

Thursday
March 5, 1998

Federal Register

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Contents

Federal Register

Vol. 63, No. 43

Thursday, March 5, 1998

Administration on Aging

See Aging Administration

Aging Administration

NOTICES

Grants and cooperative agreements; availability, etc.:
National system of legal assistance supporting elder
rights activities, 10917–10918

Agriculture Department

See Forest Service

See Grain Inspection, Packers and Stockyards
Administration

Air Force Department

NOTICES

Agency information collection activities:
Proposed collection; comment request, 10862
Meetings:
Air University Board of Visitors, 10863

Antitrust Division

NOTICES

Competitive impact statements and proposed consent
judgments:
Norsk Hydro USA Inc. et al., 10939–10944

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Bonneville Power Administration

NOTICES

Floodplain and wetlands protection; environmental review
determinations; availability, etc.:
Columbia River Basin, OR and WA; select area fisheries
evaluation project, 10865

Centers for Disease Control and Prevention

NOTICES

Advisory committees; annual reports; availability, 10918
Agency information collection activities:
Submission for OMB review; comment request, 10918–
10919

Coast Guard

RULES

Drawbridge operations:
Washington, 10777
Passenger vessels:
Hull examination alternatives; policy, 10777–10778

Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities:
Submission for OMB review; comment request, 10819–
10822

Commodity Futures Trading Commission

NOTICES

Contract market proposals:
Merger proposals—
Coffee, Sugar & Cocoa Exchange, Inc. and New York
Cotton Exchange, 10861–10862

Customs Service

RULES

Drawback; manufacturing, unused merchandise, etc.,
10970–11072

Defense Department

See Air Force Department

PROPOSED RULES

Federal Acquisition Regulation (FAR):
Progress payments, 11074–11075

Drug Enforcement Administration

NOTICES

Applications, hearings, determinations, etc.:
Mallinckrodt Chemical, Inc., 10944–10945
MD Pharmaceutical, Inc., 10945
Noramco of Delaware, Inc., 10945–10946

Education Department

NOTICES

Agency information collection activities:
Proposed collection; comment request, 10863
Submission for OMB review; comment request, 10863–
10864
Grants and cooperative agreements; availability, etc.:
Technology innovation challenge program, 11078–11082
Meetings:
Federal Interagency Coordinating Council, 10864–10865

Energy Department

See Bonneville Power Administration

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Air programs:
Stratospheric ozone protection—
Halon blends manufacture, intentional release of halon,
technician training and disposal of halon and
halon-containing equipment, 11084–11097

PROPOSED RULES

Water pollution control:
Water quality standards—
Alabama, 10799–10816

NOTICES

Agency information collection activities:
Proposed collection; comment request, 10870–10874
Clean Air Act:
Citizens suits; proposed settlements—
Northeastern States; ozone transport in eastern United
States, 10874–10875
Meetings:
Environmental Policy and Technology National Advisory
Council, 10875–10876

Federal Aviation Administration**RULES**

Class D and Class E airspace, 10758–10760
Standard instrument approach procedures, 10760–10765

PROPOSED RULES

Airworthiness directives:

Eurocopter France, 10783–10785

NOTICES

Meetings:

RTCA, Inc., 10963

Passenger facility charges; applications, etc.:

Delta County Airport, MI, 10963

Federal Communications Commission**RULES**

Radio services, special:

Common carrier and private operational fixed microwave services; conditional authorization authority, 10778–10780

Fixed microwave services—

38.6-40.0 GHz frequency band; service and auction rules; correction, 10780–10781

NOTICES

Common carrier services:

Universal service contribution factors, 10876

Meetings:

Universal service; report to Congress; En Banc hearing, 10876–10877

Federal Election Commission**PROPOSED RULES**

Contribution and expenditure limitations and prohibitions:

Corporate and labor organizations—

Membership association member; definition; hearing, 10873

NOTICES

Meetings; Sunshine Act, 10877

Federal Emergency Management Agency**PROPOSED RULES**

Disaster assistance:

Declaration process, 10816–10817

NOTICES

Emergency food and shelter program; National Board implementation plan, 10877–10915

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation filings:

Metropolitan Edison Co. et al., 10866–10868

Environmental statements; availability, etc.:

Neshkoro Power Associates, 10869

Hydroelectric applications, 10869–10870

Applications, hearings, determinations, etc.:

California Independent System Operator Corp., 10865–10866

Central Power & Light Co., 10866

Federal Highway Administration**NOTICES**

Environmental statements; notice of intent:

El Dorado County, CA, 10964

Federal Reserve System**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 10915–10916

Banks and bank holding companies:

Formations, acquisitions, and mergers, 10916

Permissible nonbanking activities, 10916

Federal Trade Commission**NOTICES**

Online information practices; industry guidelines and principles, 10916–10917

Fish and Wildlife Service**PROPOSED RULES**

Endangered and threatened species:

Howell's spectacular thrypody, 10817–10818

NOTICES

Endangered and threatened species:

Listing priority guidance (1998 and 1999 FYs), 10931–10935

Endangered and threatened species permit applications, 10930–10931

Environmental statements; availability, etc.:

Incidental take permits—

Brevard County, FL; Florida scrub jay, 10935–10936

Marine mammals:

Stock assessment reports; Alaska sea otter, walrus, and polar bear; comment request, 10936–10937

Marine mammals permit applications, 10936

Food and Drug Administration**RULES**

Animal drugs, feeds, and related products:

New drug applications—

Investigational use and approval; adequate and well-controlled studies definition, 10765–10772

PROPOSED RULES

Medical devices:

Hematology and pathology devices—

Over-the-counter test sample collection systems for drugs of abuse testing; reclassification and designation as restricted devices, 10792–10798

NOTICES

Meetings:

Dermatologic and Ophthalmic Drugs Advisory

Committee, 10919

Reporting and recordkeeping requirements, 10919–10920

Forest Service**NOTICES**

Meetings:

Southwest Washington Provincial Advisory Committee, 10819

General Services Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):

Progress payments, 11074–11075

Grain Inspection, Packers and Stockyards Administration**NOTICES**

Stockyards; posting and deposting:

B&B Sales, GA, et al., 10819

Spring Valley Sales Co., Inc., MN, 10819

Health and Human Services Department

See Aging Administration

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Health Care Financing Administration

See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 10920–10921

Medicare:

Medicare+Choice program; market research for providers and other partners, 10921–10927

Housing and Urban Development Department**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 10929–10930

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See National Indian Gaming Commission

NOTICES

Exxon Valdez Oil Spill Trustee Council; restoration of resources and services injured by oil spill; request for proposals (1999 FY), 10930

Internal Revenue Service**RULES**

Income taxes:

Dollar approximate separate transactions method of accounting and profit and loss method of accounting; qualified business unit use; requirements, 10772–10776

PROPOSED RULES

Procedure and administration:

Interest abatement

Correction, 10798–10799

NOTICES

Agency information collection activities:

Proposed collection; comment request, 10967

Proposed collection; comment request; correction, 10967

International Trade Administration**NOTICES**

Antidumping:

Stainless steel wire rod from—

Germany, 10847–10849

Italy, 10831–10835

Japan, 10854–10860

Korea, 10825–10831

Spain, 10849–10854

Sweden, 10841–10847

Taiwan, 10836–10841

Antidumping and countervailing duties:

Butter cookies in tins from—

Denmark, 10822–10824

Overseas trade missions:

Secretarial business development missions to—

China, 10860

Justice Department

See Antitrust Division

See Drug Enforcement Administration

Land Management Bureau**NOTICES**

Meetings:

Resource advisory councils—

Sierra Front/Northwest Great Basin, 10937

Organization, functions, and authority delegations:

Nevada State Office, NV; move location and date; correction, 10938

Public land orders:

Oregon, 10938

Realty actions; sales, leases, etc.:

Alaska, 10938–10939

Survey plat filings:

California, 10939

National Aeronautics and Space Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):

Progress payments, 11074–11075

National Credit Union Administration**RULES**

Credit unions:

Credit union service organizations; update and clarification, 10743–10758

National Foundation on the Arts and the Humanities**NOTICES**

Meetings:

Humanities National Council, 10946–10947

Humanities Panel, 10947

National Highway Traffic Safety Administration**NOTICES**

Motor vehicle safety standards; exemption petitions, etc.:

Fleetwood Enterprises, Inc., 10964–10965

National Indian Gaming Commission**PROPOSED RULES**

Indian Gaming Regulatory Act:

Gaming operations on Indian lands; minimum internal control standards, 10798

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Land Remote Sensing Policy Act of 1992:

Private land remote-sensing space systems; licensing provisions; hearing, 10785

NOTICES

Agency information collection activities:

Proposed collection; comment request, 10860–10861

National Science Foundation**NOTICES**

Antarctic Conservation Act of 1978; permit applications, etc., 10947–10948

Meetings:

Biological Sciences Special Emphasis Panel, 10948

Earth Sciences Proposal Review Panel, 10948

Experimental and Integrative Activities Special Emphasis Panel, 10948–10949

Geosciences Special Emphasis Panel, 10949

Human Resource Development Special Emphasis Panel, 10949

Mathematical Sciences Special Emphasis Panel, 10949

Nuclear Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:

Commonwealth Edison Co. et al., 10957–10958

Tennessee Valley Authority, 10958–10959

Petitions; Director's decisions:

Philadelphia Veterans Affairs Medical Center, 10959

Applications, hearings, determinations, etc.:

Florida Power & Light Co., 10949–10955
McGriff, Julian H., 10955–10957
Southern Nuclear Operating Co., Inc., et al., 10957

Personnel Management Office**NOTICES**

Meetings:

Federal Prevailing Rate Advisory Committee, 10959

Public Health Service

See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services
Administration

Securities and Exchange Commission**PROPOSED RULES**

Securities:

Compensatory benefit arrangements; offers and sales
exemption, 10785–10792

NOTICES

Agency information collection activities:

Proposed collection; comment request, 10959–10960

Meetings; Sunshine Act, 10960–10961

Small Business Administration**NOTICES**

Disaster loan areas:

Connecticut, 10961
Delaware et al., 10961
Florida, 10962
Massachusetts, 10962

State Department**NOTICES**

Meetings:

Religious Freedom Abroad Advisory Committee, 10962–
10963

**Substance Abuse and Mental Health Services
Administration****NOTICES**

Federal agency urine drug testing; certified laboratories
meeting minimum standards, list, 10927–10929

Surface Transportation Board**NOTICES**

Railroad operation, acquisition, construction, etc.:

AT&L Railroad Co., Inc., 10965–10966

Railroad services abandonment:

San Joaquin Valley Railroad Co., 10966

Transportation Department

See Coast Guard

See Federal Aviation Administration

See Federal Highway Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

RULES

Organization, functions, and authority delegations:

Saint Lawrence Seaway Development Corporation,
Administrator; Great Lakes pilotage functions
oversight authority revoked and delegated to Coast
Guard, 10781–10782

Treasury Department

See Customs Service

See Internal Revenue Service

NOTICES

Committees; establishment, renewal, termination, etc.:

IRS Citizen Advocacy Panel, 10966

United States Information Agency**NOTICES**

Art objects; importation for exhibition:

Gifts of the Nile: Ancient Egyptian Faience, 10967–10968

Separate Parts In This Issue**Part II**

Department of the Treasury, Customs Service, 10970–11072

Part III

Department of Defense, General Services Administration,
National Aeronautics and Space Administration,
11074–11075

Part IV

Department of Education, 11078–11082

Part V

Environmental Protection Agency, 11084–11097

Reader Aids

Additional information, including a list of telephone
numbers, finding aids, reminders, and a list of Public Laws
appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

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

11 CFR**Proposed Rules:**

100.....	10783
114.....	10783

12 CFR

701.....	10743
704.....	10743
712.....	10743
740.....	10743

14 CFR

71.....	10758
97 (3 documents)	10760, 10761, 10763

Proposed Rules:

39.....	10783
---------	-------

15 CFR**Proposed Rules:**

960.....	10785
----------	-------

17 CFR**Proposed Rules:**

230.....	10785
----------	-------

19 CFR

7.....	10970
10.....	10970
145.....	10970
173.....	10970
174.....	10970
178.....	10970
181.....	10970
191.....	10970

21 CFR

514.....	10765
----------	-------

Proposed Rules:

809.....	10792
864.....	10792

25 CFR**Proposed Rules:**

Ch. III.....	10798
--------------	-------

26 CFR

1.....	10772
--------	-------

Proposed Rules:

301.....	10798
----------	-------

33 CFR

117.....	10777
----------	-------

40 CFR

82.....	11084
---------	-------

Proposed Rules:

131.....	10799
----------	-------

44 CFR**Proposed Rules:**

206.....	10816
----------	-------

46 CFR

71.....	10777
---------	-------

47 CFR

1.....	10780
101 (2 documents)	10778, 10780

48 CFR**Proposed Rules:**

32.....	11074
52.....	11074
232.....	11074
252.....	11074

49 CFR

1.....	10781
--------	-------

50 CFR**Proposed Rules:**

17.....	10817
---------	-------

Rules and Regulations

Federal Register

Vol. 63, No. 43

Thursday, March 5, 1998

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

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 704, 712 and 740

Organization and Operations of Federal Credit Unions; Corporate Credit Unions; Credit Union Service Organizations; Advertising

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final regulation updates, clarifies and streamlines existing rules concerning credit union service organizations (CUSOs), a common means of outside provision of services to federal credit unions (FCUs) and to credit union members. The final rule clarifies NCUA's authority to review CUSO books, records, and operations, adds corporate separateness requirements and additional permissible services, changes the legal opinion requirements, maintains safety and soundness criteria, and ensures the continuity and growth of services to FCUs and their members conducted through CUSOs. Related conforming changes are also made to credit union service contract, fixed asset, and corporate credit union rules.

DATES: This rule is effective April 1, 1998, except for § 712.3(d) which is effective December 31, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Martin "Sparky" Conrey, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540; or Linda Groth, Program Officer, Division of Supervision, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

In 1977, Section 107 of the Federal Credit Union Act (12 U.S.C. 1757(5)(D) and (7)(I)) was amended to authorize FCUs to invest in, and make loans to, CUSOs subject to certain funding limits and other regulatory restrictions. The first CUSO rule was promulgated in 1979; the last major revision of this rule was in 1986. In general, the results of the 1986 revision have been positive. Nonetheless, over ten years of experience with the regulation indicated that there was a need for additional simplification, clarification, and improvement.

B. Proposed Rule

On March 7, 1997, the NCUA Board issued a proposed rule to revise its CUSO rules, §§ 701.26(b), 701.27, and 740.3(c). 62 FR 11779 (March 13, 1997). The proposal recodified the CUSO rules in part 701 into a new part 712 using a plain English format, streamlined existing requirements, added eight new CUSO services, and suggested other technical changes. In addition, the proposal suggested a change to required service center advertising to reduce regulatory burden. The purpose of the proposed rulemaking was to request public comment on reducing regulatory burden and increasing the flexibility and usefulness of CUSOs, while ensuring the safety and soundness of FCUs and the National Credit Union Share Insurance Fund (NCUSIF). The comment period was extended from May 12, 1997, to June 12, 1997, in order to give commenters more time to consider their comments. 62 FR 19702 (April 23, 1997).

C. Comments

The Board received 90 comments: 24 from FCUs; 10 from state chartered credit unions; 2 from corporate credit unions; 31 from CUSOs; 6 from national trade associations; 12 from state credit union leagues; 1 from an insurance company; and 4 from law firms. The majority of commenters supported the general approach of the proposed rule, but suggested specific changes. Where a majority of commenters disagreed with the proposed rule, NCUA has made efforts to address the commenters' concerns. NCUA thoroughly evaluated the comments and incorporated many of the suggested changes into this final rule. In addition, NCUA staff researched NCUA's experiences with CUSOs and

the relevant regulations, guidance, legal interpretations and reporting requirements of NCUA and the other federal financial institution regulators in composing this final rule.

D. Final Rule

The final rule establishes limits on FCU investments in, and loans to, CUSOs. Inasmuch as is possible within the boundaries of safety and soundness, NCUA will permit FCUs and CUSOs to operate flexibly within the new limits of this rule. At the same time, the final rule attempts to minimize the regulatory burden on those FCUs with CUSO involvement. The purposes of this final rule are in accord with the Regulatory Reinvention Initiative of the Vice President's National Performance Review and the NCUA Board's Regulatory Relief Project.

An underlying premise of the regulation is that an FCU will use good business practices and maintain proper safeguards in transactions involving CUSOs. Many FCUs will, as part of their standard business practice, establish policies and procedures which properly go beyond the minimum requirements of this rule. NCUA encourages good business practices, even if not required by this rule.

E. Small Credit Unions

NCUA requested comment on how small credit unions, especially community development and low-income designated credit unions and their members, could best be served by CUSOs. CUSOs can enable smaller credit unions to expand the types of products and services offered to their memberships, offer economies of scale, enhance members' lives, and increase hours of service and locations through automated teller machines (ATMs), service centers, and other CUSO services. In addition, CUSOs can result in more favorable penetration rates of potential members through the broader availability of financial services. CUSOs can also facilitate a transfer of knowledge and expertise from larger, full-service credit unions to smaller, more limited service credit unions, which can have long-term positive implications upon safety and soundness.

Most comments regarding small credit unions shared NCUA's concerns and support CUSO incentives for small credit unions. Seven out of the eight relevant comments agreed that small credit unions should have reduced

minimum CUSO investment requirements. Also, nine out of the eleven relevant comments agreed that small credit unions should have reduced or waived transaction costs. Commenters not in favor were opposed to additional government regulation. One commenter suggested that CUSOs consider creating special ownership programs for small credit unions that would enable them to participate and use the CUSO's services. Many of the small credit union comments favored an industry solution instead of additional government regulation and the attendant compliance burdens. Allowing the CUSO industry to be creative and address the small credit union issues on a case-by-case basis depending upon each CUSO, the services offered, and the credit unions involved could lead to unfettered flexibility and economically sound policies, according to these comments. NCUA is in agreement with these comments. With NCUA's review authority over CUSOs, NCUA will be in a good position to monitor these independent efforts and to address any abuses it finds. Therefore, the Board has decided not to impose any CUSO rule requirements regarding small credit union CUSO activities at this time.

Other commenters requested special regulatory relief for small credit unions. One commenter suggested allowing any credit union with under \$250,000 in assets to be considered an "affiliated credit union." Another commenter suggested that credit unions with less than \$50 million in assets should be subject to an easier, less restrictive set of NCUA regulations. A third commenter advised NCUA to be cautious in treating different classes of credit unions differently due to the possibility of splitting the credit union movement into two groups, with potentially negative tax and field of membership legislative consequences. Some of these solutions are outside of the scope of this rulemaking. Therefore, the Board will take these suggestions under advisement for possible future regulatory action.

F. Plain English Format

The rule was proposed as part 712 of NCUA's regulations and presented in a plain English question and answer format. The goal of plain language drafting is to decrease confusion, inadvertent errors, the need to seek clarification in correspondence and phone calls, and the amount of staff time credit unions must devote to understanding the regulations. As in the proposal, the final rule has no separate paragraph for definitions; instead,

definitions appear next to their primary use in the regulatory text. Eighteen of the twenty relevant comments received supported the use of the plain English format. One commenter held that the CUSO section should remain in part 701, Organization and Operations of FCUs, and found the plain language format unnecessary. Another commenter found that the section headings in question format did not give a complete understanding of the regulatory requirements contained in the answer portion of the section. The Board agrees with the majority of the comments that the plain language format increases regulatory comprehension, user compliance, and administrative efficiency. Therefore, with minor modifications, the format used in the proposed rule is also used in the final rule.

One modification made by the Board concerns the substitution of the term "you" for the term "FCU." Several commenters agreed with NCUA's statement in the proposed rule preamble that the use of the term "you" was confusing, as the same term variously applied to affiliated credit unions, FCUs with investments in CUSOs, and all FCUs with loans or investments in CUSOs. In order to avoid potential confusion, the Board has deleted the term "you" from the final regulation. Instead, the final rule uses the term "FCU." When rule language is applicable to a limited class of FCUs the specific limitation is noted in adjacent rule language. For example, the legal opinion requirements of § 712.4(b) apply to "an FCU investing in a CUSO."

In addition, a few comments requested that the Board produce a commentary on the new CUSO rule. The Supplementary Information to the revised rule provides substantial guidance, and additional commentary is not necessary. NCUA may consider issuing additional commentary in the future if the need appears.

G. Section-by-Section Analysis

Section 701.26(b), Credit Union Service Contracts

NCUA solicited comments on whether § 701.26(b) is outdated, imposes regulatory burden, and is unnecessary. Thirty-nine out of 40 commenters agreed with the removal of the section, which currently mandates that a vendor service contract requiring the advance payment of more than 3 months converts the advance payment into an investment in a CUSO. Comments confirmed that the business practices of many vendors, especially data processors and ATM providers,

either require such payments or give a discount to the purchasing credit union for paying in advance. In addition, some comments argued that removal would give FCUs the opportunity to conduct their own business analysis of the costs and benefits of such pricing arrangements without being subject to the service rule limit. The rule, applicable to FCUs, also did not sufficiently establish authority over third party vendors and was rarely enforced. For these reasons, the Board removes § 701.26(b).

Sections 701.36 and 704.11

Cross-referencing changes are made to the fixed asset rule, § 701.36(a)(4)(iv) and to § 704.11(e) by revising "§ 701.27" to read "part 712." No change in meaning is intended by these amendments.

Part 712

In order to assist readers, NCUA proposed the substitution of § 701.27 with part 712. The rule applies to FCUs, but is of much interest to other parties such as CUSOs and other CUSO investors. It is hoped that, by giving CUSOs their own section of NCUA's Rules and Regulations, the rule will be better known, resulting in increased compliance and a reduction of NCUA staff time spent interpreting the regulation. Raising the rule to a part also results in more convenient citations with fewer subsections. Comments received on the substitution were generally favorable and the Board adopts part 712 for CUSOs.

Section 712.1, What Does This Part Cover?

Proposed § 712.1 condensed § 701.27(a), Scope, by eliminating statutory citations and a summary of rule requirements contained elsewhere in the rule. Several changes were made in response to various comments.

NCUA proposed an expansion of the term "affiliated credit union" in order to enable credit unions being served by a CUSO through NCUA's group purchasing rule, 12 CFR part 721, to count for purposes of the customer base requirement. The intent of the proposal was not to penalize CUSOs for serving members of credit unions that may be permissibly served under the group purchasing rule. Forty-two out of 52 commenters addressing the issue supported the proposal. Favorable comments stressed that this was a matter of equity and fairness well within NCUA's authority to interpret the FCU Act. Opposing comments argued that the proposal was either too liberal or too conservative in scope.

One opposing comment held that the addition diluted the field of membership common bond rules applicable to FCUs and was beyond NCUA's statutory authority to grant. NCUA strongly disagrees with both of these arguments. First, common bond laws apply only to FCUs, not to CUSOs. 12 U.S.C. 1759 and NCUA Interpretive Ruling and Policy Statement No. 94-1, 59 FR 29066 (June 3, 1994), as modified. Second, the Board has authority to prescribe rules for the administration of the FCU Act. 12 U.S.C. 1766(a). The loan authority for CUSOs in the FCU Act specifically reads: "[a] credit union organization means any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve." 12 U.S.C. 1757(5)(D) (emphasis added). Similarly, the investment authority for CUSOs in the FCU Act defines CUSOs as: "any other organization, providing services which are associated with the routine operations of credit unions . . . with the approval of the Board." 12 U.S.C. 1757(7)(I) (emphasis added). It is clear that the Board has ample authority to define customer base requirements for CUSOs.

Nine opposing comments stated that the proposal was too limiting and should be even broader in order to apply to all credit unions and their members. Some of these comments suggested that, instead of changing the definition of "affiliated credit unions," it would be simpler to change the customer base requirements to capture these credit unions. After due consideration, and in light of the comments on potential reader confusion detailed in § F, Plain English Format, of this Supplementary Information, the Board has decided to adopt this approach. The term "affiliated credit union" has been deleted from the rule. Instead, the term "FCU" is used and any conditions on the types of FCUs affected (e.g., investing FCUs) is placed in adjacent regulatory language. This approach should be clearer, avoid confusion, and result in administrative efficiency. Furthermore, this change moots several comments proposing alternate language for the "affiliated credit union" definition.

Eight comments asked that NCUA clarify in § 712.1 the extent to which state-chartered credit unions and their subsidiaries would be affected by this revision. Part 712 applies only to FCUs and to CUSOs with FCU investment or loans. Part 712 does not apply to state-chartered credit union subsidiaries that have no FCU investments or loans. The

Board makes this clarification in the final rule by adding a statement to this effect in § 712.1. However, if an FCU invests in, or loans to, a state-chartered credit union subsidiary it will trigger compliance with Part 712. These hybrid CUSOs will need to comply with both state laws and applicable federal laws, especially Part 712.

Two commenters criticized NCUA's special reserve requirements for state-chartered credit union CUSO services that are not required for an FCU's CUSO. As NCUA has previously stated many times, "[f]or safety and soundness reasons, this requirement is and for many years has been imposed on federally insured, state-chartered credit unions (FISCUs) by the Agreement for Insurance of Accounts signed and agreed to by all insured state chartered credit unions as a condition of insurance." 60 FR 58502 (November 28, 1995, adopting new 12 CFR Part 741). Subsection 741.3(a)(3), Special reserve for nonconforming investments, will continue to apply to investments by FISCUs in subsidiaries of state-chartered credit unions providing services that cannot be provided by CUSOs having FCU investments or loans. Any revision regarding special reserves is outside the scope of this rulemaking.

In the proposed rule preamble, NCUA noted that its new corporate credit union rule contains a new section on corporate CUSOs that would apply instead of the provisions of the natural person credit union CUSO rule, as is the case currently. 12 CFR 704.11. Three commenters asked NCUA to add this cross-reference to § 712.1 and to provide clarifying guidance for CUSOs that have both natural person credit union and corporate credit union involvement. Since the comments did not identify any specific problems, it is difficult to provide guidance on any potential conflicts that might arise. NCUA believes that it is unlikely any conflicts will arise, and, if they do, the conflicts can be handled using standard supervisory tools on a case-by-case basis. Therefore, NCUA will not speculate on any potential conflicts at this time. However, the Board has decided to add a specific cross-reference to aid CUSOs with dual corporate and natural person involvement.

Additionally, the proposed sentence reading: "[t]his part does not regulate CUSOs directly, but rather establishes conditions of your [FCU] investments in, and loans to, CUSOs" has been deleted. Its replacement reads: "CUSOs are subject to review by NCUA." The reasons for this change are discussed in § 712.3(d), under the subheading

"NCUA Access to Information," in this Supplementary Information.

