–107872–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, 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 www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lilo Hester, 202–622–3840; concerning submissions, Evangelista Lee, 202–622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1441 of the Internal Revenue Code (Code). These amendments are proposed to provide general procedures for withholding agents and payors to establish acceptable electronic systems.

Final regulations published in the Rules and Regulations section of this issue of the **Federal Register** add § 1.1441–1(e)(4)(iv) which authorizes the electronic transmission of a Form W–8 described in § 1.1441–1(e)(1)(i). In addition, by cross-reference contained in § 1.6049–5(c)(2) (published as a final rule in the Rules and Regulations section of this issue of the **Federal Register**), the regulation authorizes electronic transmission of a Form W–8 furnished for purposes of chapter 61 of the Code (i.e., information reporting) or for purposes of another income tax withholding provision of the Code, such as section 3406.

Pursuant to chapter 3 (or, in certain cases, chapter 61) of the Code, a beneficial owner or a payee (i.e., a person who receives a payment) must furnish a withholding certificate to a withholding agent or payor in order to establish its status as a foreign person and entitlement to a reduced rate of withholding. By establishing foreign status, and other relevant characteristics, a beneficial owner or payee may be entitled to a reduction or exemption in the amount of withholding under chapter 3 of the Code or an exemption from information reporting under chapter 61 of the Code or from backup withholding under section 3406. The receipt of a withholding certificate affects the amount of tax that the withholding agent or payor may be required to withhold from the payment, and the type and form of information that it must provide to the IRS. The regulations under sections 1441 and 1443 specifically identify Form W–8 (or an acceptable substitute form) as the required form of the withholding certificate.

These proposed regulations apply to electronic transmission of Forms W–8. The regulations do not apply to Form 8233 for use by individuals who claim a reduced rate of withholding under an income tax convention for services performed in the United States. See § 1.1441–4(b)(2). In addition, the regulations do not apply to documentary evidence (described in § 1.6049–5(c)(1)) that may be substituted for the Form W–8 with respect to certain payments made to accounts maintained outside of the United States. However, the IRS and Treasury invite comments on any computer technology (e.g., imaging) that could make electronic transmission of documentary evidence possible.

Explanation of Provisions

1. Type and Design of System Determined by Withholding Agent or Payor Subject to Specific Requirements

Under the proposed regulations, a withholding agent or payor may choose to establish an electronic system to receive or transmit Forms W–8 (or such other form as the IRS may prescribe), including a payor or withholding agent that is an intermediary. The withholding agent or payor may determine the type of system (such as telephone or computer) available for that purpose. The system must, however, (1) reliably identify the user, (2) ensure that the information received is the information sent, and (3) document occasions of user access that result in a submission, renewal, or modification of the withholding certificate. The proposed regulations envision that implementation of these specific requirements necessitates a direct relationship between the withholding agent or payor and the beneficial owner or payee. The proposed regulations reserve on applicable standards for systems used by intermediaries to transmit forms received from another payor or withholding agent. The IRS and Treasury recognize the importance of allowing the electronic transmission of Forms W–8 through one or more intermediaries (i.e., persons not acting for their own account). Therefore, comments are solicited regarding the logistical operation of an electronic transmission system for use by an intermediary satisfying the IRS requirements that the integrity, accuracy, and reliability of the original electronic transmission through an intermediary system is adequately protected.

2. Relationship Between Paper and Electronic Withholding Certificate

The electronic transmission must contain exactly the same information as the paper Form W–8 (or such other form as the IRS may prescribe). Any guidance, such as regulations or instructions, that applies to the paper Form W–8 also applies to electronically transmitted forms.

3. Electronic Filing Optional

Section 1.1441–1(e)(4)(iv) authorizing the use of electronic systems was promulgated to assist in reducing burdens (in terms of cost and time) on withholding agents, payors, payees, and beneficial owners. The use of an electronic system for the transmission of Form W–8 is merely an alternative to the use of a paper form. Electronic transmission of Form W–8 is not mandatory. A withholding agent or payor may not mandate the use of electronic systems to receive or transmit the forms. Thus, a payee or beneficial owner may furnish a Form W–8 to the withholding agent or payor on paper.

4. Signature Under Penalties of Perjury

Section 6061 generally provides that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary. Section 301.6061–1(b) provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. Section 6065 provides that, except as provided by the Secretary, any return, statement or other document shall contain or be verified by a written declaration that it is made under the penalties of perjury. These requirements apply to a Form W–8 (or such other form as the Internal Revenue Service may prescribe), including one that is filed electronically, as provided in § 1.1441–1(e)(2)(ii), (3)(ii), (3)(iii), and (3)(v), and § 1.1441–5(c)(2)(iv) and (3)(iii) of the final regulations. The proposed regulations, therefore, include guidance on the perjury statement and the signature requirements for Forms W–8 that are filed electronically.

5. IRS Requests for Electronic Data

Upon request by the IRS in the course of an examination, a withholding agent or payor must supply a hard copy of the information contained on the electronically transmitted Form W–8 and a statement that, to the best of the

withholding agent's knowledge, the electronic Form W–8 was furnished by the person whose name is on the form. The printout of the Form W–8 information must be provided to the IRS in English.