Section 712.2, How Much Can an FCU Invest in, or Loan to, CUSOs, and What Parties May Be Involved?

NCUA proposed elimination of § 701.27(b)(1-2), which is a reprinting of the FCU Act provisions relating to CUSOs to avoid repetition of regulatory requirements. A few commenters requested that the statute continue to be reprinted with the new rule. This seems contrary to plain language precepts and an unnecessary practice when the statutory requirements are all contained in other rule provisions. Therefore, the Board removes the reprinting of FCU Act language from the new rule.

Limits on Funding

The funding limitations contained in proposed § 712.2 (a) and (b) are statutory in nature and required by § 107(5)(D) and (7)(I) of the FCU Act. 12 U.S.C. 1757(5)(D) and (7)(I). An FCU cannot invest more than one percent of its paid-in and unimpaired capital and surplus in CUSOs. Nor can an FCU loan more than one percent of its paid-in and unimpaired capital and surplus to CUSOs. Paid-in and unimpaired capital and surplus means shares and undivided earnings.

Four commenters asked NCUA to change the FCU investment and loan limitations. It is beyond the authority of the NCUA Board to change the FCU Act; only Congress has that authority. Other commenters asked for NCUA to clarify that FCUs can use their CUSO investment and lending authorities at the same time. To avoid any potential confusion on this issue, a clarification that the 1% investment and 1% loan authority are separate and independent has been added to § 712.2(b), Loans.

One comment asked that NCUA clarify how FCUs could invest in corporations, limited partnerships, and limited liability companies. To address this important issue, NCUA has added clarification to the end of § 712.2(a), Investments, stating that an FCU can only invest in a CUSO as a stockholder of a corporation, as a member of a limited liability company, or as a limited partner of a limited partnership. The terms "corporation," "limited liability company," and "limited partnership" have the meanings attributed to them in § 712.3(a) of this part. For liability reasons, FCUs are prohibited from investing as a general partner in a general partnership, either directly or indirectly.

The NCUA Board would like to clarify the scope of covered CUSO investments and loans. In the past, NCUA has

deemed all of the following to be either loan or investment equivalents in the context of the CUSO rule: standby letters of credit issued by FCUs to cover a CUSO; sale and leaseback transactions; installment sales and other similar equipment financings; payments of CUSO expenses by FCUs, such as subsidies; guarantees of CUSO debt or purchase of CUSO debentures; FCU pledges and guarantees of loans from other entities to the CUSO; and FCU spin-offs of assets to CUSOs. All of these loan and investment cash equivalents are used in determining the actual aggregate cash outlay figure.

For compliance purposes, FCUs should generally use the aggregate cash outlay figure to compute the statutory CUSO investment and loan limits. This number would equal the total amount of FCU funds either invested in, lent to, or available to be lent under a line of credit with the FCU to the CUSO. If an FCU accounts for its CUSO using the cost method consistent with Generally Accepted Accounting Principles (GAAP) and writes down the investment because of other than temporary impairment, the written down amount becomes the new basis and computes into the new aggregate cash outlay figure. If FCUs have questions calculating the aggregate cash outlay, they should contact their regional office for appropriate guidance.

Calculation of the CUSO funding limits is a separate issue from reporting CUSO investments and loans under GAAP. GAAP requires one of three measurement options—the cost method, equity method, or consolidated financial statements—depending upon the degree of ownership an FCU has in a CUSO. FCU financial reporting of CUSO activity should follow GAAP. The definition of “paid-in and unimpaired capital and surplus” is unchanged from the current definition in § 701.27(c)(4).

Parties

Recently a federally-insured credit union involved with a credit union service center CUSO applied to convert to a mutual savings and loan association. The board of directors of the converting credit union indicated that, after conversion, the savings and loan wanted to continue its participation in the credit union service center. If this had been permitted, it could have led to massive credit union member confusion when both NCUSIF and FDIC signs would be required to be posted together in service center locations. NCUA denied the institution the ability to proceed with this plan on the basis that a thrift could not participate in a “credit union service

center.” However, NCUA wants to clarify this issue further in this final rule. The FCU Act prohibits a CUSO from being involved with non-credit union depository institutions, and this prohibition is reiterated in § 712.6(a). NCUA’s position is that any intermingling of bank, thrift, and credit union share, deposit, or loan accounts at a CUSO credit union service center location is impermissible. To clarify this prohibition, NCUA has changed the phrase “non-credit union parties” to “non-depository institution parties not otherwise prohibited by § 712.6 of this part.” By stressing the impermissibility of depository institution involvement in CUSOs, and cross-referencing the statutory prohibition on certain parties’ involvement in CUSOs, the Board intends to prevent impermissible party involvement in CUSOs. In addition, to prevent credit union member confusion, prevent unsafe and unsound activities, and provide notice and comment for non-CUSO credit union service centers, NCUA staff plans to study credit union service center activities for possible future Board consideration.

Section 712.3, What are the Characteristics of and What Requirements Apply to CUSOs?

Structure

NCUA proposed the addition of the limited liability company (LLC) format to the two existing permissible CUSO entity structures of corporation and limited partnership. When the new corporate rules become effective, corporate credit unions will be allowed to use LLC format CUSOs. 12 CFR 704.11. Thirty-nine of the 50 comments addressing LLCs favored the addition of LLCs. Many of these commenters noted that NCUA’s concerns of a lack of standardized state laws and tax treatment of LLCs could be handled by appropriate legal, accounting, and tax advisors. In addressing NCUA’s concerns, comments stated that: (1) the IRS did not issue hypothetical opinions and, therefore, it was not possible to obtain an IRS ruling unless and until NCUA permitted use of the LLC format; (2) LLC members withdrawing their capital can be restricted under an LLC agreement or a buy/sell agreement providing liquidity protections; (3) voting rights and powers of LLC members can be changed by the organization articles or by operating agreement; (4) limitations on LLC management transferability are little different from those applying to limited partnerships; and (5) state laws on corporations and limited partnerships also vary widely, and yet NCUA has not

experienced any difficulties with state law variations regarding those formats. Commenters also noted that, by requiring an FCU to obtain written legal advice prior to investing in a CUSO formed as an LLC, NCUA could confirm that the laws of a particular state would insulate an FCU from liability as well as the older permissible corporation and limited partnership formats. This is the approach adopted by the Board in adopting LLCs as an additional permissible CUSO structure. In order for an FCU to invest in, or loan to, a CUSO structured as a LLC, the FCU must obtain written legal advice that the LLC is a recognized legal entity under the applicable laws of the state of formation and that the LLC is established in a manner that will limit potential exposure of the FCU to no more than the amount of funds invested in, or loaned to, the CUSO. Investing FCUs also must comply with the legal opinion requirements of § 712.4(b).

Comments opposed to LLCs believed that the LLC format was not needed in light of the existing corporation and limited partnership formats and the ability of CUSOs to make various taxation choices, such as the Subchapter S or cooperative tax elections. However, one of the purposes of this rulemaking was to give greater flexibility to CUSOs, and the majority of commenters approved adding LLCs with the legal opinion caveat.

The addition of the LLC format does not change NCUA’s policy regarding multiple CUSOs. NCUA stresses that the CUSO rule applies to all levels or tiers of a CUSO’s structure. In other words, all tiers of a CUSO, no matter what corporate format is used, are also CUSOs subject to part 712.

Customer Base

Twenty-four out of the 30 comments addressing the issue agreed that NCUA should *not* give a safe harbor definition of the meaning of “primarily serves” in the customer base requirement. Those in favor of a brightline definition believed that it would be useful, but could not agree on what the standard should be. In the past, NCUA’s definition of the term “primarily serves” has depended upon several variables, such as: type of business(es) provided; number of affiliated members served; gross or net revenues derived from affiliated members; amount of affiliated members’ assets under management; number of policies sold to affiliated members; number of services provided to affiliated members; and availability/access of services to affiliated members. Since CUSO permissible services and activities vary so much by business, and

since many CUSOs are engaged in multiple permissible services and activities, coming to a simple standard applicable to all lines of business and all CUSOs is problematic. In the 1986 final CUSO rule preamble, the Board stated that defining the term as a percentage of business or percentage of customers could prove arbitrary.

The Board is convinced by the comments that, if anything, defining the term "primarily serves" is even more difficult than in 1986, and declines to do so. NCUA will continue to monitor the customer base requirement on a case-by-case basis using a totality of the circumstances test.

One comment stated that NCUA should determine whether a CUSO "primarily serves" only at the time an FCU investment or loan is made to a CUSO and *not* revisit the test again thereafter. This is contrary to long-standing NCUA policy. The Board, as required by statute, must vigilantly reassess the customer base requirement on a constant basis. To do otherwise would permit a large loophole in the CUSO rule, allowing negligent or unscrupulous CUSOs to ignore the customer base requirements once fully funded from FCUs. This practice could easily lead to safety and soundness problems, and perhaps even threaten the NCUSIF. The Board disagrees with the comment and declines to change its position.

As previously discussed in the Supplementary Information under § 712.1, in lieu of using the term "affiliated credit union," the Board has opted to restate the customer base requirement. CUSOs must primarily serve credit unions in a corporate capacity (e.g., check processing, data processing, or supervisory committee audits), or the natural person membership of those FCUs or FISCUs investing in, or lending to, the CUSO, or the membership of FCUs and FISCUs contracting with the CUSO. Any services provided to any entities or persons outside of this scope will be considered services to others which cannot be counted towards the CUSO's credit union customer base requirement.

NCUA also requested comments on CUSO activities, such as ATM services, that began as a service primarily to credit unions, but as a result of ATM network and switch consolidations, arguably no longer meet the CUSO rule "primarily serves" customer base requirements. In some of these situations, it is NCUA's understanding that an institution must hold stock in the ATM network or switch to participate in the ATM network or switch provider. NCUA does not want

to deny credit union members ATM services due to a rule restriction. All eight of the comments addressing this subject stated that NCUA should allow CUSOs to buy and hold stock necessary to provide permissible services. To do otherwise might have serious long-term effects on the abilities of FCUs and CUSOs to compete, which could eventually erode the long-term financial conditions and generate safety and soundness concerns. To prevent these negative outcomes and promote regulatory flexibility, the Board has added a sentence to § 712.3(b). If it is necessary for an CUSO to purchase a minimum amount of stock to provide a permissible service, the purchase of the stock will not violate the customer base requirement so long as the other requirements of the CUSO rule are met.

NCUA wants CUSOs to understand clearly that this provision does not give FCUs a right to purchase stock or securities in any company in any amount. CUSOs may purchase only the minimal amount of stock absolutely necessary for the CUSO to provide a permissible service. If a CUSO owns more than the minimal amount of stock necessary, NCUA will require divestment of any stock in excess of the nominal amount needed for service provision. CUSOs may not invest in stocks and securities for speculative purposes.

FCU and CUSO Accounting

After consideration of the comments, NCUA made a few changes to the wording of § 712.3(c), FCU accounting, and (d), CUSO accounting; audits and financial statements; NCUA access to books and records. The changes clarify NCUA's CUSO review authority and make the rule clearer and easier to follow.

Ten of the 12 comments addressing the issue asked NCUA to continue the requirement for a CPA audit for CUSOs. The two comments opposed to the CPA audit stated that it would be better handled as a business decision by the CUSO's management. After consideration of the comments, NCUA continues to hold that the current requirement for a CPA audit means an opinion audit of the financial statements, performed by an independent, licensed CPA, and nothing less. The audit must be an audit of the separate CUSO entity and not simply an audit of the FCU's financial statements prepared on a consolidated basis, unless the CUSO is a wholly-owned CUSO. The reason for this long-standing position is that all credit unions investing in the CUSO need to be aware of any potential risks in their CUSO.

This clarification reflects current practice and policy.

In the proposal, NCUA asked for comments regarding the AICPA's Statement on Auditing Standards (SAS) No. 70, Reports on the Processing of Transactions by Service Organizations. Six of the 10 comments addressing SAS No. 70 approved of NCUA's position of not requiring SAS No. 70 reviews in the CUSO rule, but leaving it to the judgment of the CPA conducting the CUSO audit. Comments were concerned about adding significant costs to the CPA CUSO audit if the SAS No. 70 review was required. Four comments suggested that the reviews should be required to put CUSOs on notice that NCUA will expect a SAS No. 70 review when one is necessary under AICPA guidelines. After weighing the comments, NCUA retains its recommendation that a CPA performing an opinion audit of the financial statements of an FCU that uses a CUSO to process transactions consider the guidance in SAS No. 70 when planning and performing the audit. SAS No. 70 provides guidance when an FCU obtains either or both of the following services from a CUSO: (1) executing transactions and maintaining the related accountability; and (2) recording transactions and processing related data. The AICPA recommends SAS 70 reports be completed in CUSO trust companies that invest and hold assets for FCU employee benefit plans; CUSO mortgage bankers that service mortgages for FCUs; electronic data processing (EDP) service centers that process transactions and related data for FCUs; and other situations in which a CUSO develops, provides and maintains the software used by FCUs. The SAS 70 report on policies and procedures placed in operation and tests of operating effectiveness are crucial in keeping FCUs informed of internal control weaknesses of CUSOs performing core functions of the FCU.

Additionally, FCUs and CUSOs are reminded that CUSOs must follow GAAP for financial reporting purposes and FCUs must follow GAAP or alternative accepted regulatory accounting practices (RAP). Further, CUSOs must obtain audits consistent with generally accepted auditing standards (GAAS). NCUA interprets GAAP to mean compliance with standards of the Financial Accounting Standards Board (FASB) and related hierarchy, and GAAS to mean auditing standards issued by the American Institute of Certified Public Accountants (AICPA), unless otherwise determined by NCUA.

NCUA reminds FCUs and CUSOs that GAAP requires that entities (FCUs) holding a controlling financial interest, generally assumed at fifty percent or greater of the voting common stock, in another company (e.g., a CUSO) file consolidated financial statements with their subsidiary (e.g., CUSO). FCUs that do not control more than a 50% interest but that have the ability to exert significant influence, generally assumed at 20%–50% of the voting common stock of a CUSO, are advised to use the equity method of accounting. In both cases (consolidated financial statements and the equity method), inter-company transactions should be eliminated. While these specific requirements are not made a part of the final rule, they are required under GAAP. They are noted here because of their importance in representing the relationship between a CUSO and an FCU.

NCUA Access to CUSO Information

NCUA solicited comment on whether NCUA examination and supervision authority over CUSOs should be strengthened. Both the Office of Thrift Supervision (OTS), which charters and supervises federal savings associations, and the Office of the Comptroller of the Currency (OCC), which charters and supervises national banks, subject their regulated financial institutions' subsidiaries to examination and supervision "in the same manner and to the same extent" as the parent financial institution. 12 CFR 5.34(d)(3)(OCC) and 559.3(o)(OTS).

Commenters were also asked to address issues concerning a middle ground, such as requiring CUSOs to adhere contractually to any conditions in writing imposed upon their business by the NCUA. Currently, both OTS and OCC may impose conditions in writing upon the subsidiaries of their regulated financial institutions. 12 CFR 5.34(d)(4)(OCC) and 559.1(b)(OTS). Another possibility raised by NCUA was to consider strengthening the existing audit and reporting requirements further, or to require CUSOs to adopt specified policies, procedures, and other internal safety and soundness controls.

Sixty-five of the 70 commenters addressing the supervision issue stated that NCUA did not need additional examination authority. Many of these comments considered additional government regulation time-consuming, costly to both NCUA and to the CUSO, and obtrusive. Some comments said that NCUA staff did not have the expertise to supervise and examine the various types of for profit CUSO businesses. Several comments advised that a reliance on various legal, accounting,

and tax professionals would be preferable to NCUA regulation. A few comments distinguished bank and thrift subsidiaries regulated by OCC and OTS from CUSOs, which have not been directly regulated by NCUA. For instance, both federal thrifts and national banks may invest more in their subsidiaries, and must have higher percentages of ownership than the FCU Act or current § 701.27 permit. Other comments held that it would be unfair to regulate CUSOs providing core services, but not other vendors providing the same services to FCUs. Comments in favor echoed NCUA's reasons in support of examination authority in the proposed rule preamble. Seven comments asked NCUA to require CUSOs to adopt internal safety and soundness controls.

After due consideration of the comments on the available options, the Board has decided to adopt modifications to paragraph (d)(3) of this section, clarifying that NCUA has access to CUSO books, records, and the ability to review CUSO internal controls. This authority ratifies existing NCUA CUSO review procedures and practices. Currently, NCUA examiners perform a CUSO review to determine the degree of risk the CUSO poses to investor, borrower, and customer credit unions. The examiner must assess the financial condition of the CUSO, verify the accuracy of the financial statements, assess the adequacy of controls, determine the viability of operations and service to member credit unions, and confirm compliance with applicable laws and regulations. In the course of the CUSO review, the examiner may arrange to review records such as the CUSO's policies, procedures, budgets, business plan, goals and objectives, CPA opinion audit and related workpapers, general ledger, attorney opinions, reporting processes, board minutes, investment and loan documents, personnel documents, organization documents, and bylaws. The examiner may discuss with CUSO management the nature and extent of managerial planning, the overall reasonableness of the business plan, and budgetary projections. An on-site CUSO review provides the examiner an opportunity to observe and ascertain management's ability to effectively direct and control the CUSO's operations. It is critical for examiners to be able to review books and records, interview staff, and observe practices and procedures to determine the CUSO's ability to meet its goals, objectives, and financial projections; analyze its prospects for future success; and assess the risk to credit unions.

NCUA believes that this approach enhances the current approach of a contractual access to CUSO books and records in several ways. The ability to review CUSO internal controls enables NCUA to assess CUSO safety and soundness more quickly. Enhanced CUSO review authority helps protect CUSOs and participating credit unions from concentration and operation risk. It will also enable NCUA to better protect the NCUSIF from potential FCU losses due to CUSO losses. Presently, NCUA's main recourse is to require FCUs to divest CUSO interests and loans. NCUA is also concerned that, if CUSOs perform critical, core functions¹ for credit unions, it could disastrously affect affiliated credit union services. For example, where member transactions flow through the CUSO, credit unions are at substantial risk of losing much more than the amount of their CUSO investment or loan. Credit unions could also lose operational capability, which could detrimentally affect member services.

NCUA believes that the enhanced CUSO review approach has few drawbacks. It is unlikely to be a factor a court could consider in piercing the corporate veil and imputing liability to a credit union investor or lender. NCUA

¹ As a point of beginning, NCUA considers the following a list of such critical, core services and activities: (1) *Share-related core services*. Data processing of share deposits, withdrawals, and other account transactions; Operations conducting member share transactions for credit unions, including service center branches, remote service operations and ATMs; Provision of share account related clerical, professional, or management services; Share draft and deposit posting, sorting, and processing; ACH services; Advertising, brokerage, and other services to procure and retain share accounts; Computation and posting of dividends and other credits and charges; Preparation and mailing of share drafts, statements, notices, and similar items; (2) *Credit-related core services*. Data processing of loan applications, evaluations, extensions, collections, and payments; Making, acquiring, servicing, warehousing or otherwise processing member loans or other extensions of credit for a credit union, including consumer loans, credit card loans, mortgage loans, student loans, business loans, and loan equivalents, such as leasing and indirect lending programs; Operations conducting lending activity for credit unions, including service center branches, remote service operations, ATMs, and loan production offices; Advertising, brokerage, and other services to procure and retain loans; Advising, structuring, and arranging extensions of credit; Provision of credit analysis services; Provision of credit account related clerical, professional, or management services; and (3) *Other related core services*. General ledger data processing; Auditing and accounting; Management, development, sale or lease of affiliated credit union fixed assets; Record retention, security, and disaster recovery services; Provision of investment advice, counseling, or services; Provision of liquidity management, investment, advisory, and consulting services; Development and administration of personnel benefit programs, including life insurance, health insurance, and pension and retirement plans.

examiners are well qualified by experience and training to conduct CUSO reviews. While NCUA encourages CUSOs to use professional legal, accounting, and other services when needed, the Board believes that, in certain cases, a CUSO review conducted by an examiner best meets NCUA's needs. The current CUSO review, which is consensually scheduled, is specifically designed to result in minimal burden upon CUSOs. CUSO review authority is especially crucial in light of NCUA's extensive Year 2000 compliance program.

NCUA's Year 2000 compliance program necessitates extensive cooperation between data processor entities, credit unions, and the NCUA if it is to accomplish its goals in the available time remaining. The enhanced review authority ensures this cooperation between NCUA and CUSOs engaging in data processing activities. NCUA does not intend to use its right of access to CUSO information to roll out a comprehensive CUSO review program. NCUA plans to continue to use CUSO reviews sparingly, usually when a potential systemic risk is present, as with the Year 2000 compliance program, or when other facts and circumstances raise operational, concentration, or financial risk issues that might detrimentally affect credit unions and their members.

The NCUA Board considers the requirements set forth in the rule to be necessary for the safety and soundness of FCUs and ultimately the NCUSIF. The Board believes that it has properly exercised its authority in preserving access to CUSO information. Section 204(a) of the FCU Act, 12 USC 1784(a), authorizes the NCUA Board to examine any insured credit union. Examiners are authorized to "make a thorough examination of all the affairs of the credit union." Section 204(b) of the FCU Act, 12 USC 1784(b), further authorizes the NCUA Board or its representatives to "take and preserve testimony under oath as to *any matter in respect to the affairs of any such [insured credit union]*, and to issue subpoenas and subpoenas duces tecum." [Emphasis added.] Such subpoenas are to be enforced by the United States District Court "where the *principal office* of the credit union is located or *in which the witness resides or carries on business.*" [Emphasis added.]

It is clear that FCU investments in and loans to CUSOs are matters within the "affairs of the credit union." Under §§ 204(a) and (b) of the FCU Act, NCUA is authorized to examine such credit union affairs and, if testimony and records cannot be obtained through

such examination, to issue subpoenas and subpoenas duces tecum. This authority extends to those individuals and entities that are involved with insured credit unions, as evidenced by the reference to "principal office . . . in which the witness . . . carries on business" in § 204(b). Therefore, under the Board's authority to promulgate regulations, examine insured credit unions, and issue subpoenas and subpoenas duces tecum, the Board has the authority to require the FCUs that invest in or lend to a CUSO to obtain a written agreement granting NCUA access to CUSO information. 12 USC 1766(a) and 1789(a)(11). Creditor and investor FCUs in CUSOs are advised to obtain amendments to their required, written agreements with CUSOs as soon as possible. FCUs will have until December 31, 1998, to obtain the revised agreements with their CUSOs. The Board believes that the delayed effective date of December 31, 1998, which is ten months from the date of the adoption of the new rule, will give all FCUs sufficient time to obtain revised CUSO agreements in compliance with § 712.3(d).

Commenters were also requested to comment on whether NCUA should charge a review or examination fee for conducting CUSO examination activities. Thirty out of 36 comments opposed a fee contending it would financially burden CUSOs, many of which are start-up businesses, run at a loss, or disburse any profits back to their investor FCUs. The six in favor of a fee noted the reasons NCUA stated in the preamble: the need for more NCUA staff time; resultant increased agency expenses; and the fairness of charging users of NCUA examination services. After consideration of the comments, the Board has decided not to require a CUSO review or examination fee at this time. The Board believes that all credit unions and their members will benefit from the review of CUSOs, whether or not every FCU or FISCU uses the CUSOs reviewed. Therefore, it is more equitable to pay any of these costs out of the FCU operating fee and NCUSIF overhead transfer.

Compliance With Other Laws

This subsection remains unchanged from the proposal. NCUA has interpreted this requirement to apply, not only to laws applicable to the proper maintenance of either corporate or limited partnership format, such as fee, filing and tax requirements, but also to any other laws applicable to the nature of the CUSO's business. For instance, an insurance agency CUSO must comply with state insurance laws and

regulations. Any CUSO that is a franchise would need to follow federal and state franchising laws. Any CUSO service center would need to follow all applicable federal consumer protection laws related to its activities, as well as other relevant laws applicable to FCUs, such as those relating to supervisory committee access (12 CFR 701.12-.13); loans to members (12 CFR 701.21); truth in savings (12 CFR Part 707); advertising (12 CFR Part 740); share insurance (12 CFR Part 745); security program, report of suspicious activity, and bank secrecy act compliance (12 CFR Part 748); records preservation and retention (12 CFR Part 749); and relevant bylaw requirements, such as those relating to the confidentiality of member records (Standard Federal Credit Union Bylaws, NCUA Publication No. 8001).

Section 712.4, What Must an FCU and a CUSO do to Maintain Separate Corporate Identities?

Separate Corporate Existence

In the proposal, NCUA requested comment on the use of corporate separateness guidelines in § 712.4(a)(1-6), which, in turn, were based upon the OTS rules applicable to federal savings and loan service corporations. 12 CFR 559.10. Eight of the 14 comments were opposed to the addition of corporate separateness requirements. Several of these comments said that these principles addressing good business practices would be more appropriately included in NCUA guidance in a rule commentary rather than in the rule. Other comments stated that state law controlled whether the corporate veil would be pierced between a CUSO and an FCU and, therefore, the proposed corporate separateness guidance was not useful. The five comments in favor believed that the addition of the corporate separateness guidelines into the rule would better publicize guidance to all CUSOs, not all of which might read supplementary NCUA guidance presented in another format. One commenter asked that NCUA prohibit FCUs and CUSOs from sharing directors, and require a CUSO to disclose on its documents that it is a separate entity from any FCUs.

The Board has decided to include the guidelines, but clarify that the guidelines are merely evidence of good business practices reflecting corporate separateness. This way the guidelines could not be used to supersede any individual state's laws regarding imputed liability. The Board has not otherwise modified the guidelines from the proposal. Although NCUA does not

ban FCU/CUSO interlocked boards, NCUA cautions FCUs and CUSOs that interlocking boards are often a critical factor in a court piercing a corporate veil. Likewise, although NCUA will not require CUSOs to disclose in their documents that they are separate entities, NCUA strongly encourages CUSOs to do so as a prudent business practice, especially if the CUSO and any FCUs share similar names that might potentially cause credit union member and public confusion. This is often another critical factor in courts considering liability between two entities.

Legal Opinion

In the proposal, NCUA solicited comment on whether the legal opinion requirement should be expanded from requiring an opinion on the establishment of the CUSO to require additional legal opinions when the CUSO changes its structure, such as from a corporation to an LLC, or when the CUSO adds an additional permissible service. Sixteen of the 24 comments addressing this issue opposed these changes on grounds of regulatory burden. Some of these comments also thought the terms used in the proposal "10% or greater equity interest" and "maintained" needed more clarification. Eight of the comments favored expanding the legal opinion requirement to structure changes, but five of these opposed obtaining legal opinions when new permissible services were added to a pre-existing CUSO. These comments reasoned that there should be nothing inherently dangerous or speculative to an existing CUSO in adding an additional permissible service or activity related to the daily, routine operations of FCUs. One comment stressed that NCUA should clarify that it would require legal opinions *prior* to the establishment or structure change of a CUSO. A few comments asked that NCUA adopt the detailed legal opinion requirements provided for corporate CUSOs in § 704.11(b) to assist drafters and beneficiaries of the content of the required legal opinion.

Additionally, to reduce the regulatory burden of obtaining legal opinions, NCUA proposed that legal opinions will only be required for FCUs owning a 10% or greater equity interest in a CUSO. NCUA roughly estimated that such a limitation would reduce the number of legal opinions needed by as much as 80%. Sixteen out of the 28 comments addressing this issue favored requiring legal opinions only for FCUs holding a 10% or greater equity interest in a CUSO, giving regulatory relief as

the reason. Comments opposed to the proposed measure either wanted the threshold raised, or the legal opinion requirement left as is.

After due consideration of the comments, NCUA has revised the legal opinion requirement in several respects. First, NCUA deletes the legal opinion requirement for an existing CUSO that adds new permissible services or activities. Second, NCUA clarifies that legal opinions for CUSO establishment and structure change are due before, and not after, the CUSO is established or changes its structure from one permissible form to another (e.g. from a corporation to an LLC). Third, NCUA adds additional guidance on the content of the required legal opinions, which it borrows from § 704.11(b). Fourth, NCUA clarifies that all investing FCUs, regardless of their percentage of equity ownership, must obtain required legal opinions. FCUs lending to CUSOs should be protected from losses by following their usual credit policies. However, the risk is greater for FCUs investing in CUSOs. Limiting the legal opinion only to those FCUs with "10% equity interest" exposes smaller CUSO equity holders, who arguably need the assurances supplied by a legal opinion more than larger CUSO equity holders, to more of a potential risk due to defects in CUSO formation. By eliminating the legal opinion requirement for creditor FCUs, the Board remains able to provide a significant reduction in an FCU's paperwork burden. Fifth, NCUA clarifies that the legal opinion may be provided by independent legal counsel either of the investing FCU or of the CUSO. Currently, often the attorney for the CUSO, who actually performs the legal work creating the CUSO, provides the required legal opinion to participating CUSOs. The rule clarification sanctions this practice.

NCUA believes these changes will help strengthen corporate separateness, provide clear guidelines for compliance, and provide continuing guidance during the life of the CUSO without the drawbacks of the current legal opinion requirement. NCUA encourages legal, accounting, tax advisor, and other consultant involvement in matters affecting CUSO investments and loans. The changes in the final rule to the legal opinion requirement will aid FCUs in ensuring CUSOs are properly formed and given advice on how to function under state law in order to avoid imputed liability from a CUSO to an FCU.

Section 712.5, What Activities and Services are Preapproved for CUSOs?

General

NCUA solicited comment on a proposed provision which reserved to NCUA the right to limit any CUSO's activities or to refuse to permit activities for supervisory, legal, or safety and soundness reasons. The provision was derived from OCC and OTS subsidiary requirements (12 CFR 5.34(d)(3) and 559.1(b)). All of the eight comments addressing the issue were opposed. These comments stated that the sentence was ambiguous, burdensome, and unnecessary in light of NCUA's divestment authority. One comment suggesting that NCUA could achieve its intent by rephrasing the sentence to state that NCUA could limit an FCU's loan or investment in a CUSO or refuse to approve new CUSO activities under § 712.7.

NCUA disagrees with the commenters and adopts a slightly modified version of the proposal, reordering the words without changing content. NCUA sees the sentence as a clarification of existing NCUA practice, and as necessary given NCUA's decision to enhance CUSO review authority in § 712.3(d)(3). Currently, NCUA provides interpretations of the limits of existing permissible CUSO activities through the issuance of legal opinion letters and regional and central office correspondence. As the proposed amendment provides, these current NCUA pronouncements are based upon examination, legal, and safety and soundness grounds. The provision puts FCUs and CUSOs on notice that NCUA does have the right to interpret the limits of permissible CUSO services and activities. If transgressions are discovered after the fact, NCUA will work with the credit unions and CUSOs involved to arrive at a mutually satisfactory conclusion through the CUSO review and available enforcement processes. In an extreme case, NCUA can order the affiliated credit union to divest its CUSO investment or dispose of its CUSO loan or use other enforcement tools at its disposal against the FCU, such as prohibitions, removal orders, cease-and-desist orders, or civil money penalties. NCUA may also exercise these remedies against the FCU if the normally permissible CUSO services and activities are improperly, imprudently, or recklessly conducted.

A few comments asked that NCUA add the word "only" to the last sentence of the introduction to § 712.5 so that the phrase would read that CUSOs can "only provide one or more of the following activities and services." The

purpose of this change, derived from current § 701.27(d)(5), would be to clarify that the permissible activity and service list is exclusive, in other words, services that are not on the list cannot be performed by a CUSO. The Board agrees with this comment and makes this change in the final rule. However, the Board would like to point out that parties can use § 712.7 to petition the Board for additional activities or services not already listed in § 712.5.

Insurance and Bonding

In the proposal, NCUA solicited comment on whether an insurance or bonding requirement should be imposed upon CUSOs. Of the 33 comments addressing this issue, 23 stated that insurance and bonding decisions should be left as a management decision of the CUSO, consistent with any state requirements. The 10 comments supporting the insurance and bonding requirement believed insurance or bonding was a good business decision that helped to protect investor, borrower, and contracting FCUs from any CUSO liability. A few comments stressed that a CUSO fidelity bond or basic commercial crime insurance coverage could be especially critical to service center CUSOs and other CUSOs providing core services to FCUs. One commenter asked that NCUA provide flexibility and not require any types of coverage not available to CUSOs in the marketplace, mentioning that one major mutual insurance company no longer sold CUSO endorsements on its credit union bonds.

After considering the comments, the Board decided to add a requirement that all CUSOs be "sufficiently bonded or insured for their specific operations." Because a major mutual insurance company commented that it does not consider the credit union fidelity bond to cover CUSO activities and services, the Board believes it should address CUSO insurance in the rule. Comments confirmed the insurance industry makes a wide variety of insurance products available to CUSOs that are similar to the FCU fidelity bond in coverage. A basic Commercial Crime Policy can include coverage for employee dishonesty, theft, disappearance and destruction, and depositor's forgery.

Similarly, mortgage service CUSOs generally must have a bond meeting secondary mortgage market requirements, such as a Financial Institutions Bond Standard Form No. 15 (Mortgage Bankers Blanket Bond Policy). Likewise, a securities brokerage CUSO often will be a member of the National Association of Securities Dealers (NASD), and will meet NASD

bonding requirements through a Financial Institutions Bond Standard Form No. 14 (Security Brokers Blanket Bond). Although some of these coverages may be required by other state or federal laws, the Board strongly believes that in order to protect FCUs and credit union members served by CUSOs that CUSOs must maintain business insurance adequate to meet the CUSO's needs as determined by each CUSO's board of directors and management, and as verified by NCUA staff. This regulatory language will protect FCUs that receive CUSO services and provide flexibility for CUSOs to choose the best insurance or bonding option available for the particular services and activities conducted by them. CUSOs are encouraged to analyze their insurance needs whenever adding a new service or activity, changing their structure, or, in any event at least on an annual basis.

Permissible Activities and Services

CUSOs, according to the FCU Act, are to provide "services which are associated with the routine operations of credit unions." 12 U.S.C. 1757(7)(I). In addition, CUSOs are to be "established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve." 12 U.S.C. 1757(5)(B). In providing these daily, routine services of need to credit unions, CUSOs must avoid investments in depository financial institutions, insurance companies, trade associations, liquidity facilities, and similar entities. 12 U.S.C. 1757(7)(I). In the past, NCUA has interpreted this statutory authority broadly to encompass most services and activities a credit union can provide to itself and its members through use of express authority, incidental authority, or goodwill authority. NCUA feels this interpretation is supported by the language of the FCU Act, which sets forth a clear boundary of CUSO services, namely, services fulfilling credit union and credit union member needs. Congress did not choose to limit CUSO activities by cross-reference to statutory FCU powers or by specifically listing CUSO powers in the statute. This background on NCUA's CUSO policy is germane to the following discussion of permissible CUSO powers.

Eight new services, reflecting current NCUA interpretations of existing services, were contained in the proposed rule. First, in proposed paragraph (a)(3), under checking and currency services, NCUA proposed to add "money order, savings bonds, travelers checks, and purchase and sale

of U.S. Mint commemorative coins services." Second, in proposed paragraph (b)(2), under clerical, professional and management services, NCUA proposed to add "courier services." Third, in proposed paragraph (b)(4), also under clerical, professional and management services, NCUA proposed to add "facsimile transmissions and copying services." Fourth, in proposed paragraph (b)(10), also under clerical, professional and management services, NCUA proposed to add "supervisory committee audits." Fifth, in proposed paragraph (d)(5), under electronic transaction services, NCUA proposed to add "electronic income tax filing." Sixth, in proposed paragraph (h)(2), under leasing, NCUA proposed to add "real estate leasing of excess CUSO property." This covers real estate leasing only of premises acquired for CUSO business, and otherwise mainly used in CUSO business, that may later be used for future CUSO expansion. CUSOs are still otherwise obligated to demonstrate that the purchase of any real property will be used for CUSO purposes. NCUA expects that any real property purchased by a CUSO for future expansion should have a future benefit to the CUSO as evidenced by a business plan discussing future use of the real property. Although "personal property leasing" and "real estate leasing of excess CUSO property" are listed as the only two permissible leasing services in proposed paragraph (h), fixed asset leasing is also permitted, but retained with the other permissible fixed asset activities in proposed paragraph (f)(1). Seventh, in proposed paragraph (j)(2), under record retention, security, and disaster recovery services, NCUA proposed to add "disaster recovery services." Eighth, in proposed paragraph (j)(3), also under record retention, security and disaster recovery services, NCUA proposed to add "optical imaging, CD-ROM data storage and retrieval services" to current "microfilm and microfiche services." Thirty-two of the 33 comments addressing this issue agreed that all eight services should be added to the rule for the reasons NCUA expressed in the proposed rule. The one opposing commenter gave no explanation for her position. The Board, finding that these services are self-explanatory and only codify existing permissible services and activities not currently in the rule itself, adopts them in the final rule.

NCUA also solicited comments on whether to add consumer loan originations to the list of permissible activities. Thirty of the 39 comments addressing this issue desired addition of

consumer loan origination authority. Some of these comments stated that the authority would enable FCUs to seek out new sources for loans, help increase FCU growth, avoid predatory dealer financing practices on members, be more efficient, allow FCUs to make riskier loans through the CUSO, help reduce funding risk by facilitating use of secondary market packaged loans, and would otherwise complement an FCU's lending program. Two comments specifically asked for student loan origination authority, as an analog to the already approved consumer mortgage loan authority. Student lending is technical, complex, staff-intensive, heavily regulated by government, and involves dealing with universities, students, specialized processors, and various branches of local, state, and federal government. Nine comments opposed consumer loan origination based on the opinion of the commenters that consumer loan activity was beyond NCUA's statutory authority to approve, would dilute an FCU's common bond requirements, and would take the lending decision away from credit union board of directors.

Comments were also solicited on whether consumer loan origination services would be helpful to small, low-income, or community development credit unions. Commenters were asked to address whether consumer loan services should be permissible only for credit unions of a certain asset size and how such a class should be defined. Of the 11 comments received on this issue, 6 supported consumer loan origination authority for small credit unions and 5 opposed. The reasons given were similar to those used in support of, and opposition to, general consumer loan origination authority. NCUA received no suggestions as to how to define the applicable group of small credit unions.

After due consideration of the comments, NCUA remains opposed to this addition. Unlike consumer mortgage loan origination, which requires a specialized lending staff, must follow strict secondary mortgage market rules, and requires economies of scale in order to be viable, consumer loans are relatively easy to offer and process. In addition, NCUA is apprehensive in granting CUSOs the authority to provide consumer loans to the general public, as it may be perceived as a dilution of the common bond by Congress and the public. However, the Board is inclined to approve the addition of student loan origination to the list. Like consumer mortgage loan origination authority, in order to be properly performed in a competitive manner within applicable

laws, student loan operations can greatly benefit from specialized staff familiar with this complicated, specialized form of lending. Like mortgages, student loans also readily lend themselves to packaging and sales. It is already permissible for CUSOs to engage in loan processing, servicing, sales, and collections. Combining these pre-existing authorities with student loan origination authority should enable FCUs and FISCUs to become more involved with student lending.

NCUA also stresses that while CUSOs can only approve and fund consumer mortgages and student loans, CUSOs can engage in many back office aspects of lending. CUSOs can provide loan support services, such as loan processing, servicing and sales, as well as debt collection and collateral repossession services. The FCU, however, must make the decision whether or not to grant the loan in accordance with the FCU's loan policies. In essence, CUSOs can provide back office underwriting, processing and servicing functions to enable a credit union to offer loans. In addition, if a CUSO has lending personnel on its staff involved in making and administering business loans with a minimum of 2 years direct experience with lending, then FCUs using the CUSO for back office business loan functions can use the CUSO's staff to fulfill its obligation to have an experienced lender on the FCU's staff, as is required by § 701.21(h)(2)(i)(F). In other words, FCUs are permitted to leverage their member business loan expertise with CUSO business loan personnel. This clarification is made to assist FCUs in expanding the number and type of business loans made to its members in conjunction with the member business loan amendments proposed in 62 FR 41313 (August 1, 1997).

In the proposed rule, NCUA solicited comment on whether three services currently permissible for CUSOs should remain permissible: (1) data processing services to the general public; (2) travel-related services; and (3) real estate brokerage services. Thirty-five of 36 comments addressing the issue favored the retention of data processing services to the general public. Comments stated that other federal financial institution regulators were considering changing their rules to allow these data processing services and providing services to others helped pay for data processing computer equipment and services and helped keep costs down. Similarly, 35 of 36 comments addressing the issue favored the retention of travel-related services.

Comments stated that travel-related services had been traditionally provided in FCUs for many years and helped to promote thrift in the form of vacation share savings accounts and promote lending in the form of vacation loans. The single comment opposing the retention of data processing services and travel-related services was based on the grounds that the service is impermissible and legally insupportable. NCUA disagrees with this one comment on the grounds that the Board has constructed an adequate administrative record to support the inclusion of these services within the context of the CUSO rule, based upon the Board's statutory authority and the Administrative Procedure Act. Therefore, the Board will retain data processing services and travel-related services in the CUSO rule.

All 26 comments addressing the issue favored the retention of real estate brokerage services. Comments stated that the service was complementary to FCU and FISCU mortgage loan operations and programs. Despite the comments, NCUA has been troubled by cases involving conflicts and the appearance of conflicts between real estate brokerage CUSOs and the credit unions such CUSOs serve. In one instance, the NCUSIF suffered a large loss due to a real estate brokerage service, and several FCUs and FISCUs have suffered losses due to conflicts arising between the credit union and a real estate brokerage. Because of these concerns, the Board has decided to remove "real estate brokerage services" from the list of permissible CUSO activities and services. This removal is set forth in § 712.6(b). However, CUSOs with current investments or loans to real estate brokerage service CUSOs as of the effective date of this rule will be allowed to continue to offer the service under a 3 year grandfather provision under § 712.9. For similar reasons regarding impairment of appraiser independence and possible conflicts of interest, the Board declines to add real estate appraisal activities in the list of permissible activities.

NCUA also requested comments regarding any aspects of any other currently allowable, or potentially allowable, CUSO activity or service. One comment suggested adding "electronic imaging" to the list of record retention imaging services listed under the "Record Retention, security and disaster recovery services" category to cover future imaging technologies. The Board adopts this comment in the final rule.

Another comment asked that NCUA permit business lending services,

certificate of deposit brokerage services, medical savings accounts, telemarketing services, EFT services (point of sale, remote banking, and smart cards), executive/private banking services and correspondent banking services including cash letter processing and remittance lock box services. Some of these services can be provided under current authority: CD brokerage services can be provided by a securities brokerage CUSO; telemarketing is a form of permissible marketing services; the EFT services seem permissible; and it is possible that some of the other services, other than business lending, could be provided by a trust company CUSO. Member business loan origination is rejected for the same reasons described under consumer loan origination. Without more detail on these suggested services, the Board declines to add any of them to the permissible activities and services list at this time.

One comment suggested changing the heading of paragraph (g) from "Insurance brokerage or agency" to "Providing group purchasing programs." The comment stated that in some states the subsidiary of a financial institution cannot be licensed as an insurance brokerage or agency, but the financial institution may still want to make available to their members a legal insurance product, such as mortgage life insurance. The comment contemplated various insurance group purchasing programs, such as vehicle warranty programs, home warranties, gap insurance (protects any gap between the original cost of a vehicle and the actual cash value in the event the vehicle is destroyed), debt cancellation programs, and motor club programs. The Board is of the opinion that the addition of "provision of group purchasing programs" under the existing category "(g) Insurance brokerage or agency" is sufficient to allow CUSOs to engage in the contemplated programs. The CUSO rule does not preempt state licensing laws, therefore, it is beyond NCUA's authority to permit CUSOs, which must be properly established and operated under applicable state law, to offer or provide a service or product that is impermissible under state law. In addition, the Board is wary of how others would treat the potentially broad, vague, and troubling category of "group purchasing programs" without limiting it in some fashion, as the Board has done here, by limiting it to insurance-type group purchasing services.

One comment recommended that paragraph (d), "electronic transaction services," be expanded to include electronic payment systems, such as stored value cards, e-cash, e-checks, and

any other developing or emerging technology through which financial services may be delivered. Another comment suggested that paragraph (d) should be renamed "electronic currency and electronic delivery systems" to include electronic payment systems to permit the delivery of financial services, transactions and value, including stored value cards, e-cash, e-checks, stamps, coupons or similar payment forms; and that paragraph (d)(3), "data processing," be renamed "data processing and multimedia communication and information systems" to facilitate delivery of financial services through emerging and future technologies such as smart phones, interactive televisions, video screens and terminals, electronic conferencing centers, automated video financial centers, and digital signature certification centers, and to also act as Internet service providers. The Board indicates its approval of services that are currently performed in a credit union branch, but can now be performed by computer-based means, by adding the term "Cyber financial services" as new paragraph (d)(8) to the permissible services list. The Board cautions CUSOs that permissible CUSO "Cyber financial services" only includes credit union member financial services that are analogous to services performed for credit union members in a credit union branch and not unrelated services.

A few comments asked that NCUA provide a list of impermissible activities and allow anything not on that list to be permissible. Other comments asked that NCUA let the board of directors of each CUSO decide what services to offer instead of providing a list of permissible activities and services. The Board believes that it is better to have a list of permissible activities and services than either no list or a list of impermissible activities and services. A permissible activities and services list is easier to administer, more familiar to users, and is less likely to be misinterpreted. Therefore, the Board declines to adopt these comments' proposals.

To summarize, the proposed rearrangement of the list of permissible activities and services has been adopted with a few changes based upon comments received and staff investigation. First, "Cyber financial services" has been added as new paragraph (d)(8) to the category of "Electronic transaction services." Second, "Provision of group purchasing programs" is added as new paragraph (g)(3) to the category of "Insurance brokerage or agency." Third, the category "Real estate brokerage services" is removed. Fourth,

"electronic imaging" is added to the list of record retention imaging services listed under the new paragraph "(j) Record Retention, security and disaster recovery services." Fifth, a new category, "Student loan origination" is added as new paragraph (m). Sixth, all eight proposed rule services and activities have been added, and data processing and travel services have been retained as permissible CUSO services.

The Board adopts the rearrangement of the list of permissible activities and services for ease of understanding and citation, to reflect changes in CUSO activities and services, and to provide flexibility for future CUSO growth. The final categories of permissible services and activities are as follows: checking and currency services; clerical, professional and management services; consumer mortgage loan origination; electronic transaction services; financial counseling services; fixed asset services; insurance brokerage or agency; leasing; loan support services; record retention, security and disaster recovery services; securities brokerage services; shared credit union branch (service center) services; student loan origination; travel agency services; and trust and trust-related services. The category headings are solely descriptive in nature and not meant to convey authority for additional services and activities beyond the specific services and activities listed.

Section 712.6, What Activities and Services are Prohibited for CUSOs?

The proposed section rephrased the statutory prohibition of 12 U.S.C. 1757(7)(I). The four comments addressing this section opposed the proposed wording. Comments found the rephrasing vague, ambiguous and not supported by the statute. Comments pointed out that the statute did not prohibit insurance company involvement with CUSOs and found NCUA's prior policy prohibiting insurance company involvement to be unfounded, unnecessary, and insupportable under the statute. After further review, the Board agrees and has reworded this section to follow the language used in the statute verbatim.

In addition, as discussed under the supplementary information for § 712.5, Permissible Services, a new paragraph (b) has been added to set forth that any new FCU investments or loans in a CUSO involved with real estate brokerage services cannot be made after April 1, 1998, and any existing investments or loans must be phased-out over a three year period as provided in § 712.9.

Section 712.7, What Must an FCU Do To Add Activities or Services That are Not Preapproved?

The comments addressing this section agreed that it is useful to have a regulatory mechanism to add unpreapproved activities and services under an expedited 60-day consideration time frame. This would allow Board consideration of potential CUSO activities and services that are not included in the permissible CUSO activities and services list in § 712.5. The proposed language is adopted as revised for plain language reasons previously discussed in this Supplementary Information. The terms "NCUA Board," and "Secretary of the Board," have the meanings ascribed to them in Part 790 of the NCUA Rules and Regulations. 12 CFR Part 790.

Section 712.8, What Transaction and Compensation Limits Might Apply to Individuals Related to Both an FCU and a CUSO?

Conflict of Interest

NCUA requested comments on means to enable NCUA to better police potential CUSO/FCU conflicts, including NCUA's proposal to eliminate the ability of a CUSO to reimburse an FCU for the services of the FCU's officials and senior management employees. Seventy-one of the 72 comments received on this issue opposed NCUA's proposed reimbursement prohibition. Many comments stated that this one factor would not be controlling to a court in determining whether or not to pierce the corporate veil to find an FCU liable for acts or omissions of a CUSO. Other comments stated that a prohibition would have the effect of severely hampering, if not making it nearly impossible, for small and start-up CUSOs, that could not otherwise afford to pay for non-credit union employees, to function. Some comments stressed that shared employees were helpful in maintaining communication between an FCU and a CUSO, which aided in furthering their shared mission of providing member services. Many comments stated that for-profit, taxable CUSOs are eligible for a tax deduction for business expenses for reimbursements made to an FCU on account of shared employees, while dividends are not deductible. One comment suggested that NCUA should encourage prudent management by requiring arms' length transactions through means of required contractual agreements. Several comments stressed that the reimbursement does not by itself raise concerns. It is the actions of

a few individuals that cause NCUA concerns, and these individuals should be handled by increasing implementation of NCUA fraud detection programs and policies. Comments stated that the combined effect of the proposed ban would be to prevent formation of new CUSOs, impede expansion of CUSO services to other credit unions, and jeopardize the operations and finances of existing CUSOs. In sum, elimination of the ability to reimburse would seriously hinder CUSOs' ability to perform and deprive credit union members of additional revenues and services.

Many of the comments clarified for NCUA the extent and nature of FCU services used by CUSOs: facilities (space, utilities, maintenance services, and janitorial services); systems support (telephone, computer, Internet access); shared employees and staff (accounting, human resources, call center, marketing) and direct services like attorney and advertising services. After gaining a better understanding of the CUSO industry through due consideration of the comments, the Board has decided to continue to allow CUSOs to reimburse FCUs for the services of FCU officials, senior management employees, and employees under one condition. The condition is that the FCU accounts payable, due from the CUSO on account of the CUSO's use of FCU officials, senior management employees, and employees, must be cleared and paid in full at least every 120 days. NCUA has experienced a recurring problem of CUSO nonpayment of the funds owed to the FCU on account of the CUSO's use of FCU officials and employees. In several cases, the account receivable due from the CUSO has been allowed to accumulate for several years, triggering safety and soundness issues. In some of these cases, the FCU has been unable to collect the accumulated account receivable from the CUSO resulting in a write-down of the account receivable as an impaired asset. This practice threatens the safety and soundness of FCUs and the NCUSIF. Examiners will be instructed to review the accounts receivable due from CUSOs to ensure compliance with this requirement after this rule becomes effective.

The primary purpose of the conflict of interest section is to prevent insider abuse and self-dealing that could lead to losses at the CUSO, affiliated credit unions, and the NCUSIF. It is the responsibility and fiduciary duty of FCU volunteers and employees to make decisions based on the best interests of the FCU and its members. Motivations of personal financial gain from CUSO activities could present an inherent

conflict of interest. Such motivations in various CUSO cases have led to personal gain by FCU officials and resulted in FCU losses, occasionally even resulting in the liquidation or merger of the FCU. In addition, CUSO compensation of FCU volunteers could serve as a means to subvert the prohibitions on compensation for volunteer officials contained in the FCU Act. 12 U.S.C. 1761 and 1761a. Moreover, compensation of shared CUSO/FCU officials might be a factor that a court could evaluate in deciding to pierce the corporate veil to impute liability from a CUSO to an FCU. For these reasons, NCUA is committed to maintaining strong conflicts of interest provisions for CUSOs and FCUs.

FCU officials and employees, and their immediate family members, who also work in CUSOs engaging in FCU loan-related services, should be careful to comply with 12 CFR § 701.21(c)(8), NCUA's loan conflicts rule. Individual compensation related to FCU loans can trigger application of the loan conflicts rule. CUSO loan-related services include loan support services, such as debt collection services; loan processing, servicing and sales; or the sale of repossessed collateral; as well as leasing, consumer mortgage loan, or student loan origination activities.

Section 712.9, When Must You Begin Compliance With the Revised Rule?

NCUA solicited comment on when FCUs and CUSOs should begin compliance with a revised final part 712. The few comments received on this issue varied from the effective date to 6 months to 9 months to 1 year. After consideration of these comments, and in light of the few changes to the CUSO rule, the Board is adopting the April 1, 1998, effective date as the compliance date, as it proposed. Any conversion compliance problems should be brought to the attention of the appropriate NCUA Region immediately upon discovery for expeditious handling and resolution. FCUs will have three years, until April 1, 2001, to divest or close-out any nonconforming investments or loans made nonconforming by this new rule, such as FCU investments in, and loans to, CUSOs engaging in real estate brokerage services.