Proposed Effective Date

These regulations are proposed to become effective January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the proposed 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 Code, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person that submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Lilo A. Hester, Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1441–1, paragraph (e)(4)(iv) is revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(4) * * *

(iv) *Electronic transmission of information*—(A) *In general.* A withholding agent may establish a system for beneficial owners or payees to furnish electronically Forms W–8 (or such other form as the Internal Revenue Service may prescribe). The system also may enable the withholding agent to electronically transmit Forms W–8 to another person. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section.

(B) *Requirements*—(*1*) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of user access that result in the submission, renewal, or modification of a Form W–8. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and furnishing Form W–8 is the person named in the form.

(*2*) *Same information as paper Form W–8.* The electronic transmission must provide the withholding agent or payor with exactly the same information as the paper Form W–8.

(*3*) *Perjury statement and signature requirements.* The electronic transmission must be signed by way of an electronic signature by the person whose name is on the Form W–8 and the signature must be under penalties of perjury in the manner described in this paragraph (e)(4)(iv)(B)(*3*).

(*i*) *Perjury statement.* The perjury statement must contain the language that appears on the paper Form W–8. The electronic system must inform the person whose name is on the Form W–8 that the person must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W–8. The instructions and the language of the perjury statement must immediately follow the person's certifying statements and immediately precede the person's electronic signature.

(*ii*) *Electronic signature.* The act of the electronic signature must be effected by the person whose name is on the electronic Form W–8. The signature must also authenticate and verify the submission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper Form W–8. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the person's Form W–8 submission.

(*4*) *Requests for electronic Forms W–8 data.* Upon request by the Internal Revenue Service during an examination, the withholding agent must supply a hard copy of the electronic Form W–8 and a statement that, to the best of the withholding agent's knowledge, the electronic Form W–8 was filed by the person whose name is on the form. The hard copy of the electronic Form W–8 must provide exactly the same information as, but need not be a facsimile of, the paper Form W–8.

(C) *Special requirements for transmission of Forms W–8 by an intermediary.* [Reserved].

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–26001 Filed 10–6–97; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday
October 14, 1997

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers; Interim Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–501]

RIN 1904–AA45

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces and Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (the Department or DOE) is amending a provision of its recently promulgated final rule that prescribed revised test procedures to determine the energy efficiency of furnaces and boilers. Under today's amendment, the test procedures will provide that the flue collector box on a furnace or boiler with a power burner or draft inducer need not be insulated before the start of the cool-down test.

DATES: This rule is effective November 10, 1997. Written comments (ten copies) in response to this notice must be received by November 13, 1997.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Interim Final Rule for Test Procedures for Furnaces and Boilers, Docket No. EE–RM–93–501, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–7574.

Copies of the public comments received may be read at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see Section IV, ''Public Comment,'' of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138. Or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Discussion
II. Procedural Requirements
A. Review Under the National Environmental Policy Act of 1969.
B. Review Under Executive Order 12866, ''Regulatory Planning and Review.''
C. Review Under Executive Order 12612, ''Federalism.''
D. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights.''
E. Review Under the Paperwork Reduction Act.
F. Review Under Executive Order 12988, ''Civil Justice Reform.''
G. Review Under Unfunded Mandates Reform Act of 1995.
H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996.
III. Interim Final Rule
IV. Public Comment

I. Discussion

On August 23, 1993, DOE published in the **Federal Register** a proposal (hereinafter referred to as the 1993 proposed rule) to amend the DOE test procedures for furnaces and boilers. 58 FR 44538. A public hearing was held in Washington, DC, on January 5, 1994, on the proposed rule. On May 12, 1997, after review and evaluation of the comments received, DOE published in the **Federal Register** a final rule (hereinafter referred to as the 1997 final rule) amending the furnace test procedure. 62 FR 26140. The 1997 final rule incorporated by reference many provisions of the American National Standards Institute, Inc./American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ANSI/ASHRAE) Standard 103–1993 (hereinafter referred to as Standard 103–1993). Standard 103–1993 includes most of the provisions in the 1993 proposed rule. However, as discussed in preamble to the 1997 final rule, the Department did not intend to adopt in the final rule any revision to the test procedure that would affect the measure of efficiency (Annual Fuel Utilization Efficiency (AFUE)) of existing furnaces and boilers. The 1997 final rule did not include, therefore, those provisions in the 1993 proposed rule (also contained in Standard 103–1993) that the Department believed would, if adopted, reduce the AFUE of certain existing furnaces and boilers.

Among the provisions of Standard 103–1993 that were included in the 1997 final rule was section 7.2.2.2. This section of Standard 103–1993 specifies that, for power burner units (including power vented units and oil burners), the flue gas collector box shall be covered with insulation having an R-value of not less than 7 and an outer layer of aluminum foil before the cool-down and heat-up tests.

After the publication of the 1997 final rule, the Gas Appliance Manufacturers Association (GAMA) contacted the Department and asserted that the adoption of this insulation requirement in the DOE test procedures will reduce the AFUE of many furnaces and boilers. GAMA stated that for some units the reduced AFUE would be below the minimum standard, while for others it would be below the qualifying levels for many utility rebate programs.