Section 740.3(c), Mandatory Requirements With Regard to the Official Sign and Its Display

Federally-insured credit unions are not permitted to receive account funds at any teller's station or window where any non-federally insured credit union or institution receives shares or deposits. Credit union service centers

and branches servicing more than one credit union where only some of the credit unions are insured by NCUA are currently exempt from this requirement. However, in a service center context a sign is required immediately above or beside each official NCUA sign stating "Only the following credit unions serviced by the facility are federally insured by the NCUA _____." (The full name of each credit union insured is to follow the word NCUA). The lettering is to be of such size and print to be clearly legible to all members conducting share or deposit transactions. The intent of this requirement was to inform credit union members using a service center that share insurance was dependent upon their credit union and not upon the location of their transactions (the service center).

To reduce the paperwork and compliance burdens on service centers, which service mainly federally-insured credit unions, NCUA proposed to change this disclosure requirement to a disclosure of *non*-federally insured credit unions serviced at a service center. Twelve of the 17 relevant

comments supported this approach. Five of the comments preferred the current requirement.

After further consideration, the Board has decided not to revise the service center posting requirement. The Board is very concerned about credit union member confusion about account insurance. The NCUSIF is backed by the full faith and credit of the United States. Private insurance is backed only by the assets of the insurance company. Since 1990, concerns with privately-provided primary, non-excess account insurance has led to elimination of private account insurers in Florida, Georgia, Massachusetts, Rhode Island, Tennessee, Texas, and Washington State. While NCUA is aware of the statutorily-mandated disclosures that nonfederally insured credit unions must give to their members, 12 U.S.C. 1831t, NCUA is concerned that some member confusion might still exist leading the member of a nonfederally insured credit union to believe that his or her deposits were federally insured by the NCUSIF. Therefore, the signage requirement will remain unchanged.

Private, non-federally insured credit union members may believe that their accounts are federally-insured and backed by the full faith and credit of the United States if they transact business where the blue, NCUA Insurance of Accounts sticker is used, such as at service center locations. NCUA's concern is heightened by the recent proliferation of the use of service center outlets. Outlets are existing federally-insured and non-federally insured credit union branches that are wired to handle simple deposit and withdrawal teller window transactions for any member of any other credit union participating in that service center company. Plans are currently underway to link various service center locations to facilitate a national service center business using existing credit union branches as outlets. Thus, privately-insured credit union members will soon be able to transact credit union business in federally-insured credit union branches, perhaps on a national basis. The Board is concerned over this situation and has directed staff to study the issue.

H. DERIVATION TABLE

Original provision	New provision	Comment
701.27(a)	712.1	Modified.
701.27(b)	712.6(a)	Modified.
701.27(c)	N/A	Removed.
701.27(d)(1)	712.2(a-c)	Modified.
701.27(d)(2)(i-ii)	712.3(a)	Significantly Changed
701.27(d)(3)	712.4(b)	Significantly Changed.
701.27(d)(4)	712.3(b)	Modified.
701.27(d)(5)(i-ii)	712.5(a-o)	Modified.
701.27(d)(5)(iii)	712.7	Modified.
701.27(d)(6)(i-iii)	712.8(a-c)	Modified.
701.27(d)(7)(i)	712.3(c)	Modified.
701.27(d)(7)(ii)(A-C)	712.3(d)(1-3)	Modified.
701.27(d)(8)(i-ii)(A-B)	712.9(a-b)(1-2)	Modified.
701.27(e)	712.3(e)	No change.
N/A	712.4(a)	Added.
N/A	712.6(b)	Added.

II. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare any analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under \$1 million in assets). The CUSO and service contract rule revisions reduce existing regulatory burdens. No commenters commented on Regulatory Flexibility Act issues. Therefore, the NCUA Board has determined and certifies that the final rule does not have a significant

economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

The reporting requirements in Part 712 have been submitted to the Office of Management and Budget. A notice will be published in the **Federal Register** once approval is received from OMB. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number will be

displayed in the table at 12 CFR Part 795.

C. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final CUSO regulation applies only to FCUs. The NCUA Board has determined that the final rule does not constitute a "significant regulatory action" for purposes of the Executive Order. However, as in the past, NCUA will work with the state credit union supervisors to achieve shared goals involving viability, flexibility, parity, conformity and safety and soundness

concerning CUSOs with both FCU and state-chartered credit union participation.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121) provides generally for Congressional review of agency rules. The reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act, 5 U.S.C. 551.

OMB has determined that this final rule on Part 712 does not constitute a "major" rule as defined by the statute. A "major" rule is defined as being any final rule that the Administrator of the Office of Information and Regulatory Affairs of OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements, Surety bonds.

12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 712

Administrative practice and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 740

Advertising, Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements, Signs and symbols.

By the National Credit Union Administration Board on February 25, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR chapter VII is amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1861 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Section 701.26 is amended by removing paragraph (b) and removing the paragraph designation (a).

§ 701.27 [Removed]

3. Section 701.27 is removed.

§ 701.36 [Amended]

4. Section 701.36 is amended in paragraph (a)(4)(iv) by revising "§ 701.27" to read "part 712."

PART 704—CORPORATE CREDIT UNIONS

5. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781 and 1789.

§ 704.11 [Amended]

6. Section 704.11 is amended in paragraph (e) by revising "§ 701.27" to read "part 712."

7. Part 712 is added to read as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

Sec.

712.1 What does this part cover?

712.2 How much can a Federal credit union (FCU) invest in, or loan to, CUSOs, and what parties may be involved?

712.3 What are the characteristics of and what requirements apply to CUSOs?

712.4 What must an FCU and a CUSO do to maintain separate corporate identities?

712.5 What activities and services are preapproved for CUSOs?

712.6 What activities and services are prohibited for CUSOs?

712.7 What must an FCU do to add activities or services that are not preapproved?

712.8 What transaction and compensation limits might apply to individuals related to both an FCU and a CUSO?

712.9 When must an FCU begin compliance with this part?

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

§ 712.1 What does this part cover?

This part establishes when a Federal credit union (FCU) can invest in and make loans to CUSOs. CUSOs are subject to review by NCUA. This part does not apply to corporate credit unions that have CUSOs subject to

§ 704.11 of this title. This part does not apply to state-chartered credit unions or the subsidiaries of state-chartered credit unions that do not have FCU investments or loans.

§ 712.2 How much can an FCU invest in, or loan to, CUSOs, and what parties may be involved?

(a) *Investments.* An FCU's total investments in CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. For purposes of paragraphs (a) and (b) of this section, "paid-in and unimpaired capital and surplus" means shares and undivided earnings. An FCU can only invest in a CUSO as an equityholder of a corporation, as a member of a limited liability company, or as a limited partner of a limited partnership.

(b) *Loans.* An FCU's total loans to CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. Loan authority is independent and separate from the 1% investment authority of subsection (a) of this section.

(c) *Parties.* An FCU may invest in, or loan to, a CUSO by itself, or with other credit unions, or with non-depository institution parties not otherwise prohibited by § 712.6 of this part.

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. For purposes of this part, "corporation" means a legally incorporated corporation as established and maintained under relevant state law. For purposes of this part, "limited partnership" means a legally established limited partnership as established and maintained under relevant state law. For purposes of this part, "limited liability company" means a legally established limited liability company as established and maintained under relevant state law, provided that the FCU obtains written legal advice that the limited liability company is a recognized legal entity under the applicable laws of the state of formation and that the limited liability company is established in a manner that will limit potential exposure of the FCU to no more than the amount of funds invested in, or loaned to, the CUSO.

(b) *Customer base.* An FCU can invest in or loan to a CUSO only if the CUSO primarily serves credit unions, its membership, or the membership of credit unions contracting with the

CUSO. However, if in order for the CUSO to provide a permissible service it is necessary for the CUSO to own stock in a service provider not meeting the customer base requirement, then the CUSO can buy and own the minimal amount of service provider stock necessary to provide the service without violating the customer base requirement.

(c) *Federal credit union accounting.* An FCU must account for its investments in or loans to a CUSO in conformity with "generally accepted accounting principles" (GAAP).

(d) *CUSO accounting; audits and financial statements; NCUA access to information.* An FCU must obtain written agreements from a CUSO, prior to investing in or lending to the CUSO, that the CUSO will:

(1) Account for all its transactions in accordance with GAAP;

(2) Prepare quarterly financial statements and obtain an annual opinion audit, by a licensed Certified Public Accountant, on its financial statements in accordance with "generally accepted auditing standards" (GAAS); and

(3) Provide NCUA and its representatives with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by NCUA in carrying out its responsibilities under the Act.

(e) *Other laws.* A CUSO must comply with applicable Federal, state and local laws.

§ 712.4 What must an FCU and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* An FCU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FCU and the CUSO. Good business practices dictate that each must operate so that:

(1) Its respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of its separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise;

(5) The FCU does not dominate the CUSO to the extent that the CUSO is treated as a department of the FCU; and

(6) Unless the FCU has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the FCU is not liable.

(b) *Legal opinion.* Prior to an FCU investing in a CUSO, the FCU must

obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the FCU to no more than the loss of funds invested in, or lent to, the CUSO. In addition, if a CUSO in which an FCU has an investment plans to change its structure under § 712.3(a), an FCU must also obtain prior, written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the FCU to no more than the loss of funds invested in, or loaned to, the CUSO. The legal advice must address factors that have led courts to "pierce the corporate veil" such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be provided by independent legal counsel of the investing FCU or the CUSO.

§ 712.5 What activities and services are preapproved for CUSOs?

NCUA may at any time, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services.

Otherwise, an FCU may invest in, loan to, and/or contract with only those CUSOs that are sufficiently bonded or insured for their specific operations and only provide one or more of the following activities and services related to the routine, daily operations of credit unions:

(a) *Checking and currency services:*

(1) Check cashing;

(2) Coin and currency services; and

(3) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;

(b) *Clerical, professional and management services:*

(1) Accounting services;

(2) Courier services;

(3) Credit analysis;

(4) Facsimile transmissions and copying services;

(5) Internal audits for credit unions;

(6) Locator services;

(7) Management and personnel training and support;

(8) Marketing services;

(9) Research services; and

(10) Supervisory committee audits;

(c) *Consumer mortgage loan origination;*

(d) *Electronic transaction services:*

(1) Automated teller machine (ATM) services;

(2) Credit card and debit card services;

(3) Data processing;

(4) Electronic fund transfer (EFT) services;

(5) Electronic income tax filing;

(6) Payment item processing;

(7) Wire transfer services; and

(8) Cyber financial services;

(e) *Financial counseling services:*

(1) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;

(2) Estate planning;

(3) Financial planning and counseling;

(4) Income tax preparation;

(5) Investment counseling; and

(6) Retirement counseling;

(f) *Fixed asset services:*

(1) Management, development, sale, or lease of fixed assets; and

(2) Sale, lease, or servicing of computer hardware or software;

(g) *Insurance brokerage or agency:*

(1) Agency for sale of insurance;

(2) Provision of vehicle warranty programs; and

(3) Provision of group purchasing programs;

(h) *Leasing:*

(1) Personal property; and

(2) Real estate leasing of excess CUSO property;

(i) *Loan support services:*

(1) Debt collection services;

(2) Loan processing, servicing, and sales; and

(3) Sale of repossessed collateral;

(j) *Record retention, security and disaster recovery services:*

(1) Alarm-monitoring and other security services;

(2) Disaster recovery services;

(3) Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;

(4) Provision of forms and supplies; and

(5) Record retention and storage;

(k) *Securities brokerage services;*

(l) *Shared credit union branch (service center) operations;*

(m) *Student loan origination;*

(n) *Travel agency services; and*

(o) *Trust and trust-related services:*

(1) Acting as administrator for prepaid legal service plans;

(2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and

(3) Trust services.

§ 712.6 What activities and services are prohibited for CUSOs?

(a) *General.* CUSOs must not acquire control of, either directly or indirectly, another depository financial institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility or

similar organization, corporation, or association.

(b) *Real estate brokerage CUSO*. An FCU may not invest in, or loan to, a CUSO engaged in real estate brokerage services after April 1, 1998, except as provided in § 712.9.

§ 712.7 What must an FCU do to add activities or services that are not preapproved?

In order for an FCU to invest in and/or loan to a CUSO that offers an unpreapproved activity or service, the FCU must first receive NCUA Board approval. The request for NCUA Board approval of an unpreapproved activity or service must include a full explanation and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. The request must be submitted jointly to your Regional Office and to the Secretary of the Board. The request will be treated as a petition to amend § 712.5 and NCUA will request public comment or otherwise act on the petition within 60 days after receipt.

§ 712.8 What transaction and compensation limits might apply to individuals related to both an FCU and a CUSO?

(a) *Officials and Senior Management Employees*. The officials, senior management employees, and their immediate family members of an FCU that has outstanding loans or investments in a CUSO must not receive any salary, commission, investment income, or other income or compensation from the CUSO either directly or indirectly, or from any person being served through the CUSO. This provision does not prohibit such FCU officials or senior management employees from assisting in the operation of a CUSO, provided the officials or senior management employees are not compensated by the CUSO. Further, the CUSO may reimburse the FCU for the services provided by such FCU officials and senior management employees only if the account receivable of the FCU due from the CUSO is paid in full at least every 120 days. For purposes of this paragraph (a), "official" means affiliated credit union directors or committee members. For purposes of this paragraph (a), "senior management employee" means affiliated credit union chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g. Assistant President, Vice President, or Assistant Treasurer/Manager) and the chief

financial officer (Comptroller). For purposes of this paragraph (a), "immediate family member" means a spouse or other family members living in the same household.

(b) *Employees*. The prohibition contained in paragraph (a) of this section also applies to FCU employees not otherwise covered if the employees are directly involved in dealing with the CUSO unless the FCU's board of directors determines that the FCU employees' positions do not present a conflict of interest.

(c) *Others*. All transactions with business associates or family members of FCU officials, senior management employees, and their immediate family members, not specifically prohibited by paragraphs (a) and (b) of this section must be conducted at arm's length and in the interest of the FCU.

§ 712.9 When must an FCU comply with this part?

(a) *Investments*. An FCU's investments in CUSOs in existence prior to April 1, 1998, must conform with this part not later than April 1, 2001, unless the Board grants prior approval to continue such investment for a stated period.

(b) *Loans*. An FCU's loans to CUSOs in existence prior to April 1, 1998, must conform with this part not later than April 1, 2001, unless:

(1) The Board grants prior approval to continue the FCU's loan for a stated period; or

(2) Under the terms of its loan agreement, the FCU cannot require accelerated repayment without breaching the agreement.

[FR Doc. 98-5450 Filed 3-4-98; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-5]

Revocation and Establishment of Class D; and Revocation, Establishment and Modification of Class E Airspace Areas; Olathe, Johnson County Industrial Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revokes the Class D and Class E airspace areas designated "Olathe, Johnson County Industrial Airport, KS," and establishes a Class D

and a larger Class E airspace area in their place designated "Olathe, New Century Aircenter, KS." The name of the Olathe, Johnson County Industrial Airport has been changed to Olathe, New Century Aircenter. In order to rename the Class D and Class E areas it is necessary to evoke the existing airspace designation, and to reestablish the airspace under the new designation. This action also increases the size of the Class E airspace area extending upward from 700 feet Above Ground Level (AGL). A revision to the Airport Reference Point (ARP) coordinates is included in this document. This additional controlled airspace is necessary to accommodate the criteria for diverse departures as specified in FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

COMMENT DATE: Comments for inclusion in the Rules Docket must be received on or before May 1, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE-520, Federal Aviation Administration, Docket Number 98-ACE-5, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426-3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revokes the Class D and Class E airspace at Olathe, Johnson County Industrial Airport, KS, and reestablishes Class D and Class E airspace at Olathe, New Century Aircenter, KS. The enlarged Class E airspace at Olathe, New Century Aircenter will comply with the criteria in FAA Order 7400.2D for diverse departures. The criteria in FAA Order 7400.2D for an aircraft to reach 1,200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class D and Class E areas also indicate the new ARP and name. The enlarged Class E airspace at

New Century Aircenter, KS, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace areas designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98-ACE-5". The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

ACE KS D Olathe, Johnson County Industrial Airport, KS [Remove]

ACE KS D Olathe, New Century Aircenter, KS [New]

Olathe, New Century Aircenter, KS

(Lat. 38°49'51"N., long. 94°53'25"W.)

Olathe, Johnson County Executive Airport, KS

(Lat. 38°50'51"N., long. 94°44'15"W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of New Century Aircenter, excluding that airspace within the Johnson County Executive Airport, KS, Class D airspace and excluding that airspace bounded on the north by lat. 38°49'30"N. and on the east by long. 94°56'30"W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Olathe, Johnson County Industrial Airport, KS [Remove]

ACE KS E5 Olathe, New Century Aircenter, KS [New]

Olathe, New Century Aircenter, KS

(Lat. 38°49'51"N., long. 95°53'25"W.)

That airspace extending upward from 700 feet above the surface of a 6.7-mile radius of New Century Aircenter.

* * * * *

Issued in Kansas City, MO, on February 3, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98-5697 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29152; Amdt. No. 1852]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591; or

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

By Subscription—

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

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an

emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close of immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on February 20, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amendmend to read as follows:

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

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

*** * * Effective March 26, 1998**

Oxford, CT, Waterbury-Oxford, NDB RWY 36, Amdt 8
Oxford, CT, Waterbury-Oxford, ILS RWY 36, Amdt 12
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington/Normal, ILS RWY 20, Amdt 1
Holdenville, OK, Holdenville, Muni, NDB RWY 17, Amdt 4
Nashville, TN, Nashville Intl, ILS RWY 20L, Amdt 4
Nashville, TN, Nashville Intl, ILS RWY 20R, Amdt 7
Danville, VA, Danville Regional, VOR/DME RNAV RWY 20, Amdt 1, CANCELLED

*** * * Effective April 23, 1998**

Birmingham, AL, Birmingham Intl, GPS RWY 36, Orig
Huntsville, AL, Madison County Executive, GPS RWY 18, Orig
West Memphis, AR, West Memphis Muni, GPS RWY 17, Orig
West Memphis, AR, West Memphis Muni, GPS RWY 35, Orig
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 17, Orig
Yuma, AZ, Yuma MCAS-Yuma Intl, GPS RWY 21R, Orig
Petaluma, CA, Petaluma Muni, VOR OR GPS RWY 29, ORIG CANCELLED
Petaluma, CA, Petaluma Muni, VOR/DME RWY 29, Orig
Petaluma, CA, Petaluma Muni, GPS RWY 29, Orig
Bartow, FL, Bartow Muni, VOR/DME RWY 9L, Amdt 2
Ocala, FL, Ocala Regional/Jim Taylor Field, VOR RWY 36, Amdt 16
Ocala, FL, Ocala Regional/Jim Taylor Field, LOC RWY 36, Amdt 8
Ocala, FL, Ocala Regional/Jim Taylor Field, NDB RWY 36, Amdt 4
Ocala, FL, Ocala Regional/Jim Taylor Field, GPS RWY 18, Orig
Ocala, FL, Ocala Regional/Jim Taylor Field, GPS RWY 36, Orig
Orlando, FL, Orlando Intl, GPS RWY 36L, Orig
Algona, IA, Algona Muni, VOR/DME OR GPS-A, Amdt 6
Algona, IA, Algona Muni, NDB OR GPS RWY 12, Amdt 5
Algona, IA, Algona Muni, GPS RWY 30, Orig
Muskegon, MI, Muskegon County, VOR/DME RWY 6, Amdt 11

Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS PRM RWY 12L, (Simultaneous Close Parallel), Amdt 1
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS PRM RWY 12R, (Simultaneous Close Parallel), Amdt 1
Minneapolis, MN Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS PRM RWY 30L, (Simultaneous Close Parallel), Amdt 2
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold Chamberlain, ILS PRM RWY 30R, (Simultaneous Close Parallel), Amdt 2
Minden, NE, Pioneer Village Field, GPS RWY 34, Orig
Teterboro, NJ, Teterboro, VOR/DME RWY 6, Orig
Teterboro, NJ Teterboro, GPS RWY 24, Orig
Monticello, NY, Monticello, VOR/DME or GPS RWY 1, Amdt 3
North Wilkesboro, NC, Wilkes County, LOC RWY 1, Amdt 1, CANCELLED
North Wilkesboro, NC, Wilkes County, ILS RWY 1, Orig
Rockingham, NC, Rockingham-Hamlet, VOR/DME-A, Amdt 6, CANCELLED
Rockingham, NC, Rockingham-Hamlet, NDB RWY 31, Amdt 3
Cambridge, OH, Cambridge Muni, NDB OR GPS RWY 4, Amdt 7, CANCELLED
Guthrie, OK, Guthrie Muni, NDB OR GPS RWY 16, Amdt 5
Guthrie, OK, Guthrie, Muni, GPS RWY 34, Amdt 1
Bennettsville, SC, Marlboro County, GPS RWY 24, Orig
Clemson, SC, Clemson-Oconee County, VOR/DME OR GPS RWY 25, ORIG-A, CANCELLED
Clemson, SC, Clemson-Oconee County, GPS RWY 7, Orig
Clemson, SC, Clemson-Oconce County, GPS RWY 25, Orig
Moab, UT, Canyonlands Field, GPS RWY 3, Orig
Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt 5
Franklin VA, Franklin Muni-John Beverly Rose, VOR or GPS RWY 9, Amdt 14
Franklin, VA, Franklin Muni-John Beverly Rose, VOR/DME or GPS RWY 27, Amdt 9
Galax/Hillsville, VA, Twin County, GPS RWY 18, Orig
South Boston, VA, William M Tuck, GPS RWY 36, Orig
Ravenswood, WV, Jackson County, GPS RWY 4, Orig
Ravenswood, WV, Jackson County, GPS RWY 22, Orig

[FR Doc. 98-5694 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29153; Amdt. No. 1853]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

*For Purchase—*Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs

Division, Flight Standards Service, Federal Aviation Administration 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this

amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 20, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40129, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/13/98 ...	AR.	OSCEOLA	OSCEOLA MUNI	FDC 8/0326	NDB RWY 19, ORIG...
01/26/98 ...	GA.	SAVANNAH	SAVANNAH INTL	FDC 8/0575	GPS RWY 18, ORIG...
01/26/98 ...	GA.	SAVANNAH	SAVANNAH INTL	FDC 8/0576	NDB OR GPS RWY 9, AMDT 20...
02/05/98 ...	AK.	ANCHORAGE	ANCHORAGE INTL	FDC 8/8010	VOR OR GPS RWY 6R, AMDT 12A...
02/06/98 ...	GA.	CORDELE	CRISP COUNTY-CORDELE	FDC 8/0854	LOC RWY 9 ORIG...
02/06/98 ...	GA.	CORDELE	CRISP COUNTY-CORDELE	FDC 8/0855	NDB OR GPS RWY 9 AMDT 4...
02/06/98 ...	GA.	CORDELE	CRISP COUNTY-CORDELE	FDC 8/0856	VOR/DME OR GPS RWY 22 AMDT 10...
02/06/98 ...	IN.	HUNTINGTON	HUNTINGTON MUNI	FDC 8/0858	GPS RWY 9, ORIG...
02/06/98 ...	IN.	HUNTINGTON	HUNTINGTON MUNI	FDC 8/0859	NDB RWY 9, ORIG...
02/06/98 ...	SC.	CANDEN	WOODWARD FIELD	FDC 8/0862	VOR/DME OR GPS-A, AMDT 3A...
02/09/98 ...	FL.	CRESTVIEW	BOB SIKES	FDC 8/0923	NDB OR GPS RWY 17, AMDT 2...
02/09/98 ...	FL.	MELBOURNE	MELBOURNE INTL	FDC 8/0927	ILS RWY 9R, AMDT 10A...
02/09/98 ...	FL.	MELBOURNE	MELBOURNE INTL	FDC 8/0930	LOC BC RWY 27L, AMDT 8C...
02/09/98 ...	FL.	MELBOURNE	MELBOURNE INTL	FDC 8/0932	VOR RWY 9R, AMDT 19A...

FDC date	State	City	Airport	FDC No.	SIAP
02/09/98 ...	FL.	MELBOURNE	MELBOURNE INTL	FDC 8/0934	VOR OR GPS RWY 27L, AMDT 11B...
02/09/98 ...	FL.	MELBOURNE	MELBOURNE INTL	FDC 8/0935	NDB OR GPS RWY 9R, AMDT 14...
02/09/98 ...	MO.	AVA	AVA/BILL MARTIN MEMORIAL	FDC 8/0928	NDB RWY 31, ORIG...
02/09/98 ...	MO.	AVA	AVA/BILL MARTIN MEMORIAL	FDC 8/0933	REPLACES NOTAM IN TL98-05. VOR/DME RNAV OR GPS RWY 31, AMDT 1...
02/10/98 ...	NC.	NORTH WILKESBORO	WILKES COUNTY	FDC 8/0969	REPLACES NOTAM IN TL98-05. NDB RWY 1, AMDT 1B...
02/10/98 ...	NC.	NORTH WILKESBORO	WILKES COUNTY	FDC 8/0970	GPS RWY 1, ORIG...
02/10/98 ...	NE.	BEATRICE	BEATRICE MUNI	FDC 8/0972	NDB RWY 13, AMDT 8...
02/10/98 ...	NE.	BEATRICE	BEATRICE MUNI	FDC 8/0973	NDB OR GPS-A, AMDT 3...
02/10/98 ...	NE.	BEATRICE	BEATRICE MUNI	FDC 8/0974	VOR OR GPS RWY 13, AMDT 16...
02/10/98 ...	NE.	BEATRICE	BEATRICE MUNI	FDC 8/0975	GPS RWY 35, ORIG...
02/10/98 ...	NE.	BEATRICE	BEATRICE MUNI	FDC 8/0978	VOR RWY 35, AMDT 6...
02/10/98 ...	WI.	NEW RICHMOND	NEW RICHMOND MUNI	FDC 8/0961	NDB OR GPS RWY 14, AMDT 1...
02/11/98 ...	IL.	CHICAGO/PROSPECT HEIGHTS/WHEELING.	PALWAUKEE MUNI	FDC 8/1004	VOR RWY 16, ORIG...
02/11/98 ...	MA.	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	FDC 8/0977	ILS RWY 33L, AMDT 1...
02/11/98 ...	NE.	AINSWORTH	AINSWORTH MUNI	FDC 8/0989	VOR OR GPS RWY 17, AMDT 2...
02/11/98 ...	NE.	BEATRICE	BEATRICE MUNI	FDC 8/0995	GPS RWY 35, ORIG-A...
02/12/98 ...	KS.	SALINA	SALINA MUNI	FDC 8/1010	ILS RWY 35, AMDT 18A...
02/12/98 ...	MS.	STARKVILLE	OKTIBBEHA	FDC 8/1014	VOR OR GPS-B, AMDT 6...
02/12/98 ...	TN.	COLUMBIA/MOUNT PLEASANT	MAURY COUNTY	FDC 8/1020	SDF RWY 23, AMDT 4B...
02/12/98 ...	TN.	COLUMBIA/MOUNT PLEASANT	MAURY COUNTY	FDC 8/1021	NDB OR GPS RWY 23, AMDT 3B...
02/17/98 ...	MO.	SEDALIA	SEDALIA MEMORIAL	FDC 8/1027	GPS RWY 36, ORIG...
02/17/98 ...	MO.	SEDALIA	SEDALIA MEMORIAL	FDC 8/1028	NDB RWY 36, AMDT 8A...
02/17/98 ...	MO.	SEDALIA	SEDALIA MEMORIAL	FDC 8/1029	NDB RWY 18, AMDT 7B...
02/17/98 ...	MO.	SEDALIA	SEDALIA MEMORIAL	FDC 8/1030	GPS RWY 18, ORIG...
02/17/98 ...	NY.	ONEONTA	ONEONTA MUNI	FDC 8/1070	VOR OR TPS RWY 6 AMDT 4...
02/17/98 ...	NY.	UTICA	ONEIDA COUNTY	FDC 8/1067	ILS RWY 15 AMDT 3...
02/17/98 ...	NY.	UTICA	ONEIDA COUNTY	FDC 8/1069	ILS RWY 33 AMDT...
02/17/98 ...	NY.	UTICA	ONEIDA COUNTY	FDC 8/1072	NDB RWY 33 AMDT 12...
02/17/98 ...	TN.	CAMDEN	BENTON COUNTY	FDC 8/1084	VOR/DME OR GPS RWY 3, AMDT 3...
02/17/98 ...	TX.	McKINNEY	McKINNEY MUNI	FDC 8/1058	VOR/DME OR GPS-A, ORIG...
02/17/98 ...	TX.	McKINNEY	McKINNEY MUNI	FDC 8/1062	ILS RWY 17, AMDT 1...
02/18/98 ...	NY.	ONEONTA	ONEONTA MUNI	FDC 8/1101	LOC RWY 24 AMDT 1...
02/18/98 ...	NY.	UTICA	ONEIDA COUNTY	FDC 8/1095	NDB OR GPS RWY 15 AMDT 9...
02/18/98 ...	NY.	UTICA	ONEIDA COUNTY	FDC 8/1097	VOR/DME OR GPS RWY 33 AMDT 4...
12/11/97 ...	IA.	DES MOINES	DES MOINES INTL	FDC 7/8102	NDB OR GPS RWY 31R, AMDT 18A...