As discussed in the preamble to the 1997 final rule, 62 FR at 26147, the requirement to insulate the flue collector box of power burner units can be traced to language in prior DOE test procedures and ANSI/ASHRAE Standard 103–1982. DOE has reviewed that language, and has found that it was ambiguous, and was susceptible to a reasonable interpretation that it did not apply to power vented units. Furthermore, since 1983 furnace manufacturers, GAMA and Intertek Testing Services (an independent testing laboratory contracted by GAMA to administer its furnace and boiler Efficiency Certification Program) have done efficiency tests on furnaces and boilers equipped with power burners without insulating the flue gas collector box.

As discussed above, the Department did not intend to include any provisions in the 1997 final rule which would affect the measured efficiency for furnaces or boilers. Upon further consideration of the above, the Department concludes that the requirement to insulate the flue collector box could lower existing AFUE measurements. The inclusion of this requirement would affect manufacturers' product offerings and their participation in utility rebate programs. Furthermore, it would add a testing burden on manufacturers, by requiring them to re-test and re-certify existing units. Therefore in today's interim final rule, DOE is deleting from its recently adopted test procedure for furnaces and boilers the insulation requirement for power burner units.

II. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

The Department has concluded that this interim final rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from the

National Environmental Policy Act of 1969 (NEPA) review because they would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Appendix A to Subpart D) implementing the NEPA (42 U.S.C. 4321, 4331–35, 4341–47). Therefore this interim final rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993. Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under Executive Order 12612, ''Federalism''

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The interim final rule published today would not alter the distribution of authority and responsibility to regulate in this area. The interim final rule would only revise a currently applicable DOE test procedure to improve existing testing methods, and to add provisions that DOE might use in future standard setting. Accordingly, DOE has determined that preparation of a federation assessment is unnecessary.

D. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this final rule would not result in any Takings which might require compensation under the Fifth Amendment to the United States Constitution.

The Department believes that a test procedure implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a ''taking'' of private property. Thus, testing under the appliance standards program does not invoke the provisions of E.O. 12630.

E. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under Unfunded Mandates Reform Act of 1995

If any proposed or final rule includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, requires an agency (prior to promulgation) to prepare a budgetary impact statement and select the least costly, most cost effective and least burdensome alternative that achieve the objectives of the rule and is consistent with statutory requirements.

DOE has determined that the action promulgated today does not include such a Federal mandate. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

III. Interim Final Rule

This Interim Final Rule revises a provision, concerning insulation of the flue collector box, that is included in the 1997 final rule promulgating test procedures for furnaces. The effective date of the test procedures in 1997 the final rule is November 10, 1997. In order to avoid confusion and unwarranted testing and compliance costs, DOE concluded that this amendment to the 1997 final rule must be effective on November 10,1997, and must be issued as promptly as possible. Moreover based on the comments received in response to the 1993 proposed rule, the Department does not expect public comments objecting to the change made by this interim final rule.

Therefore, the Department finds that it would be impracticable, unnecessary and contrary to the public interest to have notice and public comment prior to issuing the amendment set forth in this interim final rule. However, the Department is providing for a post-publication public comment period, and will respond to comments as appropriate in a notice of final rulemaking.

IV. Public Comment

Interested persons are invited to participate in the rulemaking by submitting data, comments, or information with respect to the test procedures set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified both on the envelope and on the documents as ''Test Procedures for Furnaces/Boilers, Docket No. EE-RM–93–501.'' Ten (10) copies are requested to be

submitted. If possible, the Department would appreciate an electronic copy of the comments on a 3.5'' diskette. The Department is currently using WordPerfect™ 6.1. All submittals received by the date specified at the beginning of this notice will be considered by the Department of Energy before final action is taken on the interim final rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and nine copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department of Energy when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by, or available from, other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on September 5, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

2. Section 6.0 in appendix N to subpart B of part 430 is revised to read as follows:

* * * * *

6.0 *Apparatus*. The apparatus used in conjunction with the furnace or boiler during the testing shall be as specified in section 7 of ANSI/ASHRAE Standard 103–1993 except for the second paragraph of section 7.2.2.2 and except for section 7.2.2.5, and as specified in section 6.1 of this appendix.

* * * * *

[FR Doc. 97–27018 Filed 10–10–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Tuesday
October 14, 1997

Part IV

Department of Transportation

Federal Transit Administration

Fiscal Year 1998 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 1998 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This notice contains FTA's comprehensive compilation of the Federal Fiscal Year 1998 certifications and assurances to be used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 1998. (See Appendix A.) These certifications and assurances include all annual certifications required by 49 U.S.C. 5307(d)(1) for FTA's Urbanized Area Formula Program as well as other certifications and assurances needed for compliance with various other Federal statutes and regulations affecting FTA's assistance programs.