[FR Doc. 98-5695 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29154; Amdt. No. 1854]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard

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

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

Incorporation by reference-approved by the Director of the Federal Register

on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

This amendment or part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can

be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 20, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113-40114, 40120, 44502, 44514, 44701, 44719, 44721-44722.

§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

* * * *Effective April 23, 1998*

Little Rock, AR, Adams Field, NDB or GPS RWY 4L, Amdt 18 CANCELLED
 Little Rock, AR, Adams Field, NDB RWY 4L, Amdt 18
 West Memphis, AR, West Memphis Muni, NDB or GPS RWY 17, Amdt 9 CANCELLED
 West Memphis, AR, West Memphis Muni, NDB RWY 17, Amdt 10
 Phoenix, AZ, Williams Gateway, VOR or TACAN or GPS RWY 30C, Orig-C CANCELLED
 Phoenix, AZ, Williams Gateway, VOR or TACAN RWY 30C, Orig-C
 Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME or GPS RWY 17, Orig CANCELLED
 Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RWY 17, Orig
 Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV or GPS RWY 21R, Amdt 3 CANCELLED
 Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 3
 Petaluma, CA, Petaluma Muni, VOR or GPS RWY 29, Orig CANCELLED
 Petaluma, CA, Petaluma Muni, VOR RWY 29, Orig
 Wilmington, DE, New Castle County, VOR/DME RNAV or GPS RWY 9, Orig CANCELLED
 Wilmington, DE, New Castle County, VOR/DME RNAV RWY 9, Orig
 Ocala, FL, Ocala Regional/Jim Taylor Field, NDB or GPS RWY 36, Amdt 3 CANCELLED
 Ocala, FL, Ocala Regional/Jim Taylor Field, NDB RWY 36, Amdt 3
 Orlando, FL, Orlando Intl, VOR/DME or GPS RWY 36L, Amdt 4A CANCELLED
 Orlando, FL, Orlando Intl, VOR/DME RWY 36L, Amdt 4A
 Ortonville, MN, Ortonville Muni-Martinson Field, NDB or GPS RWY 34, Amdt 1A CANCELLED
 Ortonville, MN, Ortonville Muni-Martinson Field, NDB RWY 34, Amdt 2
 Poplar Bluff, MO, Poplar Bluff Muni, NDB or GPS RWY 36, Amdt 1A CANCELLED
 Poplar Bluff, MO, Poplar Bluff Muni, NDB RWY 36, Amdt 1A
 Greenwood, MS, Greenwood-Leflore, VOR/DME RNAV or GPS RWY 36, Amdt 3A CANCELLED
 Greenwood, MS, Greenwood-Leflore, VOR/DME RNAV RWY 36, Amdt 3A
 Greenwood, MS, Greenwood-Leflore, VOR or GPS RWY 5, Amdt 10A CANCELLED
 Greenwood, MS, Greenwood-Leflore, VOR RWY 5, Amdt 10A
 Greenwood, MS, Greenwood-Leflore, NDB or GPS RWY 18, Amdt 1A CANCELLED

Greenwood, MS, Greenwood-Leflore, NDB or GPS RWY 18, Amdt 1A
 Minden, NE, Pioneer Village Field, VOR or GPS RWY 34, Amdt 1A CANCELLED
 Minden, NE, Pioneer Village Field, VOR RWY 34, Amdt 1A
 Ocean City, NJ, Ocean City Muni, VOR or GPS RWY 6, Amdt 1 CANCELLED
 Ocean City, NJ, Ocean City Muni, VOR RWY 6, Amdt 1
 Teterboro, NJ, Teterboro, VOR/DME RNAV or GPS RWY 24, Orig-B CANCELLED
 Teterboro, NJ, Teterboro, VOR/DME RNAV RWY 24, Orig-B
 Shirley, NY, Brookhaven, VOR or GPS RWY 6, Amdt 2 CANCELLED
 Shirley, NY, Brookhaven, VOR RWY 6, Amdt 2
 Clemson, SC, Clemson-Oconee County, VOR/DME or GPS RWY 25, Orig-A CANCELLED
 Clemson, SC, Clemson-Oconee County, VOR/DME RWY 25, Orig-A
 Cedar City, UT, Cedar City Muni, NDB or GPS RWY 20, Orig CANCELLED
 Cedar City, UT, Cedar City Muni, NDB RWY 20, Orig
 Fredericksburg, VA, Shannon, VOR or GPS RWY 24, Amdt 7 CANCELLED
 Fredericksburg, VA, Shannon, VOR RWY 24, Amdt 7
 Spokane, WA, Spokane Intl, VOR or GPS RWY 3, Amdt 12 CANCELLED
 Spokane, WA, Spokane Intl, VOR RWY 3, Amdt 12
 Ravenswood, WV, Jackson County, VOR/DME or GPS RWY 3, Amdt 2A CANCELLED
 Ravenswood, WV, Jackson County, VOR/DME RWY 4, Amdt 2A

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 97N-0141]

Adequate and Well-Controlled Studies for Investigational Use and Approval of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA), as directed by the Animal Drug Availability Act of 1996 (ADAA), is amending its regulations governing new animal drug applications to further define the term "adequate and well-controlled studies." The purpose of this final rule is to further define "adequate and well-controlled" to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical

conditions in the field and differences between field conditions and laboratory conditions.

DATES: The regulations are effective on April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1638.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the ADAA (Pub. L. 104-250) on October 9, 1996. Section 2(e) of the ADAA directs FDA to issue, within 18 months of its enactment, final regulations to further define the term "adequate and well-controlled" to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical conditions in the field and differences between field conditions and laboratory conditions. In an advance notice of proposed rulemaking that published in the **Federal Register** of November 21, 1996 (61 FR 59209), FDA solicited comments from interested parties on how to further define "adequate and well-controlled as it relates to field studies."¹ Docket No. 96N-0411 was created for comments responding to this notice.

In the **Federal Register** of May 8, 1997 (62 FR 25153), FDA proposed to amend its regulations in part 514 (21 CFR part 514) to further define the term "adequate and well-controlled studies." FDA provided 75 days for public comment on the proposed rule. Docket No. 97N-0141 was created for comments regarding this proposed rule. As proposed, one of the characteristics of an adequate and well-controlled study is that such a study, when conducted in target animals, be conducted in compliance with "good study practices" (GSP's). Elsewhere in the **Federal Register** of May 8, 1997 (62 FR 25152), FDA reopened Docket No. 96N-0411 and gave interested parties 30 days to comment on GSP's.

The primary purpose of conducting adequate and well-controlled studies is, and has always been, to distinguish the effect of the drug from other influences, such as spontaneous change in the course of disease and biased observation, so that it can be determined whether the drug is effective. This final rule defines the essential characteristics of adequate and well-controlled studies

¹ The terms field investigation and field study are used interchangeably in this final rule.

and explicitly addresses differences between field and laboratory studies.

II. Comments on the Proposed Rule

FDA received two letters, one from the Animal Health Institute (AHI) and one from the Coalition for Animal Health (the Coalition), commenting on the proposed definition of "adequate and well-controlled studies." FDA also received three letters in response to its reopening Docket No. 96N-0411 for comments specifically on GSP's. Comments relating to GSP's can be found in that docket. FDA met with representatives of the Coalition on June 11, 1997, and July 11, 1997, to discuss the proposed rule and GSP's. Those discussions were recorded in memoranda of meeting that have been placed in the docket for the proposed rule, Docket No. 97N-0141, and in Docket No. 96N-0411.

In general, the comments agreed that the characteristics of an adequate and well-controlled study set forth in the proposed regulation represent sound scientific principles essential for adequate and well-controlled studies. However, the comments criticized FDA's failure to address more explicitly in the proposed regulation the differences between field and laboratory studies and objected to FDA's reference to GSP's.

A. Section 514.117(a)

1. AHI recommended that FDA clarify in proposed § 514.117(a) that reports of adequate and well-controlled studies refer to reports of adequate and well-controlled "effectiveness" studies. Based on the following discussion, FDA does not find it necessary to make such a clarification.

Under section 512(d)(1)(E) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(1)(E)), FDA must refuse to approve a new animal drug application if there is a lack of substantial evidence that the drug will have the effect it is purported or represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling. By definition, substantial evidence consists of one or more adequate and well-controlled studies on the basis of which experts qualified by scientific training and experience to evaluate the effectiveness of the drug could fairly and reasonably conclude that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its proposed labeling (section 512(d)(3) of the act). Thus, it is clear and well established that adequate and well-

controlled studies are studies intended to determine whether or not a drug is effective.

Because it is adequate and well-controlled studies and not just reports of adequate and well-controlled studies that provide a basis for determining whether a new animal drug is effective, and in some instances support a claim of target animal safety, FDA is deleting "Reports of" in the second to last sentence in proposed § 514.117(a).

In that same sentence, FDA is also clarifying that adequate and well-controlled studies may be relied upon to support target animal safety but are not necessary to support claims of target animal safety. Studies intended to demonstrate safety need not be adequate and well-controlled studies (see section 512(d)(1) of the act, which states that in order to secure approval of a new animal drug, a sponsor must conduct adequate tests by all methods reasonably applicable to show whether or not such drug is safe). In proposed § 514.117(a), FDA intended only to note that adequate and well-controlled studies intended to demonstrate whether a new animal drug is effective may be designed in a manner that also permits sponsors to simultaneously collect target animal safety data. If a sponsor needs to demonstrate through a field study that a new animal drug is safe for use in the target animal, the sponsor may do so by adequate tests by methods that are reasonably applicable or as part of an adequate and well-controlled study that is designed to determine the effectiveness of the new animal drug. Accordingly the second to last sentence in § 514.117(a) will now provide that adequate and well-controlled studies, in addition to providing a basis for determining whether a new animal drug is effective, may also be relied upon to support target animal safety.

B. Section 514.117(b)(2)

Proposed § 514.117(b)(2) would require that adequate and well-controlled studies conducted in target animals be conducted in compliance with GSP's. In comments to Docket Nos. 96N-0411 and 97N-0141, both the Coalition and AHI strongly opposed the inclusion by reference of GSP's and proposed that a specific provision addressing the differences between field and laboratory studies be added.

1. Objections to GSP's

2. Although the Coalition is not opposed in concept to the development of a standard of conduct of studies in target animals, the Coalition believes that reference to "good study practices"

should be removed from the further definition of adequate and well-controlled and questions whether the standard of conduct must be codified into regulations or whether a guidance may be sufficient. In a submission to Docket No. 96N-0411 stating its objections to the inclusion of GSP's in the definition of adequate and well-controlled studies, AHI cited four concerns as follows: (1) GSP regulations are outside of the scope of the legislation; (2) establishing GSP's will improperly interfere with prompt implementation of the ADAA; (3) discussion of GSP's should be deferred until FDA and industry have adequate experience in using Guidance Document 58, "Guidance for Industry for Good Target Animal Study Practices: Clinical Investigators and Monitors," issued by FDA's Center for Veterinary Medicine (CVM) in May 1997; and (4) GSP's could have a serious negative impact on current and future international harmonization efforts.

AHI and the Coalition consider GSP's to be outside the scope of the ADAA because there is no requirement in the ADAA for GSP's, and because GSP's would apply to any study in the target animal. A study in the target animal may be conducted to evaluate the safety or the effectiveness of a new animal drug. The purpose of the ADAA was to responsibly streamline effectiveness requirements. It was not the intention of the ADAA to modify the standard for determining whether a new animal drug is safe. Thus, it is perceived by AHI and the Coalition that FDA acted outside the directives of the ADAA.

FDA believed that it was in fact being responsive to the directives of the ADAA when it proposed GSP's as a new characteristic of adequate and well-controlled studies. As FDA explained in the preamble to the proposed regulation, the characteristics of an adequate and well-controlled study listed in current § 514.111(a)(5)(ii) remain sound scientific principles essential for all adequate and well-controlled studies. These principles, including use of an appropriate control and procedures to minimize bias, relate primarily to the design of an adequate and well-controlled study. At the same time, FDA acknowledged that the practices that apply to the testing of new animal drugs under field conditions may need to differ from the practices applied to the testing of new animal drugs under laboratory conditions. Good study practices was intended to be the standard of conduct specifically designed for field studies.

The primary purpose of any adequate and well-controlled study is to

distinguish, by comparison with appropriate controls, the effect of the new animal drug from other influences so that it can be determined whether or not the new animal drug is effective. A further purpose of an adequate and well-controlled field study is to observe the new animal drug's effects under conditions which closely approximate the conditions under which the new animal drug will be applied or administered. Thus, as discussed in the legislative history of the ADAA (H. Rept. 104-823, at 13 (1996)) and as FDA has repeatedly stated in discussions with the Coalition (see, e.g., Memorandum of July 11, 1997, meeting with the Coalition for Animal Health, Docket No. 97N-0141), it is not expected that sponsors need to or should control all environmental factors, husbandry practices, and other such factors in studies conducted under field conditions. Adequate and well-controlled field studies should balance the need to control the environment and other factors with the need to observe the drug's effects under closely approximated use conditions so that the true effect of the animal drug can be measured and an appropriate inference can be drawn regarding the effect of the animal drug in actual use. Nonetheless, it is critical that the study documentation completely and accurately reflect the conditions under which the new animal drug was tested so that the sponsor and FDA can properly evaluate the study results.

The purpose of requiring compliance with GSP's as a characteristic of an adequate and well-controlled study in the proposed rule was to make it clear that it was not FDA's expectation that the standard of conduct for laboratory studies applied to the conduct of studies under field conditions. By virtue of its inclusion in the definition of adequate and well controlled, the applicability of the standard was limited to any study in the target animal intended to demonstrate the effectiveness of the new animal drug. FDA did not provide further definition of GSP's as part of the definition of adequate and well controlled because FDA believes, as the Coalition notes in its July 22, 1997, comments to Docket No. 97N-0141, that GSP's represent a significant new regulatory concept that requires serious consideration and discussion. Thus, FDA reopened Docket No. 96N-0411 to receive comments from interested parties.

In response to comments opposing the inclusion of GSP's in the definition of adequate and well-controlled studies, FDA is removing the reference in § 514.117(b)(2) to GSP's and replacing it

with a reference to "an appropriate standard." By referencing an appropriate standard, § 514.117(b)(2) allows the application of Good Laboratory Practices (GLP's) to adequate and well-controlled laboratory studies and the application of an as yet to be defined standard of conduct to adequate and well-controlled field studies. Until a guidance or regulations defining the appropriate standard of conduct for conducting adequate and well-controlled studies under field conditions are finalized, FDA will, on its own initiative, waive the requirement for compliance with an appropriate standard of conduct for field studies (§ 514.117(d)) and the study report for an adequate and well-controlled study need not contain a statement describing adherence to an appropriate standard. In the meantime, sponsors can continue to refer to FDA's guidance, "Good Target Animal Study Practices: Clinical Investigators and Monitors," for guidance regarding the responsibilities of investigators and monitors who conduct clinical studies.

Issues to be resolved regarding the development of an appropriate standard of conduct include: (1) What the standard of conduct for field studies should be, (2) whether the standard of conduct should be defined in guidance or by regulation, and (3) whether the standard of conduct should be applied to field studies intended to demonstrate the safety of the new animal drug as well as to adequate and well-controlled field studies intended to demonstrate the effectiveness of the new animal drug.

Although the definition of adequate and well-controlled studies only applies to studies intended to demonstrate the effectiveness of a new animal drug, FDA believes that it is logical that there should be one standard for the conduct of all field studies. The agency believes this to be true because it is the fact that a field study is conducted under field conditions—and not whether the field study is intended to demonstrate safety or effectiveness—that gives rise to the need for a different standard.

In a *Federal Register* notice dated May 8, 1997, that reopened the comment period for Docket No. 96N-0411 and in meetings with the Coalition, FDA asked interested parties to provide FDA with specific examples of how field studies and laboratory studies differ so that FDA can develop a reasonable and appropriate standard of conduct for field studies. No such examples have been provided by any interested parties. FDA intends to continue its efforts to obtain relevant information from interested parties.

As FDA considers further the development of a standard of conduct for field studies, FDA will evaluate its experience in implementing the guidance "Good Target Animal Study Practices: Clinical Investigators and Monitors." However, FDA contemplates that the standard of conduct for field studies will also address issues such as facilities and equipment in addition to those issues addressed in the guidance. Because FDA recognizes the importance of efforts to achieve international harmonization, FDA will also take into consideration the work of the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH), the body responsible for the harmonization of technical requirements for the registration of veterinary medicinal products, relating to the development of standards of conduct for field studies.

2. Explicit Provision to Address Differences Between Field and Laboratory Studies

3. AHI and the Coalition maintain that the further definition of adequate and well controlled should more explicitly take into account practical conditions in the field and the differences between field and laboratory conditions. In its July 22, 1997, comment to Docket No. 97N-0141, the Coalition, on behalf of its member national trade associations including AHI, proposed for inclusion in § 514.117 a paragraph to address the differences between adequate and well-controlled field and laboratory studies. The proposed paragraph read:

Field Investigation. It is recognized that under field conditions, there may be less opportunity for blinding or other traditional non-field controls, such as concurrent placebo or untreated groups. The nature of field trials may preclude the use of a concurrent control group; thus the animal may serve as its own control in selected situations. While the general principles in subparagraph (1) are applicable to a field investigation, conditions on farms, ranches, other animal husbandry operations, and veterinary private practices are such that the same degree of precision with regard to environmental management and documentation of all variables cannot be maintained, as when the trials are conducted on sponsor-owned premises. Controls and documentation must be sufficient to evaluate the investigation, permit the application of statistical methods of evaluation and permit the documentation to be audited.

In response to comments requesting the inclusion of a more explicit provision to address the differences between field and laboratory studies, FDA is revising § 514.117 by redesignating paragraphs (c) and (d) as

paragraphs (d) and (e), respectively, and is adding a new paragraph (c). As revised, § 514.117(c) more explicitly addresses the differences between field and laboratory studies.

Unlike the Coalition's suggested language, FDA's provision describing field studies does not discuss at length the use of controls in field studies but instead requires the use of an appropriate control. As discussed in the preamble to the proposed rule (62 FR 25153 at 25154), the sponsor's choice of the type of control used in a study should be based on the scientific, ethical, and practical circumstances associated with that particular study. Section 514.117(b)(6) already states that when the effect of variables such as age, sex, class of animal, severity of disease, duration of disease, dietary regimen, level of animal production, and use of drugs or other therapy is accounted for by an appropriate design, and when, within the same animal, effects due to the test drug can be obtained free of the effects of such variables, the same animal may be used for both the test drug and the control. Consistent with the discussion in the preamble to the proposed rule (62 FR 25153 at 25155) and the American Veterinary Medical Association's comments submitted to Docket No. 96N-0411, FDA's provision reflects the need for field studies to balance the need to control the environment and other factors with the need to observe the drug's performance under actual conditions of use.

C. Section 514.117(b)(3)

4. AHI questioned why the requirements of current § 514.111(a)(3) were changed and greatly expanded by proposed § 514.117(b)(3).

Current § 514.111(a)(3) lists one of the grounds on which FDA may refuse to approve a new animal drug application. Specifically, FDA may refuse to approve a new animal drug application if the methods used in and the facilities and controls used for the manufacture, processing, and packaging of such drug are inadequate to preserve its identity, strength, quality, and purity. Proposed § 514.117(b)(3) does not expand upon the requirements of this section.

Proposed § 514.117(b)(3) describes a characteristic of an adequate and well-controlled study and was intended to correspond to current § 514.111(a)(5)(ii)(b) which provides that the test drug must be standardized in order for a study to be considered adequate. FDA did not provide an explanation of this section because it believed the provision to be clear on its face. The identity, strength, quality, and purity of a new animal drug being tested

in a particular study must be known and be reproducible. Knowledge of this information permits meaningful evaluation of the effectiveness of the new animal drug and allows the appropriate comparison of effectiveness studies in which different formulations of the new animal drug are used. Furthermore, the sponsor of the new animal drug must be able to demonstrate the equivalency of the formulation of the new animal drug proposed for marketing to the formulations used in the study or studies supporting effectiveness and safety. Therefore, FDA has finalized § 514.117(b)(3) as proposed.

D. Section 514.117(b)(4)

5. AHI commented that the list of acceptable study controls should not be ranked and the controls used should be "appropriate to the scientific objectives of the study." AHI believes that justification for the use of each type of control is preferable to a ranking system that may erroneously give the impression that one type of control is always preferred over others.

FDA lists the acceptable types of controls in descending order, roughly in accordance with the ease of interpretation of the associated studies. Sponsors should not ascribe unintended meaning to the order in which the controls are listed. As discussed in the preamble to the proposed rule (62 FR 25153 at 25154), FDA believes that there may be good reasons for using different types of controls in study designs for particular situations and that the sponsor's choice of the type of control used in a particular study should be based on the scientific, ethical, and practical circumstances associated with that particular study. Therefore, the selection of the proper control is best addressed in discussions between FDA and the sponsor during protocol development.

6. AHI objected to FDA's inclusion in the preamble to the proposed rule of examples of when a specific type of control may not be appropriate. AHI asserted that humane considerations are always taken into account by the sponsor during the design phase of the study.

FDA did not include in the preamble examples of when specific types of controls may not be appropriate, rather FDA identified circumstances to be considered when choosing the type of control to be used in any particular study. An important consideration in choosing the type of control to be used is the humane treatment of the investigational animals, including control animals. FDA wanted to remind

sponsors and the owners of investigational animals that considerations relating to the humane treatment of investigational animals require more than considering treatment versus no treatment. Notably, the use of an active control sometimes requires inducing a disease or condition in a greater number of animals than would be necessary with other types of controls, thus, a greater number of animals may suffer if the new animal drug proves to be unsafe or ineffective.

7. AHI believes that the proposed rule unfairly biases the value of active treatment controls. AHI noted that it is difficult, if not impossible, to find clinicians or owners who will allow studies conducted on an owner's animals with a placebo or no treatment. AHI noted further that the proposed rule implies that the only active controls that may be used are those drugs that have been tested in placebo-controlled studies. AHI objected to any limitation on the use of an approved drug as an active control, regardless of how it was approved, i.e., without data from a study with a placebo control.

It is not FDA's intent to express a bias against studies using active treatment controls. The overriding principle to be followed in selecting a type of control is to select a control that is appropriate to the scientific, ethical, and practical circumstances associated with the particular study. However, from a scientific standpoint, a demonstration of effectiveness by means of showing similarity of the new animal drug to an active control drug is an indirect demonstration of effectiveness and necessarily involves making assumptions that do not need to be made in studies with controls that permit a direct demonstration of effectiveness. For example, it must be presumed that the active control would have been superior to a placebo if there had been a comparison. Thus, if the particular circumstances of a study do not dictate a need for an active control, it is usually easier to interpret the results of studies using placebo or untreated controls.

It is understandable that clinicians and owners of investigational animals, including control animals, may be reluctant to participate in studies using placebo or untreated controls when a new animal drug is intended to cure, mitigate, treat, or prevent disease. Nonetheless, it is up to the sponsor to select, based on the particular circumstances of the study, the appropriate control and to obtain the informed consent of each owner who authorizes the use of their animal in the study.

In those instances in which a new animal drug is intended to affect the structure or function of the animal's body by increasing feed efficiency or weight gain (production animal drugs), it is much less clear why clinicians or owners would object to the participation of animals in studies using placebo or untreated controls, because there is no potential for animal suffering if the new animal drug is not administered or applied to the particular animal. In fact, the health of an animal could be compromised by the administration or application of the new animal drug if there are side effects from the investigational use of the new animal drug. Furthermore, because the effects of production animal drugs are generally small, they are more difficult to measure, and it can be expected that even active drugs will not prove effective in all studies. Studies involving placebo or untreated controls may be the only way to evaluate such treatments.

Use of active treatment controls in studies to evaluate the effectiveness of a production animal drug are likely to require the participation of a very large number of animals if, indeed, such controls are credible at all. In any instance in which a sponsor chooses to use an active treatment control, the sponsor should justify the need to use such a control.

Because comparison with an active treatment control establishes only that the new animal drug is more or less effective than, or as effective as, the active control, before FDA can evaluate the study FDA must know that the active treatment control is effective. One way, but not the only way, to provide information to FDA about the effectiveness of the active treatment control is to reference previous placebo-controlled studies of the active control drug. When such studies are not available, a sponsor should justify the choice of active treatment control and explain how it can be known that the active control drug was effective in the study.