EFFECTIVE DATE: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Pat Berkley, Office of Program Management, Federal Transit Administration, (202) 366–6470; the FTA Web Site at http://www.fta.dot.gov; or contact FTA staff in the appropriate Regional Office listed below. For copies of other related documents, contact Minnie Davis, Office of Public Affairs, Federal Transit Administration, (202) 366–1217.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts, Telephone 617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands, Telephone 212–264–8162

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia, Telephone 215–656–7100

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico, Telephone 404–562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio, Telephone 312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico, Telephone 817–860–9663

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska, Telephone 816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Telephone 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands, Telephone 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska, Telephone 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or its project.

This notice provides the text of certifications and assurances that may be required by law for the various Federal assistance programs administered by FTA including the Capital Program; the Urbanized Area Formula Program; the Nonurbanized Area Formula Program; the Metropolitan Planning Program; the Rural Transit Assistance Program; the Elderly and Persons With Disabilities Program; the Human Resource Program; the National Training Institute Program; the State Planning and Research Program; and the National Planning and Research Program, all codified at 49 U.S.C. chapter 53. When administering Federal assistance programs authorized by other Federal statutes, such as Title 23, United States Code, FTA uses these same certifications and assurances during Federal Fiscal Year 1998.

This Notice provides the applicant with a single Signature Page on which the applicant and its attorney certifies compliance with all certifications and assurances applicable to each grant or cooperative agreement for which the applicant wishes to apply in Federal Fiscal Year 1998. (See Signature Page of Appendix A.)

Electronic Submission

FTA has expanded the use of the electronic programs for applicants introduced in 1995. The On-Line Program is offered to applicants through the Grant Management Information System (GMIS). This is a computerized system designed to assist the FTA grantee or recipient of a cooperative agreement in managing its FTA assisted projects and their budgets. All applicants are encouraged to participate in the On-Line Program, which includes the opportunity to certify compliance electronically for all certifications and assurances selected among those in Appendix A. The Electronic Grant Making and Management initiative (EGMM) pilot program also initiated in Federal Fiscal Year 1995 has proved so successful in reducing time and paper that EGMM will continue to be offered to more applicants. This program is presently undergoing graphical-user-interface refinement for enhanced accessibility. Applicants may contact their Regional Office shown above for more information.

1998 Changes

This 1998 Annual Certifications and Assurances document contains two major changes to the previous year's **Federal Register** publication. (1) Starting with this Fiscal Year 1998, all Applicants for FTA capital program or formula program assistance, and current Grantees with an active project financed with FTA capital program or formula program assistance will be required to provide the Appendix A Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 1998, whichever comes first.

(2) The attorney signature from previous years on the Single Signature Page will no longer be acceptable. FTA requires a current attorney's affirmation of the Applicant's legal authority to certify compliance with the funding obligations in this document. Additional changes include clarification and reference sources. It is important that each applicant be familiar with all fifteen categories contained in this document as it is a prerequisite for receiving FTA financial assistance.

FTA directs your attention to Appendix C in FTA Circular 9300.1, ''Capital Program Grant Application Instructions,'' which was published on September 29, 1995; to Exhibit D in FTA Circular 9040.1D, dated May 3, 1997, ''Nonurbanized Area Formula Program Guidance and Grant Application Instructions; and Appendix G of FTA Circular 9030.1B, dated October 10, 1996, Urbanized Area Formula Program: Grant Application Instructions. These circulars contain a previous version of the Annual Certifications and Assurances which includes some but

not all of the most current and valid changes. Do not use the document contained in these circulars. They are examples only and will not be considered acceptable or valid. Therefore the provisions of this Notice supersede conflicting statements in those circulars. Note especially that the Applicant must use the most current Signature Pages shown in this Federal Fiscal Year 1998 **Federal Register** document or provided concurrently through the EGMM initiative discussed above. A copy of an earlier fiscal year's Certification Signature page is not acceptable.

Background

With the publication of the Federal Fiscal Year 1995 version of this notice, certifications and assurances for Federal assistance programs administered by FTA were for the first time consolidated into one document. This marked the beginning of an effort to assist applicants in reducing time and paper work in certifying compliance with various Federal laws and regulations. It coincided with the On-Line Program and the EGMM initiative described above, which also reduced the time and paper required to process an application.

FTA intends to continue publishing this document annually with any changes or additions specifically highlighted, in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds in accordance with the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Procedures

Following is a detailed compilation of Certifications and Assurances and the Signature Page (Appendix A). The Signature Page is to be signed by the applicant's authorized representative and its attorney, and sent or electronically transmitted through the FTA computerized on-line system, to the appropriate FTA Regional office within 90 days of this **Federal Register** publication date, or with the applicant's first Federal assistance application in Federal Fiscal Year 1998, whichever comes first.

All applicants are advised to read the entire 1998 Certifications and Assurances to be confident of their responsibilities and commitments. The applicant may signify compliance with all Categories by placing a single ''X'' in the appropriate space at the top of the Signature Selection Page in Appendix A. However, the applicant's Attorney Affirmation continues to be required as indicated on the Signature Page at the end of Appendix A, regardless of the applicant's selection of a single selection for all fifteen Categories, or individual options selection from the fifteen Categories.

The Signature Page, when properly signed and submitted, or electronically transmitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program/s involved, should they apply for a FTA grant during this fiscal year. All applicants must read the selection portion and the signature portion of this document and signify compliance by marking where appropriate with an ''X'' on the category selection side, and then signifying compliance as indicated. (See Appendix A.) An applicant participating in the On-Line Program or the EGMM Program described above, may submit its Signature Page (both the selection side and the signature side) electronically. The applicant should not hesitate to consult with the appropriate Regional Office or Headquarters Office before submitting its certifications and assurances.

References

49 U.S.C. chapter 53, Title 23 U.S.C., 42 U.S.C. 4151, Title VI and Title VII of the Civil Rights Act, FTA regulations under 49 CFR, and FTA Circulars.

Issued: October 6, 1997.

Gordon J. Linton,

Administrator.

Appendix A

Federal Fiscal Year 1998 Certifications and Assurances for Federal Transit Administration Assistance Programs

Each Applicant is requested to provide as many of the following certifications and assurances necessary to cover the various types of Federal assistance programs for which the Applicant intends to seek Federal assistance from FTA in Federal Fiscal Year 1998. A state making certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients as necessary for the state to make informed certifications and assurances. The fifteen categories of certifications and assurances are listed by Roman numerals I through XV on the other side of the Signature Page document. Categories II through XV will apply to some, but not all applicants. The categories correspond to the following descriptions of circumstances mandating submission of specific certifications, assurances, or agreements:

I. Certifications and Assurances Required of Each Applicant

Each Applicant for Federal assistance awarded by FTA *must* make all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant,

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and

(3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any grant or cooperative agreement awarded by FTA. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its approved project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that if, later, it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to the statements within paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Certification

As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) the Applicant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will: (a) abide by the terms of the statement, and (b) notify the employer (Applicant) in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;

(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, which is the employer of any convicted employee must provide notice, including position title, to every project officer or other designee on whose project activity the Applicant's convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted: (a) By taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (b) by requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above. The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of the Department of Transportation Programs and Activities,'' 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients''; and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include appropriate clauses in each third party contract or subagreement to impose the requirements of 49 CFR part 21 and 49 U.S.C. 5332, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

H. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

II. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized

representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000: (1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and (2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. Effects on Private Mass Transportation Companies

An Applicant that is a state or local government seeking Federal assistance under 49 U.S.C. chapter 53 to acquire property or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(a)(1)(B) or 5323(a)(1)(C), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Provided for the participation of private mass transportation companies to the maximum extent feasible; and

B. Paid or will pay just compensation under state or local law to a private mass transportation company for its franchises or property acquired.

IV. Public Hearing Certification for a Capital Project (Except Urbanized Area Formula Projects) That Will Substantially Affect a Community or Its Transit Service

An Applicant seeking Federal assistance for a capital project authorized by 49 U.S.C. chapter 53 (except Urbanized Area Formula Program assistance), that will substantially affect a community or its transit service must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined the project to be consistent with official plans for developing the urban area.

V. Certification of Pre-Award and Post-Delivery Rolling Stock Reviews Required for Each Applicant Seeking To Purchase Rolling Stock Financed With Federal Assistance Awarded by FTA

An Applicant seeking FTA assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category V on the Signature Page.

As required by 49 U.S.C. 5323(l), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

VI. Bus Testing Certification Required for New Buses

An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category VI on the Signature Page.

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

VII. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. must enter into the following charter service agreement. FTA may not provide assistance for those projects until the Applicant enters into this agreement by selecting Category VII on the Signature Page.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VIII on the Signature Page.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operations,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will: (1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and (2) comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. awarded by FTA for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

IX. Certification Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service

An Applicant seeking direct Federal assistance to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category IX on the Signature Page.

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, its service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

X. Substance Abuse Certifications

If the Applicant is required by Federal regulations to provide the following substance abuse certifications, FTA may not provide Federal assistance until the Applicant has selected Category X on the Signature Page.

A. Alcohol Testing Certification

As required by FTA regulations, ''Prevention of Alcohol Misuse in Transit Operations,'' at 49 CFR 654.83, the Applicant certifies that it has established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR part 654; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with the requirements of FRA's regulations, ''Control of Alcohol and Drug Use,'' 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations, ''Prevention of Prohibited Drug Use in Transit Operations,'' at 49 CFR 653.83, the Applicant certifies that it has established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR part 653; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an anti-drug program complying with the requirements of FRA's regulations, ''Control of Alcohol and Drug Use,'' 49 CFR part 219.

XI. Assurances Required for Projects Involving Real Property

The Applicant must provide the following assurances in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category XI on the Signature Page.

A. Relocation and Real Property Acquisition Assurance

As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

B. Flood Insurance Coverage

As required by section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that in the course of implementing each project financed with Federal assistance, the Applicant will obtain appropriate insurance for any real estate acquired or construction undertaken thereon within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program.

C. Seismic Assurance

As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provided by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

XII. Certifications for the Urbanized Area Formula Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XII on the Signature Page.