E. Section 514.117(b)(5)

8. Proposed § 514.117(b)(5) would require that adequate and well-controlled studies use a method of selecting animals that provides adequate assurances that the animals are suitable for the purposes of the study. AHI believes that examples cited in the characteristic are too specific for inclusion in a regulation and should be eliminated. AHI notes that criteria for selection should be established on a case-by-case basis during the protocol review.

FDA does not agree that the examples provided in proposed § 514.117(b)(5) are too specific. The examples represent generally some of the criteria to be considered in selecting animals. The examples are drawn from, and clarify FDA's interpretation of, current § 514.111(a)(5)(ii)(a)(2)(i). FDA agrees that the criteria for selecting animals suitable for a study should be determined on a case-by-case basis during protocol development and nothing in the examples precludes such case-by-case determination.

F. Section 514.117(b)(6)

9. AHI believes that FDA has expanded the "pertinent variables" used to judge whether experimental units of animals are comparable and that such expansion is unnecessary.

The only difference in the list of pertinent variables described in proposed § 514.117(b)(6) from those variables listed in current § 514.111(a)(5)(ii)(a)(2)(iii) is the use of the phrase "class of animal" in place of the term "species" and the listing of "dietary management" and "level of animal production" in place of "management practices." These substitutions represent a clarification, not expansion, of the list of variables. FDA is retaining § 514.117(b)(6) as proposed.

G. Section 514.117(b)(7)

10. AHI has asked for clarification of how FDA is interpreting the phrase "analysts of the data" under § 514.117(b)(7).

As used in proposed § 514.117(b)(7), "observers" of data refers to those individuals who, on behalf of the investigator or sponsor, observe, collect, or record data and information as part of the conduct of an adequate and well-controlled study. This would include individuals who analyze specimens and samples (including the new animal drug and animal feed bearing or containing the new animal drug) which are collected as part of such a study. In contrast, "analysts" of data refers to those individuals who, on behalf of the sponsor or investigator, analyze the data and information collected and recorded during the conduct of an adequate and well-controlled study. Both observers and analysts of the data would be expected to perform their functions in a manner which minimizes bias. For example, observers of the data should be "blinded" or "masked" at all times, while analysts of the data should maintain such "blinding" or "masking" as long as reasonable or practical.

H. Data Variations

11. AHI recommended that the definition of adequate and well-controlled studies include a new subsection entitled "Data variations" to explain that nonsystematic errors or omissions generally will not disqualify a study as being adequate and well controlled for purposes of establishing that a drug is effective for use as described in the proposed labeling. Data variations would be subject to review and would require an explanation.

FDA does not find it necessary to create a provision to address data variations. FDA has not, nor does FDA intend to, disqualify studies as not being adequate and well controlled based solely on a finding of nonsystematic errors or omissions, i.e., random human error, that are explained and do not affect the integrity of the study. Furthermore, sponsors may ask the Director of CVM to waive the requirement to meet a specific characteristic of an adequate and well-controlled study with respect to a specific study and still accept that study as an adequate and well-controlled study.

I. Uncontrolled Studies

12. As discussed in section II.B.1 of this document, proposed § 514.117(d), which describes how uncontrolled studies would be considered by FDA, has been redesignated in this final rule as § 514.117(e). FDA and the Coalition agree that regardless of the differences between field and laboratory studies, a control group (placebo, untreated, active treatment, or historical) is always needed for a laboratory or a field study to be an adequate and well-controlled study (see Memorandum of July 11, 1997, meeting with the Coalition for Animal Health, at 2, Docket No. 97N-0141). Not only is a study without a control group not acceptable as the sole basis for the approval of claims of effectiveness, such a study does not permit scientific evaluation of claims of effectiveness. Accordingly, the phrase "including studies for which the Director has granted a waiver under paragraph (c) of this section, of the use of any necessary control described in paragraph (b)(4) of this section," in the first sentence in proposed § 514.117(d) was erroneous. FDA is revising § 514.117(e) to remove this phrase. Thus, § 514.117(e) is the same as current § 514.11(a)(5)(ii)(c).

J. Quality Assurance

13. AHI inquired whether reference to a "documented quality assurance process or program" is a reference to a

quality assurance function and not a specific, defined quality assurance unit as required in 21 CFR 58.35.

In the preamble to the proposed rule (62 FR 25153 at 25155), FDA stated that it believes that generation of reliable data and information can best be accomplished by conducting adequate and well-controlled studies under a documented program of quality assurance. FDA is primarily concerned that sponsors develop and implement a quality assurance process that is carried out in accordance with the well-established principles of quality assurance. A well-established principle of quality assurance is that personnel responsible for quality assurance should be independent from those personnel responsible for the development of new animal drugs, including the conduct and monitoring of the study. Personnel responsible for quality assurance may or may not function as a "unit."

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The following analysis demonstrates that the final rule is not an economically significant regulatory action as defined by the Executive Order and is consistent with the regulatory philosophy and principles identified in the Executive Order.

Section 2(e) of the ADAA requires FDA to further define the term "adequate and well controlled" to require that field investigations be designed and conducted in a scientifically sound manner, taking into account practical conditions in the field and differences between field conditions and laboratory conditions. Discussions between FDA and regulated industry during the development of the ADAA made it clear that the regulated industry is concerned that certain

scientific principles and practices may be difficult to apply in testing new animal drugs under actual field conditions. FDA reviewed the essentials of adequate and well-controlled studies currently identified in § 514.111(a)(5)(ii) and determined that these essentials continue to represent scientifically sound principles governing the conduct of adequate and well-controlled studies, whether conducted under laboratory or field conditions. However, FDA determined that the practices followed in the conduct of adequate and well-controlled studies in the target animal under field conditions may need to be more flexible in some regards than practices followed under laboratory conditions.

In its proposed rule published in the May 8, 1997, **Federal Register**, FDA proposed to amend its regulations in part 514 to further define the term "adequate and well-controlled studies" to allow for more flexibility in the practices followed in the conduct of adequate and well-controlled studies in the target animal under field conditions. Specifically, FDA proposed to incorporate by reference GSP's, that is, the practices to be followed in conducting studies in target animals under field conditions.

FDA received several letters from industry groups commenting on the proposed definition of "adequate and well-controlled studies." Some of the comments criticized the rule for its failure to explicitly address the difference between field and laboratory studies and objected to FDA's reference to GSP's. In response to these comments, FDA has removed the references to GSP's and added language to the rule that will more explicitly address the differences between field and laboratory studies.

The definition of adequate and well-controlled studies has significance only within the context of the regulations governing investigational use and approval of new animal drugs. Because FDA has issued neither revised new animal drugs for investigational use regulations nor revised new animal drug applications regulations, there will be little or no effect on the level of effort expended by industry in testing the effectiveness of new animal drugs as part of the animal drug approval process. FDA did not receive any comments on its estimate of impacts for the proposal, which reached an identical conclusion. The agency notes that a thorough economic analysis will be conducted on the impact of proposed changes to the regulations governing investigational use new animal drugs

and to the new animal drug application regulations in future proposals.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant economic impact on a substantial number of small entities. As this final regulation will not impose significant new costs on any firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of the anticipated costs and benefits before issuing any final rule that may result in annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation). This final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of \$100,000,000 or more.

Lists of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Section 514.111 is amended by revising paragraph (a)(5) to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(5) Evaluated on the basis of information submitted as part of the application and any other information before the Food and Drug Administration with respect to such drug, there is lack of substantial evidence consisting of one or more adequate and well-controlled studies by

experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

* * * * *

3. New § 514.117 is added to subpart B to read as follows:

§ 514.117 Adequate and well-controlled studies.

(a) *Purpose.* The primary purpose of conducting adequate and well-controlled studies of a new animal drug is to distinguish the effect of the new animal drug from other influences, such as spontaneous change in the course of the disease, normal animal production performance, or biased observation. One or more adequate and well-controlled studies are required to establish, by substantial evidence, that a new animal drug is effective. The characteristics described in paragraph (b) of this section have been developed over a period of years and are generally recognized as the essentials of an adequate and well-controlled study. Well controlled, as used in the phrase adequate and well controlled, emphasizes an important aspect of adequacy. The Food and Drug Administration (FDA) considers these characteristics in determining whether a study is adequate and well controlled for purposes of section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b). Adequate and well-controlled studies, in addition to providing a basis for determining whether a new animal drug is effective, may also be relied upon to support target animal safety. The report of an adequate and well-controlled study should provide sufficient details of study design, conduct, and analysis to allow critical evaluation and a determination of whether the characteristics of an adequate and well-controlled study are present.

(b) *Characteristics.* An adequate and well-controlled study has the following characteristics:

(1) The protocol for the study (protocol) and the report of the study results (study report) must include a clear statement of the study objective(s).

(2) The study is conducted in accordance with an appropriate standard of conduct that addresses, among other issues, study conduct, study personnel, study facilities, and study documentation. The protocol contains a statement acknowledging the

applicability of, and intention to follow, a standard of conduct acceptable to FDA. The study report contains a statement describing adherence to the standard.

(3) The study is conducted with a new animal drug that is produced in accordance with appropriate manufacturing practices, which include, but are not necessarily limited to, the manufacture, processing, packaging, holding, and labeling of the new animal drug such that the critical characteristics of identity, strength, quality, purity, and physical form of the new animal drug are known, recorded, and reproducible, to permit meaningful evaluations of and comparisons with other studies conducted with the new animal drug. The physical form of a new animal drug includes the formulation and physical characterization (including delivery systems thereof, if any) of the new animal drug as presented to the animal. The protocol and study report must include an identification number which can be correlated with the specific formulation and production process used to manufacture the new animal drug used in the study.

(4) The study uses a design that permits a valid comparison with one or more controls to provide a quantitative evaluation of drug effects. The protocol and the study report must describe the precise nature of the study design, e.g., duration of treatment periods, whether treatments are parallel, sequential, or crossover, and the determination of sample size. Within the broad range of studies conducted to support a determination of the effectiveness of a new animal drug, certain of the controls listed below would be appropriate and preferred depending on the study conducted:

(i) *Placebo concurrent control.* The new animal drug is compared with an inactive preparation designed to resemble the new animal drug as far as possible.

(ii) *Untreated concurrent control.* The new animal drug is compared with the absence of any treatment. The use of this control may be appropriate when objective measurements of effectiveness, not subject to observer bias, are available.

(iii) *Active treatment concurrent control.* The new animal drug is compared with known effective therapy. The use of this control is appropriate when the use of a placebo control or of an untreated concurrent control would unreasonably compromise the welfare of the animals. Similarity of the new animal drug and the active control drug can mean either that both drugs were effective or that neither was effective.

The study report should assess the ability of the study to have detected a difference between treatments. The evaluation of the study should explain why the new animal drugs should be considered effective in the study, for example, by reference to results in previous placebo-controlled studies of the active control.

(iv) *Historical control.* The results of treatment with the new animal drug are quantitatively compared with experience historically derived from the adequately documented natural history of the disease or condition, or with a regimen (therapeutic, diagnostic, prophylactic) whose effectiveness is established, in comparable animals. Because historical control populations usually cannot be as well assessed with respect to pertinent variables as can concurrent control populations, historical control designs are usually reserved for special circumstances. Examples include studies in which the effect of the new animal drug is self-evident or studies of diseases with high and predictable mortality, or signs and symptoms of predictable duration or severity, or, in the case of prophylaxis, predictable morbidity.

(5) The study uses a method of selecting animals that provides adequate assurances that the animals are suitable for the purposes of the study. For example, the animals can reasonably be expected to have animal production characteristics typical of the class(es) of animals for which the new animal drug is intended, there is adequate assurance that the animals have the disease or condition being studied, or, in the case of prophylactic agents, evidence of susceptibility and exposure to the condition against which prophylaxis is desired has been provided. The protocol and the study report describe the method of selecting animals for the study.

(6) The study uses a method to assign a treatment or a control to each experimental unit of animals that is random and minimizes bias. Experimental units of animals are groups of animals that are comparable with respect to pertinent variables such as age, sex, class of animal, severity of disease, duration of disease, dietary regimen, level of animal production, and use of drugs or therapy other than the new animal drug. The protocol and the study report describe the method of assignment of animals to an experimental unit to account for pertinent variables and method of assignment of a treatment or a control to the experimental units. When the effect of such variables is accounted for by an appropriate design, and when, within

the same animal, effects due to the test drug can be obtained free of the effects of such variables, the same animal may be used for both the test drug and the control using the controls set forth in paragraph (b)(4) of this section.

(7) The study uses methods to minimize bias on the part of observers and analysts of the data that are adequate to prevent undue influences on the results and interpretation of the study data. The protocol and study report explain the methods of observation and recording of the animal response variables and document the methods, such as "blinding" or "masking," used in the study for excluding or minimizing bias in the observations.

(8) The study uses methods to assess animal response that are well defined and reliable. The protocol and study report describe the methods for conducting the study, including any appropriate analytical and statistical methods, used to collect and analyze the data resulting from the conduct of the study, describe the criteria used to assess response, and, when appropriate, justify the selection of the methods to assess animal response.

(9) There is an analysis and evaluation of the results of the study in accord with the protocol adequate to assess the effects of the new animal drug. The study report evaluates the methods used to conduct, and presents and evaluates the results of, the study as to their adequacy to assess the effects of the new animal drug. This evaluation of the results of the study assesses, among other items, the comparability of treatment and control groups with respect to pertinent variables and the effects of any interim analyses performed.

(c) *Field studies.* (1) Field conditions as used in this section refers to conditions which closely approximate the conditions under which the new animal drug, if approved, is intended to be applied or administered.

(2) Studies of a new animal drug conducted under field conditions shall, consistent with generally recognized scientific principles and procedures, use an appropriate control that permits comparison, employ procedures to minimize bias, and have the characteristics generally described in paragraph (b) of this section. However, because field studies are conducted under field conditions, it is recognized that the level of control over some study conditions need not or should not be the same as the level of control in laboratory studies. While not all conditions relating to a field study need to be or should be controlled, observations of

the conditions under which the new animal drug is tested shall be recorded in sufficient detail to permit evaluation of the study. Adequate and well-controlled field studies shall balance the need to control study conditions with the need to observe the true effect of the new animal drug under closely approximated actual use conditions.

(d) *Waiver.* The Director of the Center for Veterinary Medicine (the Director) may, on the Director's own initiative or on the petition of an interested person, waive in whole or in part any of the criteria in paragraph (b) of this section with respect to a specific study. A petition for a waiver is required to set forth clearly and concisely the specific criteria from which waiver is sought, why the criteria are not reasonably applicable to the particular study, what alternative procedures, if any, are to be, or have been employed, and what results have been obtained. The petition is also required to state why the studies so conducted will yield, or have yielded, substantial evidence of effectiveness, notwithstanding nonconformance with the criteria for which waiver is requested.

(e) *Uncontrolled studies.* Uncontrolled studies or partially controlled studies are not acceptable as the sole basis for the approval of claims of effectiveness or target animal safety. Such studies, carefully conducted and documented, may provide corroborative support of adequate and well-controlled studies regarding effectiveness and may yield valuable data regarding safety of the new animal drug. Such studies will be considered on their merits in light of the characteristics listed here. Isolated case reports, random experience, and reports lacking the details which permit scientific evaluation will not be considered.

Dated: February 25, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98-5675 Filed 3-4-98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8765]

RIN 1545-AL24; 1545-AS68

Change From Dollar Approximate Separate Transactions Method of Accounting (DASTM) to the Profit and Loss Method of Accounting/Change From the Profit and Loss Method to DASTM

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to adjustments required when a qualified business unit (QBU) that used the profit and loss method of accounting (P&L) in a post-1986 year begins to use the dollar approximate separate transaction method of accounting (DASTM) and adjustments required when a QBU that used DASTM begins using P&L. The regulations provide rules for taxpayers to construct an opening dollar balance sheet for the QBU and require income adjustments in certain cases.

DATES: These regulations are effective April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Wiener at (202) 622-3870 (not a toll-free number) of the office of Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1993 and July 25, 1994, the IRS published proposed amendments to § 1.985-7 in the **Federal Register** at 58 FR 300 (INTL-0045-92) and § 1.985-1 in the **Federal Register** at 59 FR 37733 (INTL-0066-92), respectively. No public hearing was held and few comments were received. After consideration of these comments, the regulations are adopted as a Treasury Decision with modifications as described below.

Explanation of Provisions

I. Proposed Rules for Changing From P&L to DASTM (§ 1.985-7)

1. The Proposed Regulations

The proposed regulations under § 1.985-7 set forth transition rules for QBUs changing from the profit and loss method of accounting (P&L) to DASTM in tax years after 1987. Section 1.985-

6 provides the translation rules for QBUs using DASTM in 1987. Generally, when a QBU changes its functional currency, two basic issues arise: (1) How should the QBU translate its balance sheet accounts into the new functional currency in a way that preserves any unrecognized currency gain or loss which accrued in the old functional currency; and (2) whether income adjustments need to be made to recognize any currency gain or loss which accrued in the old functional currency that cannot be preserved.

Section 1.985-5 provides rules that generally apply when a QBU changes its functional currency. Under § 1.985-5 balance sheet accounts are translated using the spot rate on the last day prior to the taxable year of change. In addition, § 1.985-5 generally requires recognition of unrealized exchange gain or loss on instruments and other accounts that were maintained in the functional currency to which the QBU is changing.

The proposed regulations issued under § 1.985-7 were issued in response to taxpayer comments that § 1.985-5 resulted in significant distortions when a QBU either elected or was required to use DASTM. Applying the spot rate on the last day prior to the year in which the QBU begins to use DASTM (the "taxable year of change") to translate fixed assets typically results in a significant loss of basis in dollar terms and does not take into account certain income and expense distortions that occur in the period immediately preceding the taxable year of change.

In response to taxpayers' comments, the proposed regulations provide for use of the translation rules provided under § 1.985-3. These rules generally translate fixed assets at the historical exchange rate and other assets and liabilities at the current exchange rate. To correct for distortions that would result from applying historic exchange rates for fixed assets while applying the current year's spot rate for other balance sheet accounts, the proposed regulations provide for income adjustments in the case of a controlled foreign corporation (CFC) and a branch that reflect amounts that would have been included in income under DASTM.

In the case of a CFC, the proposed regulations provide for a shareholder level income adjustment to the extent subpart F income realized during the period after 1986 until the taxable year of change differs from subpart F income that would have been realized if the CFC had used DASTM throughout this period. In the case of a branch, the regulations provide that any difference between the branch's local currency

equity translated into dollars at the spot exchange rate on the last day prior to the taxable year of change and the taxpayer's dollar basis pool on that day is included in income over three taxable years beginning with the taxable year of change. For purposes of translating the balance sheet of noncontrolled section 902 corporations, the proposed regulations apply historic exchange rates for fixed assets. In such case, no shareholder level income adjustments are required.

Recognizing the administrative burden of making income adjustments for all post-1986 tax years in the case of a CFC, the preamble to the proposed regulations requested comments regarding three alternative transition rules as follows: (1) Requiring shareholder level adjustments for the three-year base period used to determine the hyperinflationary status of the local currency (in which case the general rule of § 1.985-5 would be applied in preparing the balance sheet for the first year of the base period); (2) treating a portion of retained earnings as subpart F income based on an average historical rate of subpart F income to total earnings and profits, and (3) using the spot rate on the last day prior to the taxable year of change to translate balance sheet items with special rules to allow historical exchange rates to translate fixed assets to the extent of unrealized exchange loss on paid-in capital.

2. Reasons for Change

The IRS is concerned that the approach of the proposed regulations could create a significant administrative burden for shareholders of CFCs. The administrative burden results from the requirement that shareholders recompute subpart F income for all of the CFC's post 1986 taxable years. If the functional currency of a CFC becomes hyperinflationary in a year that is significantly distant from the CFC's first post-1986 taxable year, records supporting the required recomputation may be unavailable.

Further, the required recomputation under the proposed regulations is generally inconsistent with the policy of sections 986 and 987 that the income of branches with a functional currency different than that of the taxpayer and the earnings and profits of foreign corporations be computed under a profit and loss method, except in the case of hyperinflation. See S. Rep. No. 99-313, 99th Cong., 2d Sess., 454 (1986). The recomputation under the proposed regulation would put the CFC on DASTM for non-hyperinflationary years. Accordingly, the rules in the proposed

regulations have been modified as described below.

II. Final Regulations for Changing From P&L to DASTM (§ 1.985-7)

1. General Rule

The approach employed in the final regulations has the general effect of treating a QBU as if it had applied § 1.985-5 on the last day of the last taxable year prior to the base period for determining whether a currency is hyperinflationary (transition date) and had applied DASTM during the taxable years beginning after the transition date until the taxable year of change (look-back period). This approach addresses the problems of applying § 1.985-5 in the taxable year of change for purposes of translating fixed assets by applying the historical exchange rate to the extent fixed assets were acquired during the look-back period. Assets acquired prior to the look-back period are translated by applying the spot rate on the transition date. This approach also corrects distortions in income and expense (generally interest income and expense) that occur during the look-back period.

The final regulations respond to taxpayers' comments and provide an appropriate rule for translating the adjusted basis of fixed assets into dollars by applying an exchange rate in effect prior to the hyperinflationary period. Moreover, this method more accurately reflects Congressional intent for QBUs to apply the profit and loss method except in the case of hyperinflation. In addition, this approach decreases the administrative burden of changing to DASTM.

2. Foreign Corporations

In the case of a foreign corporation which is either required or elects to use DASTM, four basic corporate level adjustments are required as follows. (1) The balance sheet is translated by treating the corporation as if it had changed its functional currency to the dollar for the first post-transition date taxable year and had applied the rules of § 1.985-5(c) on the transition date. Assets acquired and liabilities incurred in the functional currency during the look-back period are translated by applying the rules of § 1.985-3. (2) The unrealized gain or loss on dollar denominated section 988 transactions as determined on the transition date are treated as if recognized on that date (and actual gain or loss recognized on dollar denominated section 988 transactions during the look-back period is reversed). (3) The dollar value of the pre-1987 E&P of the corporation as stated on the transition date in the functional

currency is translated into U.S. dollars at the spot rate in effect on the transition date. (4) The dollar value of the post-1986 E&P is computed by translating the post-1986 E&P as stated on the transition date in the functional currency at the spot rate on such date and adding to it the E&P for the years during the look-back period as computed under DASTM.

In the case of a CFC, there are three shareholder level adjustments as follows: (1) The U.S. shareholders must take into income exchange gain or loss on the deemed recognition of the section 988 transactions as determined at the corporate level to the extent such gain or loss is subpart F income. (2) The U.S. shareholders must recognize foreign currency gain or loss as computed under section 986(c) as if all previously taxed earnings and profits were distributed on the transition date (however, any actual 986(c) gain or loss recognized during the look-back period is reversed). (3) The subpart F income of the CFC is recomputed during the look-back period under DASTM and compared to the subpart F income as computed under the P&L method. The difference (positive or negative) is taken into account in the taxable year of change and spread over four years. Similar rules apply to United States persons who have made an election under section 1295 to treat a passive foreign investment company as a qualified electing fund. In the case of other foreign corporations, no shareholder level income adjustments are necessary.

4. Branches

In accord with the general approach articulated above, the regulations treat a branch changing to DASTM as applying the principles of § 1.985-5 on the transition date. Thus, the balance sheet is translated by treating the branch as if it had changed its functional currency to the dollar for the first post-transition date taxable year and had applied the rules of § 1.985-5(c) on the transition date. Unrealized gain or loss on dollar denominated section 988 transactions as stated on the transition date are treated as if recognized on that date (and any actual gain or loss realized with respect to section 988 transactions during the look-back period is reversed). Further, the regulations require that the taxpayer recognize gain or loss attributable to the branch's equity pool (as stated on the transition date) under the principles of section 987, computed as if the branch terminated on the transition date. Such gain or loss is reduced by any section 987 gain and increased by any section 987 loss that was recognized by the

taxpayer with respect to remittances during the look-back period. Finally, branch income shall be determined under § 1.985-3 for each look-back year and compared to the amount that was taken into account for each year. The sum of the difference (positive or negative) is taken into account in the taxable year of change and spread over four years.

III. Rules for Changing from DASTM to P&L (§ 1.985-1)

Under the proposed regulation, a QBU that has been required or had elected to use DASTM must change functional currency to the currency of its economic environment in a year in which the currency is no longer hyperinflationary pursuant to the three-year test under § 1.985-1(b). These rules provide that when a taxpayer changes from DASTM to the P&L method of accounting, § 1.985-5 shall apply for purposes of translating a QBU's balance sheet and for making certain income adjustments. Because these rules generally do not create distortions and are administrable, the final regulations adopt these regulations as proposed.

IV. Other Changes

Various conforming changes have been made to §§ 1.985-1 and 1.985-5 to account for the addition of § 1.985-7. In addition, the definition of hyperinflation has been liberalized to provide that for purposes of determining whether a currency is hyperinflationary for income tax purposes, United States generally accepted accounting principles will be accepted provided that the determination is based on criteria that is substantially similar to the general rules provided in the regulations, the method of determination is applied consistently from year to year, and the same method is applied to all related persons.

Special Analysis

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 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. Accordingly, a regulatory flexibility analysis is not required. 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 Howard A. Wiener of the Office of the Associate Chief Counsel (International). Other personnel from the IRS and Treasury Department also 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 continues to read in part as follows:

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

Par. 2. Section 1.985-1 is amended by:

1. Revising paragraph (b)(2)(ii)(C).
2. Adding a sentence to the end of paragraph (b)(2)(ii)(D).
3. Adding paragraph (b)(2)(ii)(E).

The additions and revision reads as follows:

§ 1.985-1 Functional currency.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) *Change in functional currency.* If a QBU is required to change its functional currency to the dollar under paragraph (b)(2)(ii)(A) of this section, or chooses or is required to change its functional currency to the dollar for any open taxable year (and all subsequent taxable years) under § 1.985-3(a)(2)(ii), the change is considered to be made with the consent of the Commissioner for purposes of § 1.985-4. A QBU changing functional currency must make adjustments described in § 1.985-7 if the year of change (as defined in § 1.481-1(a)(1)) begins after 1987, or the adjustments described in § 1.985-6 if the year of change begins in 1987. No adjustments under section 481 are required solely because of a change in functional currency described in this paragraph (b)(2)(ii)(C).

(D) * * * In making the determination whether a currency is hyperinflationary, the determination for purposes of United States generally accepted accounting principles may be used for income tax purposes provided the determination is based on criteria that is substantially similar to the rules

previously set forth in this paragraph (b)(2)(ii)(D), the method of determination is applied consistently from year to year, and the same method is applied to all related persons as defined in § 1.985-3(e)(2)(vi).