A. Certifications Required by Statute

As required by 49 U.S.C. 5307(d)(1) (A) through (J), the Applicant certifies that:

(1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(2) It has or will have satisfactory continuing control over the use of the equipment and facilities;

(3) It will adequately maintain the equipment and facilities;

(4) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself under title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 not more than 50 percent of the peak hour fare;

(5) In carrying out a procurement financed with Federal assistance authorized for the

Urbanized Area Formula Program at 49 U.S.C. 5307, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(6) It has complied or will comply with the requirements of 49 U.S.C. 5307(c); specifically, it has or before submitting its application it will: (a) Make available to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and the program of projects it proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;

(7) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); (c) 49 U.S.C. 5303 through 5306 (planning requirements); and (d) 49 U.S.C. 5310 (a) through (d) (programs for the elderly and persons with disabilities);

(9) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(10) As required by 49 U.S.C. 5307(d)(1)(J), it will expend at least one percent of the amount of Federal assistance it receives for this fiscal year apportioned by 49 U.S.C. 5336 for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system; unless it has decided that it is not necessary to expend one percent of that Federal assistance this fiscal year for transit security projects.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' 49 CFR at 639.15(b)(1) and 639.21, to the extent that the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 to finance the cost of leasing any capital asset until it undertakes calculations demonstrating that it is more cost-effective to lease the capital asset than to purchase or construct similar assets;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

XIII. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from any public body that is a prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (Category I.F., ''Certifications and Assurances Required of Each Applicant.'')

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

J. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category 1.G of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 C.F.R. section 37.77(c).

K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VIII, ''School Transportation Agreement.'')

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I–XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XIV on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program, and it has obtained from the prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, ''Certifications and Assurances Required of Each Applicant.'')

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category 1.G of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR section 37.77(c).

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) Signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, ''Charter Service Agreement,'' and Category VIII, ''School Transportation Agreement.'')

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue, a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; a lobbying certification for each application exceeding $100,000; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I-XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen percent of the

Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

XV. Certifications and Assurances for the State Infrastructure Bank Program

A state Applicant for a grant of Federal assistance for deposit in the Transit Account of the State Infrastructure Bank (SIB) within that state must provide the following certifications and assurances. The Federal Transit Administration (FTA) may not award Federal assistance to capitalize a SIB until the state Applicant provides these certifications and assurances.

Based on its own knowledge and, as necessary, on requisite information submitted by the participating parties, the state Applicant for Federal assistance for the Transit Account of its state SIB program, authorized by section 350 of the National Highway System Designation Act of 1995 (NHS Act), as amended, 23 U.S.C. 101 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with: (1) The requirements of section 350 of the National Highway System Designation Act of 1995 (NHS Act), Pub. L. 104–59, Nov. 28, 1995, 23 U.S.C. 101 note, (2) the provisions of FTA's NHS Guidelines, and any amendments thereto, (3) the provisions of FHWA and FTA Cooperative Agreement with the state to establish the state's SIB program, and (4) the provisions of the FTA Grant Agreement with the state obligating Federal assistance for the Transit Account of the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that Grant Agreement that conflicts with any provision of FTA's NHS Guidelines, the provisions of the Cooperative Agreement establishing the SIB program within the state, or the text within the Grant Agreement will not apply.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of all applicable requirements for the SIB program, as those requirements may be amended from time to time.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the NHS Act, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a Grant Agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the Transit Account of its SIB to amounts that do not exceed the limitations specified in the underlying Grant Agreement or the Approved Project Budget for that Grant Agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the Transit Account of the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that the SIB will provide Federal assistance derived from the Transit Account only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project.

G. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

H. The state assures that the SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

I. The state assures that before the SIB enters into an agreement with a subrecipient under which Federal assistance within the Transit Account of the SIB will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from each subrecipient of capital assistance that is also a public body a certification that an opportunity for a public hearing has been provided.

J. The state assures that the subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, and other interested parties within the area.

K. The state assures that the subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, ''Certifications and Assurances Required of Each Applicant,'' of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.)

L. The state assures that the subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

M. To the extent applicable, the state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The state assures that the SIB will provide to the state an Assurance of Nondiscrimination on the Basis of Disability from each subrecipient, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (See Category I.G, ''Certifications and Assurances Required of Each Applicant,'' of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.) If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category IX, ''Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service,'' of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.) This ''Certification of Equivalent Service'' must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

N. The state assures that before the SIB provides Federal assistance from the Transit Account, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project.

O. The state assures that each subrecipient has certified or will certify to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, ''Charter Service Agreement,'' and Category VIII, ''School Transportation Agreement,'' of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.)

P. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in Q. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that the SIB will not provide financial assistance from the Transit Account for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the

required environmental finding. The state further certifies that the SIB will provide no financial assistance from its Transit Account for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

Q. The state assures that the subrecipient has submitted (or will submit), when applicable, all certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000; assurances FTA requires for projects involving real property; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances of Categories I–XI of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs, but modified as necessary to accommodate the SIB and the subrecipient's circumstances.

R. The state agrees and assures that the SIB and each subrecipient will agree to permit FTA, U.S. DOT, and the Comptroller General to conduct audits to verify compliance with the foregoing requirements and stipulations.

BILLING CODE 4910–57–P

Appendix A

FEDERAL FY 1998 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XV. ____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I.	Certifications and Assurances Required of Each Applicant.	____
II.	Lobbying Certification.	____
III.	Effects on Private Mass Transportation Companies.	____
IV.	Public Hearing Certification for Major Projects with Substantial Impacts.	____
V.	Certification for the Purchase of Rolling Stock.	____
VI.	Bus Testing Certification.	____
VII.	Charter Service Agreement.	____
VIII.	School Transportation Agreement.	____
IX.	Certification for Demand Responsive Service.	____
X.	Substance Abuse Certifications.	____
XI.	Assurances Projects Involving Real Property.	____
XII.	Certifications for the Urbanized Area Formula Program.	____
XIII.	Certifications for the Elderly and Persons with Disabilities Program.	____
XIV.	Certifications for the Nonurbanized Area Formula Program.	____
XV.	Certifications for the State Infrastructure Bank (SIB) Program	____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FEDERAL FISCAL YEAR 1998 FTA CERTIFICATIONS AND ASSURANCES

Required of all Applicants for FTA financial assistance, and
all FTA Grantees with an active project receiving capital program or formula program assistance.

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 1998.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 1998.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____ a. _____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant, I hereby affirm that the Applicant has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant and FTA promptly.

Date: _____ b. _____
Applicant's Attorney

An attorney for the Applicant must provide an affirmation of the Applicant's legal capacity, unless the Applicant seeks only an FTA university and research training grant authorized by 49 U.S.C. 5312(b).

In addition, an attorney for a Capital Program Grantee or Formula Program Grantee with an active project must provide an affirmation of the Grantee's legal capacity.

[FR Doc. 97–26927 Filed 10–10–97; 8:45 am]
BILLING CODE 4910–57–C

Federal Register

Tuesday
October 14, 1997

Part V

The President

Proclamation 7035—Leif Erikson Day, 1997

Proclamation 7036—General Pulaski Memorial Day, 1997

Federal Register
Vol. 62, No. 198
Tuesday, October 14, 1997

Presidential Documents

Title 3—

The President

Proclamation 7035 of October 9, 1997

Leif Erikson Day, 1997

By the President of the United States of America

A Proclamation

Americans have always been a people marked by a spirit of discovery. Generations of American explorers and pioneers have pushed against the boundaries of the known world, eager to see what lies beyond the next horizon. We come by that spirit naturally, for millions of us are descended from men and women of courage, vision, and independence who left their native lands to seek new possibilities in a new world.

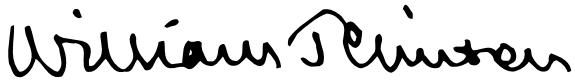
One of the earliest of these was Leif Erikson. Almost a thousand years ago, braving the cold and unforgiving North Atlantic, he set out on a voyage that would ultimately bring him to this continent and a lasting place in history. But Leif Erikson is more than a symbol of the pioneer spirit. He is also a powerful reminder of the long and proud history of the sons and daughters of Iceland, Norway, Sweden, Denmark, and Finland who endured the hardships of the American frontier to build a new life for themselves and their families. These immigrants from the Nordic countries, and their descendants, have contributed immeasurably to America's strength, character, prosperity, and independent spirit.

Today, the people of Iceland, Norway, Sweden, Denmark, and Finland are our partners in building a new Europe. Committed to democracy and self-determination, they have always reached out to those struggling for freedom and equality. We are proud to join them in fostering the integration of the Baltic countries of Estonia, Latvia, and Lithuania into the Western family of nations. We also look forward to joining our Nordic friends in celebrating in the year 2000 the millennial anniversary of Leif Erikson's momentous voyage to our shores. It is fitting that we should pay special tribute to Leif Erikson—son of Iceland, grandson of Norway—as we begin our own uncharted journey of discovery into the new millennium that stretches before us.

In honor of Leif Erikson and of our Nordic-American heritage, the Congress, by joint resolution approved on September 2, 1964 (Public Law 88–566), has authorized and requested the President to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1997, as Leif Erikson Day. I encourage the people of the United States to observe this occasion with appropriate ceremonies and activities commemorating our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–27399
Filed 10–10–97; 10:59 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7036 of October 9, 1997

General Pulaski Memorial Day, 1997

By the President of the United States of America

A Proclamation

In times of peace and at moments of great crisis, America has been blessed with the steadfast support of friends from other nations. Few have proved their friendship with more courage and generosity than Casimir Pulaski, who paid for America's independence with his own life.

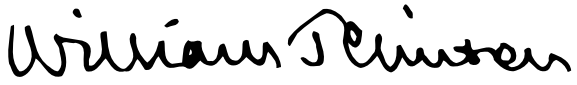
As a son of Poland, Pulaski knew well the desire for freedom and self-determination. He fought bravely beside his father and brothers in his native land, defending Poland from the aggression of neighboring empires with such skill and valor that he was known throughout Europe for his military exploits. Ultimately outnumbered by opposing forces, he escaped to France, where he met Benjamin Franklin and offered his services in behalf of the American Revolution.

Upon his arrival in America, Pulaski told General Washington that he had come to defend liberty and ''to live or die for her.'' True to his word, he fought valiantly as a brigadier general in our Continental Army and made the ultimate sacrifice for our Nation's freedom during the siege of Savannah.