(E) *Change in functional currency when currency ceases to be hyperinflationary—(1) In general.* A QBU that has been required to use the dollar as its functional currency under paragraph (b)(2) of this section, or has elected to use the dollar as its functional currency under paragraph (b)(2)(ii)(B)(2) of this section or § 1.985-2, must change its functional currency as of the first day of the first taxable year that follows three consecutive taxable years in which the currency of its economic environment, determined under paragraph (c)(2) of this section, is not a hyperinflationary currency. The functional currency of the QBU for such year shall be determined in accordance with paragraph (c) of this section. For purposes of § 1.985-4, the change is considered to be made with the consent of the Commissioner. See § 1.985-5 for adjustments that are required upon a change in functional currency.

(2) *Effective Date.* This paragraph (b)(2)(ii)(E) of this section applies to taxable years beginning after April 6, 1998.

Par. 3. Section 1.985-5(a) is amended by adding the following sentence to the end of the paragraph:

§ 1.985-5 Adjustments required upon change in functional currency.

(a) * * * However, a QBU that changes to the dollar pursuant to § 1.985-1(b)(2) after 1987 shall apply § 1.985-7.

* * * * *

Par. 4. Section 1.985-7 is added as follows:

§ 1.985-7 Adjustments required in connection with a change to DASTM.

(a) *In general.* If a QBU begins to use the dollar approximate separate transactions method of accounting set forth in § 1.985-3 (DASTM) in a taxable year beginning after April 6, 1998, adjustments shall be made as provided by this section. For the rules with respect to foreign corporations, see paragraph (b) of this section. For the rules with respect to adjustments to the income of United States shareholders of controlled foreign corporations, see paragraph (c) of this section. For the rules with respect to adjustments relating to QBU branches, see paragraph (d) of this section. For the effective date of this section, see paragraph (e). For purposes of applying this section, the look-back period shall be the period

beginning with the first taxable year after the transition date and ending on the last day prior to the taxable year of change. The term transition date means the later of the last day of the last taxable year ending before the base period as defined in § 1.985-1(b)(2)(ii)(D) or the last day of the taxable year in which the QBU last applied DASTM. The taxable year of change shall mean the taxable year of change as defined in § 1.481-1(a)(1). The application of this paragraph may be illustrated by the following examples:

Example 1. A calendar year QBU that has not previously used DASTM operates in a country in which the functional currency of the country is hyperinflationary as defined under § 1.985-1(b)(2)(ii)(D) for the QBU's 1999 tax year. The look-back period is the period from January 1, 1996 through December 31, 1998, the transition date is December 31, 1995, and the taxable year of change is the taxable year beginning January 1, 1999.

Example 2. A QBU that has not previously used DASTM with a taxable year ending June 30, operates in a country in which the functional currency of the country is hyperinflationary for the QBU's tax year beginning July 1, 1999 as defined under § 1.985-1(b)(2)(ii)(D) (where the base period is the thirty-six calendar months immediately preceding the first day of the current calendar year 1999). The look-back period is the period from July 1, 1995 through June 30, 1999, the transition date is June 30, 1995, and the taxable year of change is the taxable year beginning July 1, 1999.

(b) *Adjustments to foreign corporations*—(1) *In general.* In the case of a foreign corporation, the corporation shall make the adjustments set forth in paragraphs (b)(2) through (4) of this section. The adjustments shall be made on the first day of the taxable year of change.

(2) *Treatment of certain section 988 transactions*—(i) *Exchange gain or loss from section 988 transactions unrealized as of the transition date.* A foreign corporation shall adjust earnings and profits by the amount of any unrealized exchange gain or loss that was attributable to a section 988 transaction (as defined in sections 988(c)(1)(A), (B), and (C)) that was denominated in terms of (or determined by reference to) the dollar and was held by the corporation on the transition date. Such gain or loss shall be computed as if recognized on the transition date and shall be reduced by any gain and increased by any loss recognized by the corporation with respect to such transaction during the look-back period. The amount of such gain or loss shall be determined without regard to the limitations of section

988(b) (i.e., whether any gain or loss would be realized on the transaction as a whole). The character and source of such gain or loss shall be determined under section 988. Proper adjustments shall be made to account for gain or loss taken into account by reason of this paragraph (b)(2). See § 1.985-5(f) *Example 1, footnote 1.*

(ii) *Treatment of a section 988 transaction entered into and terminated during the look-back period.* A foreign corporation shall reduce earnings and profits by the amount of any gain, and increase earnings and profits by the amount of any loss, that was recognized with respect to any dollar denominated section 988 transactions entered into and terminated during the look-back period.

(3) *Opening balance sheet.* The opening balance sheet of a foreign corporation for the taxable year of change shall be determined as if the corporation had changed its functional currency to the dollar by applying § 1.985-5(c) on the transition date and had translated its assets and liabilities under § 1.985-3 during the look-back period.

(4) *Earnings and profits adjustments*—(i) *Pre-1987 accumulated profits.* The foreign income taxes and accumulated profits or deficits in accumulated profits of a foreign corporation that are attributable to taxable years beginning before January 1, 1987, as stated on the transition date, and that were maintained for purposes of section 902 in the old functional currency, shall be translated into dollars at the spot rate in effect on the transition date. The applicable accumulated profits shall be reduced on a last-in, first-out basis by the aggregate dollar amount (translated from functional currency in accordance with the rules of section 989(b)) attributable to earnings and profits that were distributed (or treated as distributed) during the look-back period to the extent such amounts distributed exceed the earnings and profits calculated under (b)(4)(ii) or (b)(4)(iii), as applicable. See § 1.902-1(b)(2)(ii). Once translated into dollars, these pre-1987 taxes and accumulated profits or deficits in accumulated profits shall (absent a change in functional currency) remain in dollars for all federal income tax purposes.

(ii) *Post-1986 undistributed earnings of a CFC.* In the case of a controlled foreign corporation (within the meaning of section 957 or section 953(c)(1)(B))(CFC) or a foreign corporation subject to the rules of § 1.904-6(a)(2), the corporation's post-1986 undistributed earnings in each

5(a)(1) as of the first day of the taxable year of change (and prior to adjustment under paragraph (c)(1) of this section) shall equal the sum of—

(A) The corporation's post-1986 undistributed earnings and profits (or deficit in earnings and profits) in each separate category as defined in § 1.904-5(a)(1) as stated on the transition date translated into dollars at the spot rate in effect on the transition date; and

(B) The sum of the earnings and profits (or deficit in earnings and profits) in each separate category determined under § 1.985-3 for each post-transition date taxable year prior to the taxable year of change.

Such amount shall be reduced by the aggregate dollar amount (translated from functional currency in accordance with the rules of section 989(b)) attributable to earnings and profits that were distributed (or treated as distributed) during the look-back period out of post-1986 earnings and profits in such separate category. For purposes of applying this paragraph (b)(4)(ii)(B), the opening balance sheet for calculating earnings and profits under § 1.985-3 for the first post-transition year shall be translated into dollars pursuant to § 1.985-5(c).

(iii) *Post-1986 undistributed earnings of other foreign corporations.* In the case of a foreign corporation that is not a CFC or subject to the rules of § 1.904-6(a)(2), the corporation's post-1986 undistributed earnings shall equal the sum of—

(A) The corporation's post-1986 undistributed earnings (or deficit) on the transition date translated into dollars at the spot rate in effect on the transition date; and

(B) The sum of the earnings and profits (or deficit in earnings and profits) determined under § 1.985-3 for each post-transition date taxable year (or such later year determined under section 902(c)(3)(A)) prior to the taxable year of change.

Such amount shall be reduced by the aggregate dollar amount (translated from functional currency in accordance with the rules of section 989(b)) that was distributed (or treated as distributed) during the look-back period out of post-1986 earnings and profits. For purposes of applying this paragraph (b)(4)(iii)(B), the opening balance sheet for calculating earnings and profits under § 1.985-3 for the first post-transition year shall be translated into dollars pursuant to § 1.985-5(c).

(c) *United States shareholders of controlled foreign corporations*—(1) *In general.* A United States shareholder (within the meaning of section 951(b) or section 953(c)(1)(B)) of a CFC that

changes to DASTM shall make the adjustments set forth in paragraphs (c) (2) through (5) of this section on the first day of the taxable year of change.

Adjustments under this section shall be taken into account by the shareholder (or such shareholder's successor in interest) ratably over four taxable years beginning with the taxable year of change. Similar rules shall apply in determining adjustments to income of United States persons who have made an election under section 1295 to treat a passive foreign investment company as a qualified electing fund.

(2) *Treatment under subpart F of income recognized on section 988 transactions.* The character of amounts taken into account under paragraph (b)(2) of this section for purposes of sections 951 through 964, shall be determined on the transition date and to the extent characterized as subpart F income shall be taken into account in accordance with the rules of paragraph (c)(1) of this section. Such amounts shall retain their character for all federal income tax purposes (including sections 902, 959, 960, 961, 1248, and 6038).

(3) *Recognition of foreign currency gain or loss on previously taxed earnings and profits on the transition date.* Gain or loss is recognized under section 986(c) as if all previously taxed earnings and profits as determined on the transition date, if any, were distributed on such date. Such gain or loss shall be reduced by any foreign currency gain and increased by any foreign currency loss that was recognized under section 986(c) with respect to distributions of previously taxed earnings and profits during the look-back period. Such amount shall be characterized in accordance with section 986(c) and taken into account in accordance with the rules of paragraph (c)(1) of this section.

(4) *Subpart F income adjustment.* Subpart F income in a separate category shall be determined under § 1.985-3 for each look-back year. For this purpose, the opening DASTM balance sheet shall be determined under § 1.985-5. The sum of the difference (positive or negative) between the amount computed pursuant to § 1.985-3 and amount that was included in income for each year shall be taken into account in the taxable year of change pursuant to paragraph (c)(1) of this section. Such amounts shall retain their character for all federal income tax purposes (including sections 902, 959, 960, 961, 1248, and 6038). For rules applicable if an adjustment under this section results in a loss for the taxable year in a separate category, see section 904(f) and the regulations thereunder. The amount

of previously taxed earnings and profits as determined under section 959(c)(2) shall be adjusted (positively or negatively) by the amount taken into account under this paragraph (c)(4) as of the first day of the taxable year of change.

(5) *Foreign tax credit.* A United States shareholder of a CFC shall compute an amount of foreign taxes deemed paid under section 960 with respect to any positive adjustments determined under paragraph (c) of this section. The amount of foreign tax deemed paid shall be computed with reference to the full amount of the adjustment and to the post-1986 undistributed earnings determined under paragraph (b)(4) (i) and (ii) of this section and the post-1986 foreign income taxes of the CFC on the first day of the taxable year of change (i.e., without taking into account earnings and taxes for the taxable year of change.) For purposes of section 960, the associated taxes in each separate category shall be allocated pro rata among, and deemed paid in, the shareholder's taxable years in which the income is taken into account. (No adjustment to foreign taxes deemed paid in prior years is required solely by reason of a negative adjustment to income under paragraph (c)(1) of this section.)

(d) *QBU branches—(1) In general.* In the case of a QBU branch, the taxpayer shall make the adjustments set forth in paragraphs (d)(2) through (d)(4) of this section. Adjustments under this section shall be taken into account by the taxpayer ratably over four taxable years beginning with the taxable year of change.

(2) *Treatment of certain section 988 transactions—(i) Exchange gain or loss from section 988 transactions unrealized as of the transition date.* A QBU branch shall adjust income by the amount of any unrealized exchange gain or loss that was attributable to a section 988 transaction (as defined in sections 988(c)(1) (A), (B), and (C)) that was denominated in terms of (or determined by reference to) the dollar and was held by the QBU branch on the transition date. Such gain or loss shall be computed as if recognized on the transition date and shall be reduced by any gain and increased by any loss recognized by the QBU branch with respect to such transaction during the look-back period. The amount of such gain or loss shall be determined without regard to the limitations of section 988(b) (i.e., whether any gain or loss would be realized on the transaction as a whole). The character and source of such gain or loss shall be determined under section 988. Proper adjustments

shall be made to account for gain or loss taken into account by reason of this paragraph (d)(2). See § 1.985-5(f) *Example 1, footnote 1.*

(ii) *Treatment of a section 988 transaction entered into and terminated during the look-back period.* A QBU branch shall reduce income by the amount of any gain, and increase income by the amount of any loss, that was recognized with respect to any dollar denominated section 988 transactions entered into and terminated during the look-back period.

(3) *Deemed termination income adjustment.* The taxpayer shall realize gain or loss attributable to the QBU branch's equity pool (as stated on the transition date) under the principles of section 987, computed as if the branch terminated on the transition date. Such amount shall be reduced by section 987 gain and increased by section 987 loss that was recognized by such taxpayer with respect to remittances during the look-back period.

(4) *Branch income adjustment.* Branch income in a separate category shall be determined under § 1.985-3 for each look-back year. For this purpose, the opening DASTM balance sheet shall be determined under § 1.985-5. The sum of the difference (positive or negative) between the amount computed pursuant to § 1.985-3 and amount taken into account for each year shall be taken into account in the taxable year of change pursuant to paragraph (d)(1) of this section. Such amounts shall retain their character for all federal income tax purposes.

(5) *Opening balance sheet.* The opening balance sheet of a QBU branch for the taxable year of change shall be determined as if the branch had changed its functional currency to the dollar by applying § 1.985-5(c) on the transition date and had translated its assets and liabilities under § 1.985-3 during the look-back period.

(e) *Effective date.* This section is effective for taxable years beginning after April 6, 1998. However, a taxpayer may choose to apply this section to all open taxable years beginning after December 31, 1986, provided each person, and each QBU branch of a person, that is related (within the meaning of § 1.985-2(d)(3)) to the taxpayer also applies this section.

Michael P. Dolan,
Deputy Commissioner of Internal Revenue.

Approved: February 11, 1998

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
[FR Doc. 98-5470 Filed 3-4-98; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117****[CGD 13-98-001]****RIN 2115-AE47****Drawbridge Operations Regulations; Tacoma Harbor, WA****AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: This amendment removes all operating regulations for the East 11th Street Bridge across the Blair Waterway and changes the operating regulations for the East 11th Street Bridge across the Hylebos Waterway in Tacoma Harbor, Tacoma, Washington. The regulations are being amended because the drawspan on the Blair Waterway has been removed, and because traffic conditions have changed due to the relocation of Washington State Route 509 farther inland. The Hylebos drawspan will open on signal at all times.

DATES: Effective: March 5, 1998.

ADDRESSES: Unless otherwise noted, documents referred to in this preamble are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Program Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220-7272.

SUPPLEMENTARY INFORMATION:**Regulatory History**

The current regulations require both the Blair and Hylebos Waterway Bridges to open on signal except from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. the draws need not be opened except for vessels of 1000 gross tons or more, vessels towing such vessels or vessels enroute to take such vessels in tow. These daily periods applied only to Monday through Friday, except federal holidays.

Background and Purpose

This change removes all regulations for the East 11th Street bridge across Blair Waterway because the drawspan was removed in 1997 to facilitate the safe movement of large vessels in the Blair Waterway. Good cause exists for proceeding directly to a final rule without notice and comment and for the

final rule to be effective immediately because the regulations for the operation of the bridge are no longer necessary as the bridge has been removed.

The operating regulations for the East 11th Street Bridge across the Hylebos Waterway are removed so that the bridge will operate according to 33 CFR 117.5, which requires the drawspan to open on signal for the passage of vessels. The periods during which the bridge need not open for vessels in order to accommodate the heavy volume of roadway traffic are no longer necessary. State Route 509, which formerly coincided with East 11th Street in this part of Tacoma Harbor, has been relocated farther inland. East 11th Street now bears far less commuter and commercial traffic.

Good cause exists for proceeding directly to a final rule without notice and comment and for the final rule to be effective immediately because the relocation of State Route 509 has alleviated the congestion on the bridge which necessitated the exception to opening on demand. The traffic volumes no longer warrant any delay to navigation at the drawspan. The bridge owner has not needed to use the congested periods regulations and is amenable to the bridge on signal at all times.

Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 1286 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that vessels will be facilitate in their movement by this amendment, while roadway traffic will not be hindered unreasonable.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant impact on a significant number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Section 2.B.2.e. of Commandant Instruction M16475.B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); § 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

§ 117.1061 [Amended]

2. Paragraphs (c) and (d) of § 117.1061 are removed.

Dated: February 11, 1998.

J. David Spade,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 98-5717 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Part 71****[USCG-1998-3569]****Hull Examination Alternatives for Passenger Vessels****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of policy.

SUMMARY: The Coast Guard announces the availability of MOC Policy Letter No. 3-98 which updates Coast Guard drydock extension policy for passenger vessels that operate exclusively in benign environments. Upon completion of a comprehensive hull survey process, these passenger vessels, which pose a relatively low risk of hull failure, may obtain a drydock extension of up to 30 months.

DATES: This policy is effective March 5, 1998.

ADDRESSES: The Docket Management Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001, maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at room PL-401, located on the Plaza Level of the Nassif Building, at the above address between 9:30 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. The public docket can also be accessed via the internet at: <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Paulette Twine, Chief, Documentary Services Division, Department of Transportation, telephone 202-366-9329, for questions on the docket; or Lt. Brian Willis, Commandant (G-MOC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone 202-267-6700 for questions on this notice.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard has recognized a growing need to consider risk when addressing the needs and concerns of the passenger vessel industry. Some passenger vessels must travel over 1,000 river miles to find a drydock facility to accommodate them while others, because they are land-locked, would have to build a drydock on site to satisfy Coast Guard hull examination requirements. The majority of the vessels faced with these problems are operated in benign, low-risk environments; i.e. fresh water, near-shore and/or shallow water, mud-bottom rivers, limited routes, and

limited time underway. These low-risk operating conditions, coupled with the use of improved underwater hull examination technologies, enable the Coast Guard to consider drydock extensions beyond the traditional one-year limit. Altogether, these factors make it safe and reasonable to allow drydock extensions of up to 30 months.

MOC Policy Letter No. 3-98, entitled "Drydock Extensions for Certain Passenger Vessels", establishes the criteria for obtaining drydock extensions of up to 30 months for qualified passenger vessels. The policy letter presents specific eligibility criteria, outlines application requirements, and provides detailed criteria for the requisite in-water hull survey. The policy will be implemented by the granting of appropriate extensions through the cognizant OCMI to the Commandant (G-MOC). Please refer to the policy letter for information on requests for extensions.

Coast Guard authority for issuing drydock extensions for passenger vessels is given under Title 46, Code of Federal Regulations, §§ 71.50-36(f), 115.670, and 176.670 for vessels inspected under Subchapters H, K, and T respectively. Until a regulatory project can be completed on this matter, the guidelines presented in this policy letter shall be used by the Coast Guard and affected members of the passenger vessel industry when considering drydock extension requests for these vessels. A notice of proposed rulemaking (NPRM) that incorporates this policy will be published in the **Federal Register** in the near future. This NPRM will also address possible alternatives to traditional hull examination requirements for all passenger vessels. Because a regulatory project is being developed, the Coast Guard is not requesting comments on this notice.

MOC Policy Letter No. 3-98 is available on the Internet in the DMS Docket as mentioned under **ADDRESSES** or on the World Wide Web at: <http://www.uscg.mil/hq/g-m/gmhome.htm> in "Publications, Reports and Forms". Paper copies will soon be available for a nominal fee through the National Technical Information Service, 5285

Port Royal Road, Springfield, VA 22161, telephone 703-605-6000; or fax 703-321-8547.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104-121], the Coast Guard wants to assist small entities in understanding this policy so that they can better evaluate how this policy may affect them. If you have questions concerning this notice of policy, please consult the Coast Guard point of contact: Lt. Brian Willis, Commandant, (G-MOC), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, telephone 202-267-2735.

Dated: February 26, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98-5691 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 94-148 and CC Docket No. 93-2; DA 98-349]

Conditional Authorization Authority to Common Carrier and Private Operational Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 101.31 of the fixed microwave service rules to provide for conditional authority in the 10.6-10.68 GHz band ("10 GHz band") under certain circumstances. The effect of this rule is that licensees will be able to provide service in the 10 GHz band in an expedited manner and will have greater flexibility in coordinating and consolidating construction efforts. This action eliminates a source of regulatory delay and will allow for more rapid delivery of 10 GHz band microwave services to the marketplace.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT:

Shaun Maher of the Commission's Wireless Telecommunications Bureau at (202) 418-0680.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Order* to modify § 101.31(e) of the Commission's rules to provide for conditional authorization in the 10.6–10.68 GHz band ("10 GHz band") under certain circumstances.

2. On February 8, 1996, the Commission adopted its *Report and Order* in WT Docket No. 94–148, (61 FR 26670, May 28, 1996) in which it simplified and consolidated its rules for the common carrier and private operational fixed microwave services and, among other things, extended conditional authorization authority to both common carrier and private operational fixed microwave services generally, with a few limited exceptions. This allowed fixed microwave licensees to construct and begin operating their facilities prior to receiving an authorization. This conditional authorization authority was not made available for: (1) The 10 GHz band, (2) the 17.7–19.7 GHz band in the states of Colorado, Maryland, and Virginia and the District of Columbia, and (3) the 21.2–23.6 GHz band ("23 GHz band") for operations with an effective radiated power (ERP) greater than 55 dBm. These bands are allocated for both Government and non-Government users and, as a result, these frequencies are subject to coordination between the Commission and the National Telecommunications and Information Administration (NTIA). In the *Report and Order*, the Commission delegated authority to its Wireless Telecommunications Bureau (WTB) and its Office of Engineering and Technology (OET) to modify the rule regarding conditional authorization, if appropriate, once the Commission and NTIA reached an agreement regarding coordination of these frequencies.

3. On January 21, 1998, the Commission reached agreement with NTIA and received a Memorandum

from NTIA concerning conditional authorization in the 10 GHz band which lists specific geographic locations where prior coordination with NTIA will be required before grant of FCC authorizations covering non-Government operations in the 10 GHz band. The NTIA Memorandum states that, for non-Government facilities only operating outside these geographic areas, coordination with NTIA will not be necessary. In addition, NTIA requests that the appropriate revisions be made to the Commission's rules to reflect the coordination requirements set forth in its Memorandum.

4. We hereby modify § 101.31 of the Commission's rules to permit conditional authorization in the 10 GHz band under the specific circumstances stated in the NTIA Memorandum. Entities will have conditional authorization authority for operations in the 10 GHz band in areas other than those specified in the NTIA Memorandum. Under this conditional authorization procedure, an applicant for the 10 GHz band will be allowed to operate while its formal license application(s) is being processed provided that it certifies that the following conditions are satisfied: (1) It has successfully completed the frequency coordination process pursuant to § 101.103(d) of the Commission's rules; (2) the station's operation will have no significant environmental impact; (3) grant of the application does not require a waiver of the Commission's rules; (4) the proposed facilities do not lie within 56.3 kilometers of any international border; (5) the antenna structure(s) has been previously studied by the Federal Aviation Administration (FAA) and determined to pose no hazard to aviation safety as required by subpart B of part 17 of the Commission's rules; or, if not previously studied by the FAA and cleared by the FCC, the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure); and (6) the filed application is consistent with the

proposal that was coordinated pursuant to § 101.103 of the Commission's rules. However, an applicant operating under such conditional authorization must cease operation immediately upon notification by the Commission if, for example, it is determined that the applicant has not met the above-outlined criteria.

5. Accordingly, the Commission's rules *Are Hereby Modified* as set forth in the final rules, effective upon publication of this *Order* in the **Federal Register**.

6. This action is taken pursuant to delegated authority under §§ 0.331 and 0.241 of the Commission's Rules, 47 CFR 0.331 and 0.241, and pursuant to the *Report and Order* in WT Docket No. 94–148.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio.
Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

Richard M. Smith,

Chief, Office of Engineering and Technology.

Rule Changes

Part 101 of title 47 of the Code of Federal Regulations is amended as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.31 is amended by revising paragraphs (e)(1)(vi) and (vii) and adding a new paragraph (viii) to read:

§ 101.31 Special temporary, temporary, and conditional authorizations.

* * * * *

(e) *Conditional authorization.*

(1) * * *

(vi) If operated on frequencies in the 10.6–10.68 GHz band, the station site does not lie within any of the following regions:

Name of region	Dimensions=radius in kilometers	Center-point
Kitt Peak, Arizona	60	N31-57-22; W111-36-42
Big Pine, California	60	N37-13-54; W118-16-34
Vandenberg AFB, California	75	N34-43-00; W120-34-00
Denver, Colorado	150	N39-43-00; W104-46-00
Washington, DC	150	N38-48-00; W76-52-00
Eglin AFB, Florida	50	N30-29-00; W86-32-00
Mauna Kea, Hawaii	60	N19-48-16; W155-27-29
North Liberty, Iowa	60	N41-46-17; W91-34-26
Maryland Point, Maryland	60	N38-22-26; W77-14-00
Hancock, New Hampshire	60	N42-56-01; W71-59-12
Los Alamos, New Mexico	60	N35-46-30; W106-14-42
Pie Town, New Mexico	60	N34-18-04; W108-07-07
Socorro, New Mexico	160	N34-04-43; W107-37-04
WSMR, New Mexico	75	N32-23-00; W106-29-00
Minot AFB, North Dakota	80	N48-15-00; W101-17-00
Arecibo, Puerto Rico	160	N18-20-37; W66-45-11
Fort Davis, Texas	60	N30-38-06; W103-56-39
St. Croix, Virgin Islands	60	N17-45-31; W64-35-03
Brewster, Washington	60	N48-07-53; W119-40-55
Green Bank, West Virginia	160	N38-25-59; W79-50-24

(vii) The filed application(s) does not propose to operate in the 21.2–23.6 GHz band with an E.R.P. greater than 55 dBm pursuant to § 101.147(s); and

(viii) The filed application(s) is consistent with the proposal that was coordinated pursuant to § 101.103.

* * * * *

[FR Doc. 98–5465 Filed 3–4–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 101

[ET Docket No. 95–183; PP Docket No. 93–253; FCC 97–391]

Service and Auction Rules for the 38.6–40.0 GHz Frequency Band; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of the Commission's rules that were published in the **Federal Register** of February 6, 1998 (63 FR 6079).

DATES: Effective on March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Christina Eads Clearwater, Auctions and Industry Analysis Division, 202–418–0660.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 101 of the Commission's rules in the **Federal Register** of February 6, 1998 (63 FR 6079). This document corrects 47 CFR 1.2102 and 47 CFR 101.1209(c) as they appeared in the **Federal Register** of February 6, 1998. In rule FR Doc. 98–1731, published on February 6, 1998 (63 FR 6079), make the following corrections:

§ 1.2102 [Corrected]

1. On page 6103, in the first column, § 1.2102 is corrected to read as follows:

(a) Mutually exclusive initial applications are subject to competitive bidding.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Public safety radio services, including private internal radio services used by state and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that

(i) Are used to protect the safety of life, health, or property; and
(ii) Are not commercially available to the public;

(2) Initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(3) Noncommercial educational and public broadcast stations described under 47 U.S.C. 397(6).