More than two centuries later, Americans and Poles alike remember with pride and gratitude the outstanding service General Pulaski gave to both his native and adopted lands. Today the United States and Poland enjoy freedom, prosperity, and the prospect for a bright future as allies in NATO, thanks to the unwavering commitment of patriots and heroes like Casimir Pulaski.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Saturday, October 11, 1997, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and his contributions to the cause of American freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



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Filed 10–10–97; 10:59 am]
Billing code 3195–01–P

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Vol. 62, No. 198

Tuesday, October 14, 1997

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H.R. 1420/P.L. 105–57

National Wildlife Refuge System Improvement Act of 1997 (Oct. 9, 1997; 111 Stat. 1252)

S. 871/P.L. 105–58

Oklahoma City National Memorial Act of 1997 (Oct. 9, 1997; 111 Stat. 1261)

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20 Parts:			
●1–399	(869–032–00056–5)	26.00	Apr. 1, 1997
●400–499	(869–032–00057–3)	46.00	Apr. 1, 1997
●500–End	(869–032–00058–1)	42.00	Apr. 1, 1997
21 Parts:			
●1–99	(869–032–00059–0)	21.00	Apr. 1, 1997
●100–169	(869–032–00060–3)	27.00	Apr. 1, 1997
●170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
●200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
●300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
●500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
●600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
●800–1299	(869–032–00066–2)	31.00	Apr. 1, 1997
●1300–End	(869–032–00067–1)	13.00	Apr. 1, 1997
22 Parts:			
1–299	(869–032–00068–9)	42.00	Apr. 1, 1997
●300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
●**23**	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
●0–199	(869–032–00071–9)	32.00	Apr. 1, 1997
200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
500–699	(869–032–00073–5)	18.00	Apr. 1, 1997
●700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
●1700–End	(869–032–00075–1)	18.00	Apr. 1, 1997
●**25**	(869–032–00076–0)	42.00	Apr. 1, 1997
26 Parts:			
●§§ 1.0-1–1.60	(869–032–00077–8)	21.00	Apr. 1, 1997
●§§ 1.61–1.169	(869–032–00078–6)	44.00	Apr. 1, 1997
●§§ 1.170–1.300	(869–032–00079–4)	31.00	Apr. 1, 1997
●§§ 1.301–1.400	(869–032–00080–8)	22.00	Apr. 1, 1997
●§§ 1.401–1.440	(869–032–00081–6)	39.00	Apr. 1, 1997
●§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
●§§ 1.501–1.640	(869–032–00083–2)	28.00	Apr. 1, 1997
●§§ 1.641–1.850	(869–032–00084–1)	33.00	Apr. 1, 1997
●§§ 1.851–1.907	(869–032–00085–9)	34.00	Apr. 1, 1997
●§§ 1.908–1.1000	(869–032–00086–7)	34.00	Apr. 1, 1997
●§§ 1.1001–1.1400	(869–032–00087–5)	35.00	Apr. 1, 1997
●§§ 1.1401–End	(869–032–00088–3)	45.00	Apr. 1, 1997
●2–29	(869–032–00089–1)	36.00	Apr. 1, 1997
30–39	(869–032–00090–5)	25.00	Apr. 1, 1997
●40–49	(869–032–00091–3)	17.00	Apr. 1, 1997
●50–299	(869–032–00092–1)	18.00	Apr. 1, 1997
300–499	(869–032–00093–0)	33.00	Apr. 1, 1997
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●600–End	(869–032–00095–3)	9.50	Apr. 1, 1997
27 Parts:			
1–199	(869–032–00096–4)	48.00	Apr. 1, 1997

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28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
●43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
●0–99	(869–032–00100–5)	27.00	July 1, 1997
●100–499	(869–032–00101–4)	12.00	July 1, 1997
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1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
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200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
31 Parts:			
0–199	(869–032–00112–0)	20.00	July 1, 1997
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
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1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–032–00116–2)	33.00	July 1, 1997
630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
800–End	(869–032–00119–7)	27.00	July 1, 1997
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–032–00123–5)	28.00	July 1, 1997
300–399	(869–032–00124–3)	27.00	July 1, 1997
400–End	(869–032–00125–1)	44.00	July 1, 1997
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36 Parts			
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38 Parts:			
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18–End	(869–032–00132–4)	38.00	July 1, 1997
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●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869–028–00144–1)	47.00	July 1, 1996
61–62	(869–032–00140–5)	19.00	July 1, 1997
63–71	(869–032–00141–3)	57.00	July 1, 1997
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
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●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–032–00146–4)	35.00	July 1, 1997
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
260–265	(869–032–00149–9)	29.00	July 1, 1997
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–032–00152–9)	33.00	[6] July 1, 1996
●425–699	(869–032–00153–7)	40.00	July 1, 1997
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
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201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
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●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●**44**	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
●200–499	(869–028–00170–0)	14.00	[5] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
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●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
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●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–028–00181–5)	17.00	Oct. 1, 1996
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
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●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
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●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
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●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
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●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
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49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
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●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.