Note to § 1.2102: To determine the rules that apply to competitive bidding, specific service rules should also be consulted.

§ 101.1209 [Corrected]

2. On page 6107, in the second column, line 55, replace “(A)” with “(1)”.

3. On page 6107, in the third column, line 1, replace “(B)” with “(2)”.

4. On page 6107, in the third column, line 4, replace “(C)” with “(3)”.

5. On page 6107, in the third column, line 8, replace “(D)” with “(4)”.

Dated: February 24, 1998.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98-5466 Filed 3-4-98; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-292]

Organization and Delegation of Powers and Duties; Great Lakes Pilotage

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation hereby revokes the

authority delegated to the Administrator for the Saint Lawrence Seaway Development Corporation to carry out the functions vested in the Secretary by the Great Lakes Pilotage Act of 1960, as amended (46 U.S.C. 9301 *et seq.*) and delegates that authority to Commandant of the Coast Guard. This responds to a ruling of the U.S. Court of Appeals for the District of Columbia Circuit that vacates a December 11, 1995, final rule transferring oversight of Great Lakes pilotage functions to the Saint Lawrence Seaway Development Corporation.

EFFECTIVE DATE: This rule is effective March 5, 1998.

FOR FURTHER INFORMATION CONTACT:

Gwyneth Radloff, Office of the General Counsel, Department of Transportation, C-50, (202) 366-9306, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In 1994, the Secretary formed a study group to determine where best to locate the Secretary's authority to carry out the functions vested in him by the Great Lakes Pilotage Act of 1960, as amended, and his authority to enter into, revise, or amend arrangements with Canada under the 1977 Memorandum of Arrangements with Canada. This authority extends to such matters as examination and registration of pilots and setting the rates for their services. The study group recommended transferring this responsibility from the Coast Guard to the St. Lawrence Seaway Development Corporation. On December 11, 1995, the Secretary of Transportation issued a rule revoking the then-existing delegation of pilotage authority to the Coast Guard and redelegating oversight of Great Lakes Pilotage functions to the Saint Lawrence Seaway Development Corporation. On November 12, 1997, the U.S. Court of Appeals for the District of Columbia Circuit, in *Halverson v.*

Slater, 129 F.3d 180 (D.C. Cir. 1997), reversed a district court decision, and held that the Secretary of Transportation lacks the authority under 49 U.S.C. 322(b) to delegate Great Lakes Pilotage Act powers and duties to the Saint Lawrence Seaway Development Corporation. The court held that under 46 U.S.C. 2104(a) the Secretary only has authority either to keep those powers and duties within the Office of the Secretary or to delegate them to the U.S. Coast Guard.

The 1995 rule vacated by the court decision revoked an earlier delegation of this authority to the U.S. Coast Guard and removed the relevant sections from the Code of Federal Regulations (CFR). The Department is acting now to settle the question of where the authority will reside after the court's decision. This action requires changes to the CFR.

This rule responds to the U.S. Court of Appeals ruling by formally revoking the delegation to the Saint Lawrence Seaway Development Corporation and delegating to the Commandant of the Coast Guard the authority to carry out the Secretary's functions under the Great Lakes Pilotage Act of 1960, as amended, and his authority to enter into, revise, or amend arrangements with Canada.

Following the issuance of the Court's decision, the Department undertook an outreach effort to elicit industry views concerning the administration of pilotage functions. The Secretary's decision to transfer the pilotage function to the Coast Guard takes into account the views expressed in these meetings, as well as the Department's own review of the best placement of the administration of the pilotage function given the limited options available under the Circuit Court's opinion.

This rule amends 49 CFR 1.52 by deleting the authority of the SLSDC Administrator to carry out the Great Lakes Pilotage Act of 1960 and enter into, revise, or amend arrangements with Canada contained in paragraphs (d) and (e). The rule establishes the authority of the Commandant of the Coast Guard to carry out the functions vested in the Secretary by the Great Lakes Pilotage Act of 1960 by adding paragraphs (mmm) and (nnn) to 49 CFR 1.46.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. The Department also faces a short timeframe for complying with the court decision and wishes to avoid confusion about where this function will reside. For these reasons, the Secretary for good cause finds, under 5 U.S.C. 553(b)B and (d)(3), that notice and public procedure

on the rule are unnecessary and that this rule should be made effective in less than 30 days after publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies), Transportation Department.

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 2104(a); Pub. L. 101–552; 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2), 46 U.S.C. 2104(a).

§ 1.52 [Amended]

2. In § 1.52, paragraphs (d) and (e) are removed and reserved.

3. Section 1.46 is amended by adding new paragraphs (mmm) and (nnn) to read as follows:

§ 1.46 Delegations to the Commandant of the Coast Guard.

* * * * *

(mmm) Carry out the Great Lakes Pilotage Act of 1960, as amended, (46 U.S.C. 9301 *et seq.*).

(nnn) Under the 1977 Memorandum of Arrangements with Canada and the Great Lakes Pilotage Act of 1960, as amended in 1983 (46 U.S.C. 9305), enter into, revise, or amend arrangements with Canada.

Issued in Washington, DC this 26th day of February, 1998 under authority contained in 46 U.S.C. 2104(a).

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–5526 Filed 3–4–98; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register

Vol. 63, No. 43

Thursday, March 5, 1998

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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1998–8]

Definition of “Member” of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on proposed changes to its rules defining who qualifies as a “member” of a membership association.

DATES: The hearing will be held at 10:00 a.m. on Wednesday, April 29, 1998. Requests to testify must be received on or before April 6, 1998. Persons requesting to testify also must submit written comments by April 6, 1998, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written requests and comments should be sent to the Commission’s postal service address: Federal Election Commission, 999 E St. N.W., Washington, DC 20463. Faxed requests and comments should be sent to (202) 219–3923. Commenters submitting faxed material also should submit a printed copy to the Commission’s postal service address to ensure legibility. Requests to testify and comments also may be sent by electronic mail to “members@fec.gov”. Persons sending requests and comments by electronic mail should include their full name, electronic mail address and postal service address within the text of the request and comments. Commission hearings are held in the Commission’s ninth floor meeting room, 999 E St. N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street N.W.,

Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 22, 1997, the Commission published a Notice of Proposed Rulemaking (“NPRM”) seeking comments on proposed revisions to its rules defining who qualifies as a “member” of a membership association. 62 FR 66832. The NPRM announced that a hearing would be held on the proposed rules if the Commission received sufficient requests to testify.

To date the Commission has received several requests to testify at such a hearing. After considering these requests and the other comments received to date in response to the NPRM, the Commission believes a public hearing would be helpful in considering the issues raised in this rulemaking. The hearing will be held on 10:00 a.m. on Wednesday, April 29, 1998.

Dated: February 27, 1998

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–5612 Filed 3–4–98; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–06–AD]

Airworthiness Directives; Eurocopter France Model SA 330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model SA 330F, G, and J helicopters. This proposal would require verifying the torque on the nut that secures the two transformer-rectifiers’ common ground; and subsequently installing a modification to separate the grounds of the two transformer-rectifiers. This proposal is prompted by a report from the airworthiness authority of France about an unsafe condition resulting from the loss of the common ground of the two

transformer-rectifiers. The actions specified by the proposed AD are intended to prevent loss of the common ground of the two transformer-rectifiers, which could result in a complete electrical failure (essential and secondary), loss of electrically-powered instrumentation, and subsequent loss of control of the helicopter.

DATES: Comments must be received by April 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, phone (817) 222–5121, fax (817) 222–5961.

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 should 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 No. 97-SW-06-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, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-SW-06-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA 330F, G, and J helicopters. The DGAC advises that there have been reports of the loss of the common ground of the two transformer-rectifiers caused by loss of clamping torque on the nut that secures the common ground.

Eurocopter France has issued SA 330 Service Bulletin No. 01.53, Revision 1, dated March 13, 1997, which specifies checking the tightness of the transformer-rectifiers common ground nut, as well as installing a modification to separate the grounds. The DGAC classified this service bulletin as mandatory and issued AD No. 96-173-077(B)R1, dated April 23, 1996 (effective date May 3, 1997), in order to assure the continued airworthiness of these helicopters in France.

This helicopter 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.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France

Model SA 330F, G, and J helicopters of the same type design registered in the United States, which do not have Modification 0725580 or 0725681 installed, the proposed AD would require, within 10 hours time-in-service (TIS) after the effective date of this AD, ensuring that the nut, part number (P/N) 22541N080, that secures the common ground of the transformer-rectifiers is properly torqued; and, within 500 hours TIS after the effective date of this AD, installing Eurocopter France modification (MOD) No. 0725580 or 0725681 to separate the grounds of the two transformer-rectifiers. Installation of the applicable modification is considered a terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour to verify or accomplish the retorquing of the nut, 2 work hours per helicopter to accomplish the proposed modifications, and that the average labor rate is \$60 per work hour. Required parts for the modification would cost approximately \$70 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$220.

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 adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 96-SW-06-AD.

Applicability: Model SA 330F, G, and J helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the common ground of the two transformer-rectifiers, which could result in a complete electrical failure (essential and secondary), loss of electrically-powered instrumentation, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), ensure that the nut, part number (P/N) 22541N080, that secures the common ground of the transformer-rectifiers is properly torqued in accordance with the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 01.53R1, dated March 13, 1997.

(b) Within 500 hours TIS, install Eurocopter France Modification No. 0725580 or 0725681, as applicable, in accordance with the Accomplishment Instructions of Eurocopter France SA 330 Service Bulletin No. 01.53R1, dated March 13, 1997. Installation of Modification No. 0725580 or 0725681, as applicable, is considered a terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

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

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96-173-077(B)R1, dated April 23, 1996.

Issued in Fort Worth, Texas, on February 26, 1998.

Eric Bries,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 98-5734 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF COMMERCE

National Oceanic And Atmospheric Administration

15 CFR Part 960

Licensing of Private Remote-Sensing Space Systems

AGENCY: National Oceanic And Atmospheric Administration, Department of Commerce.

ACTION: Notice of public Hearing.

SUMMARY: On November 3, 1997, the National Oceanic And Atmospheric Administration (NOAA) proposed regulations revising its regime for the licensing of private remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* (1992 Act) (62 FR 59317). As part of this rulemaking, NOAA is sponsoring a public meeting to solicit comments from the public on the proposed rule.

DATES: The Public Meeting will be held on April 1, 1998, from 8 a.m. to 5 p.m., with a lunch break from 12 p.m. to 1 p.m.

ADDRESSES: The meeting will be held at the United States Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street & Constitution Avenue, NW, Washington, DC. Parties interested in participating in the public meeting, particularly those that would like to present oral and/or written testimony, should contact Charles

Wooldridge or Kira Alvarez (See **FOR FURTHER INFORMATION CONTACT**) by March 27, 1998. Comments received to date in response to the notice of proposed rulemaking (NPRM) may be viewed and/or copied by appointment from 9 a.m. to 3 p.m. at NOAA, National Environmental Satellite, Data and Information Service, 1315 East West Highway, Rm 3620 Silver Spring, Maryland.

FOR FURTHER INFORMATION CONTACT:

Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, (301) 713-2024 x 107 or Kira Alvarez, NOAA, Office of General Counsel, (301) 713-1329.

SUPPLEMENTARY INFORMATION:

On November 3, 1997, NOAA published a Notice of Proposed Rulemaking (62 FR 59317) proposing regulations revising its regime for the licensing of private Earth remote-sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* (1992 Act). These proposed regulations implement the licensing provisions of the 1992 Act and the Presidential Policy on remote sensing announced March 10, 1994. NOAA is sponsoring this public meeting to solicit comments on the proposed rule.

Parties are encouraged to bring a copy of their proposed oral testimony. Due to time constraints, NOAA may have to limit the length of oral statements on some of the topics. The proposed agenda is as follows:

8:00-8:30 Registration and Coffee
8:30-9:00 Welcome and Introduction
9:00-10:00 General
 § 960.1 Purpose
 § 960.2 Scope
 § 960.3 Definitions
10:15-12:00 Procedures
 § 960.4 Pre-application Consultation
 § 960.5 Filing Information
 § 960.6 Information to be included in an Application
 § 960.7 Confidentiality of Information
 § 960.8 Review Procedures for License Applications
 § 960.13 Amendment to Licenses
12:00-1:00 Lunch
1:00-4:00 National Security, Foreign Policy and Investment Agreements
 § 960.9 Conditions for Operations [subsections (b), (c), (g)]
 § 960.10 National Security, International Obligations, and Foreign Policy
 § 960.12 Notification of Foreign Agreements
 § 960.14 Investment Agreements
4:00-5:00 Other
 § 960.9 Conditions for Operations [subsections (a), (d) (e), (f), (h), (i)]

§ 960.11 Data Policy
§ 960.15 Certain Rights not Conferred
§ 960-16-20 Enforcement Procedures
5:00 Closing Remarks

Dated: March 2, 1998.

Robert S. Winokur,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 98-5744 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-12-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-7511; File No. S7-5-98]

RIN 3235-AG21

Rule 701—Exempt Offerings Pursuant to Compensatory Arrangements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The current dollar limitations on the amount of securities that may be offered and sold under the Commission's Rule 701 under Securities Act of 1933 which provides an exemption from registration for such securities pursuant to compensatory benefit arrangements may be too restrictive. Therefore, we propose to amend these limitations to permit companies greater access to the exemption if certain disclosure requirements are satisfied.

DATES: Public comments should be received on or before May 4, 1998.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. You can send comments electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7-5-98; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT:

Richard K. Wulff (202-942-2950), Office of Small Business, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Rule 701¹ under the Securities Act of 1933 ("Securities Act")² was adopted in 1988 to allow private companies to sell securities to their employees without the need to file a registration statement in the same manner as a public company. At that time we determined that it would be an unreasonable burden for these private companies, many of which are small businesses, to incur the expenses and disclosure obligations of public companies when their only public sales were to employees. This is especially true because these sales were for compensatory and incentive purposes, rather than capital-raising. To accommodate these companies, we used the maximum extent of our exemptive authority and exempted offers and sales of up to \$5 million per year.

Over the years, the Commission staff monitored the use of the rule. Until mid-1993, Form 701 was required to be filed with us whenever an offering under the rule was made. On the basis of that data and feedback from practitioners, the staff has concluded that the rule has been popular for both small businesses and larger private companies (such as mutual insurance companies, foreign issuers, and engineering firms), but that the \$5 million limit has been particularly restrictive in light of: the popularity of equity ownership by employees; inflation; and the growth of deferred compensation plans (which are eligible for the rule). In addition, the staff has concluded that the rule needs further simplification and clarification.

In October 1996, Congress enacted the National Securities Markets Improvement Act of 1996 ("NSMIA")³ which, for the first time, gave us the authority to provide exemptive relief beyond \$5 million for transactions such as these. The legislative history of NSMIA suggested specifically that the \$5 million ceiling on Rule 701 be lifted.⁴ As detailed below, we propose today to modify the ceilings and to further simplify and streamline the rule. To ensure continued investor protection along with the added flexibility, we propose to mandate that a company must give any purchaser specific types of disclosure.

We seek to increase the flexibility and utility of Rule 701 by issuing proposals that would:

- (1) Remove the artificial \$5 million ceiling and instead set the maximum amount of securities that may be sold in a year at the greatest of: \$1 million; 15% of the issuer's total assets; and 15% of the outstanding securities of that class
- (2) Not count offers for purposes of calculating the ceiling;
- (3) Require the issuer to disclose certain risk factors that may be associated with investment in securities pursuant to the plan or agreement, and deliver financial statements in accordance with Form 1-A of Regulation A⁵ to each person to whom securities are sold;
- (4) Amend Rule 701 to comport with current and more flexible interpretations; and
- (5) Simplify the Rule.

Together, these changes will add greater flexibility for companies to sell securities to their employees and, at the same time, will provide that essential information be delivered to employees in a timely manner.

II. Background

Rule 701 was adopted under section 3(b) of the Securities Act to provide an exemption from the registration requirements of that Act for offers and sales of securities pursuant to certain compensatory benefit plans or written agreements relating to compensation.⁶ The exemptive scope covers securities offered or sold pursuant to a plan or agreement established by a non-reporting ("private") company, its parents or majority-owned subsidiaries, to their employees, directors, partners, trustees, consultants and advisors.

Currently the rule provides that the amount of securities that may be subject to outstanding offers in reliance on Rule 701 plus the amount of securities offered or sold under the rule in the preceding 12 months may not exceed the greater of \$500,000, or an amount determined under one of two different formulas. One formula limits the amount to 15% of the issuer's total assets measured at the end of the issuer's last fiscal year. The other formula restricts the amount to no more than 15% of the outstanding securities of the class being offered. Regardless of the measurement method elected, the Rule restricts the aggregate offering price of securities subject to outstanding offers and sold in the preceding 12 months to no more than \$5 million.

A. Concerns With the Current Rule

In the decade since adoption of Rule 701, equity ownership by employees has grown exponentially. Not only have employees benefited generally as the value of their stock has appreciated, but companies' managements have widely encouraged equity participation as a retention and incentive device for employees. In addition, companies have sought to provide tax benefits and possible investment opportunities by offering many of their senior and middle management personnel participation in deferred compensation plans. To the extent these plans involve an offer of securities, they are eligible to use Rule 701. The growth of these plans, coupled with the impact of inflation, has caused the \$5 million annual limit to be impractical for many companies.

In addition to concerns with the ceiling, a myriad of interpretive questions have arisen under the current rule. While every new rule needs routine interpretive gloss from the Commission staff, Rule 701 has been the subject of an abundance of highly technical requests for clarification. Some of these issues include how to treat stock options, former employees, subsidiaries, consultants, advisors, and successor issuers, and when to integrate Rule 701 offerings with other exempt offerings under the federal securities laws. In summary, the rule needs to be both simplified and modernized.

B. National Securities Markets Improvement Act of 1996

In October 1996, NSMIA was signed into law. Title I of that statute relating to "Capital Markets" adds section 28 to the Securities Act providing us with general exemptive authority from any provision of the Securities Act.⁷ During the legislative process, both the House Committee on Commerce⁸ and the Senate Committee on Banking, Housing and Urban Affairs⁹ noted, in

⁷ The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation issued under this title, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 77bb. New section 2(b) of the Securities Act requires that when we engage in rulemaking and are required to consider the public interest as well as the protection of investors, we also must consider "whether the action will promote efficiency, competition, and capital formation." 15 U.S.C. 77b(b).

⁸ H.R. Rep. No. 104-622 (June 17, 1996) at 38.

⁹ S. Rep. No. 104-293 (June 26, 1996) at 15-16.

¹ 17 CFR 230.701.

² 15 U.S.C. 77a *et seq.*

³ Pub. L. 104-290, 110 Stat. 3416 (October 11, 1996).

⁴ Both Committee Reports specifically highlighted the current \$5 million limit contained in Rule 701 and seek prompt Commission action to raise that ceiling. H.R. Rep. No. 104-622 at 38; S. Rep. No. 104-293 at 16.

⁵ 17 CFR 230.251-263.

⁶ Release No. 33-6768 (April 14, 1988) [53 FR 12918].

considering this provision, that we should take steps to increase the ceilings in our existing exemptions promulgated under section 3(b) of the Securities Act. The legislative history of NSMIA reflects a specific Congressional concern about the current \$5 million aggregate offering price ceiling in Rule 701 having a negative impact for many issuers of securities in compensatory arrangements.

III. Proposed Amendments to Rule 701

A. Exemptive Limits

The current rule limits the dollar amount of securities *offered* to employees, regardless of how many securities are *sold* to employees. Calculations based on offers for this purpose are problematic, especially in determining how to treat options, warrants, rights and other exercisable or convertible securities (which represent offers to sell the underlying securities). In light of our new exemptive authority, we propose eliminating the restriction in the dollar amount of securities that may be *offered* pursuant to the rule since limiting the amount of offers is not necessary to assure that these transactions are not so large as to necessitate registration. Instead, a test that focuses on the amount of sales in each 12-month period should serve that purpose.

Changing the focus to sales means that issuers no longer will have to calculate and regularly monitor the amount of options, warrants, rights or other exercisable or convertible securities, but rather can focus solely on the amount of securities sold. This change also reduces the likelihood that companies will restrict eligibility or participation in a compensatory benefit plan solely to meet an offering limit. This proposal would make the exemption more usable to a greater number of companies, including those that maintain deferred compensation plans, but are not reporting companies under the Exchange Act and therefore do not qualify to utilize Form S-8.¹⁰ Commenters are asked to address whether removing offers from the calculation is appropriate or whether we should limit the amount of securities being offered as well as, or instead of, a limit on the amount of securities sold.

As part of eliminating the ceiling on the amount of offers of securities that may be made pursuant to the rule, we propose eliminating outstanding offers

from the calculation under the two formulas for determining the aggregate sales price or number of securities that may be sold in a 12-month period. By only measuring the amount of securities sold against the 15% of assets formula or the 15% of outstanding securities formula, some issuers will be given more flexibility and an increase in the limit on the amount of securities that they may sell. The proposal also will greatly simplify a highly technical calculation and the resulting need for incremental interpretation. We believe no investor protection concerns are presented by this added flexibility, but solicit comment as to whether there might be unanticipated abuses.

Rule 701 has become increasingly of limited utility to larger companies due to the \$5 million limitation. We believe that this would be the case even if we re-focus the limitation on sales. Moreover, the more appropriate focus is not the absolute dollar amount sold, but rather how the amount compares to the size of the company and its capital base. Therefore, we propose to eliminate the \$5 million aggregate offering price ceiling and rely on the three-part calculation of the amount of securities that may be sold in a 12-month period to set a more appropriate dollar limit. In addition, we propose to amend Rule 701 so that the issuer's most recent balance sheet date would be used for purposes of that calculation. This would make the measurement consistent and avoid confusion as to the date to be used when performing the calculation.¹¹ Comment is solicited as to whether a specific aggregate offering price ceiling, such as \$10 million, \$15 million or \$20 million, is preferable to no ceiling, and whether we should change the measurement periods as we propose. We also solicit comment as to whether non-reporting foreign issuers should be subject to an annual limit, such as \$10 million, because the application of the calculation to large foreign private companies could result in the sale of a large amount of securities to a large number of employees without such companies ever being required to register under either the Securities Act or the Exchange Act.¹²

¹¹ Under the current rule, assets are calculated as of the end of its last fiscal year. The rule is silent as to when outstanding securities are calculated.

¹² Domestic issuers that acquire more than 500 shareholders and have assets exceeding \$10 million must register under Section 12(g) of the Exchange Act. Foreign private issuers crossing those thresholds may instead rely on the exemption from Section 12(g) provided by Rule 12g3-2(b). 17 CFR 240.12g3-2(b). The rule exempts from Exchange Act registration securities of a foreign private issuer if the issuer furnishes to us annual and other reports

Comment is solicited as to whether Rule 12g3-2(b) should be amended so that foreign private issuers that either sell securities under Rule 701 or sell more than some annual threshold amount under the rule, such as \$10 million, would be ineligible for the Rule 12g3-2(b) exemption since that exemptive relief from reporting under Section 12(g) is predicated on the foreign issuer not taking any steps to enter the U.S. market voluntarily.

It is not only the \$5 million ceiling that has an obvious limiting effect; the \$500,000 level used in the calculation also has such an effect. We are particularly concerned that many small businesses are unnecessarily constrained by this limit. We therefore propose setting this level of the amount of securities sold in reliance on the rule during a 12-month period at \$1 million. The proposed \$1 million limit should ensure issuers adequate flexibility. Thus, regardless of total assets or outstanding securities, a private company could always sell up to \$1 million in securities to its employees in a 12-month period. We note that this level would be consistent with the \$1 million offering exemption in Rule 504 of Regulation D.¹³ (Unlike Rule 504, however, securities sold under Rule 701 are "restricted" securities and cannot be freely resold.) We request comment on whether the alternative level allowed under Rule 701 should be limited to \$1 million, as proposed, or alternatively whether the amount should be retained at \$500,000 or raised to \$750,000, \$1.5 million or \$2 million.

We propose that the changes in the Rule 701 ceilings would apply to plans and agreements currently covered by the rule, including those with consultants and advisors. We do not propose to change the status of securities sold under the rule, so that the securities would continue to be "restricted" and subject to resale restrictions. We do not anticipate that the same types of abuses that are associated with Form S-8, with issuers selling securities to consultants and advisors, who are in effect underwriters in reselling the securities to the public, would arise because the securities would be restricted. However, we solicit comment as to whether Rule 701 should retain consultants and advisors as eligible participants pursuant to the rule, whether the current offer and sale ceilings should be retained for consultants and advisors, and whether the definition of consultant

and other materials that are publicly available in its home market.

¹³ 17 CFR 230.504.

¹⁰ 17 CFR 239.16b. Form S-8 is a simplified form for registering securities for sale to employees but is limited to public companies which file reports pursuant to the reporting requirements of the Exchange Act.

and advisor should be narrowed to the definition used with Form S-8.

B. Disclosure to Persons Covered by Rule 701

Similar to some private placements, there is no requirement in Rule 701 to deliver a specific disclosure document to buyers other than a copy of the relevant compensation plan or agreement. However, because these transactions are subject to the antifraud provisions of the federal securities laws,¹⁴ we understand that many companies prepare an offering document to provide information to employee investors.¹⁵ While we are not aware of any widespread abuses, we are concerned that the increased flexibility added by today's proposals could lead to a series of larger transactions and consequently a broader impact on U.S. investors. While it may be burdensome to impose specific disclosure requirements on small transactions by small businesses, the cost-benefit balance may shift because the amended rule would facilitate larger transactions to potentially unsophisticated employees.

We propose that sales of securities under Rule 701 would require that the employees and other persons covered by the rule be supplied with recent financial and other information a reasonable period of time prior to the sale of such securities. We propose that this disclosure include the risk factors associated with investment in the securities pursuant to the plan or agreement and the financial statements required in an offering statement pursuant to Form 1-A of Regulation A under the Securities Act.¹⁶ Regulation A allows for simpler unaudited financial statements. We also propose that the financial statements be as of a date no more than 180 days prior to the sale of such securities.¹⁷

¹⁴ See 15 U.S.C. 77q(a) and 15 U.S.C. 78j(b).

¹⁵ Issuers are reminded of the preliminary note to Rule 701 which reaffirms the obligations of issuers and persons acting on their behalf to provide disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of the federal securities laws.

¹⁶ Form 1-A [17 CFR 239.90] under Regulation A sets forth the financial and non-financial information required in an offering statement.

¹⁷ Proposed Rule 701(g) would provide that the disclosure delivery obligation would apply a reasonable period of time prior to the date of sale, but not necessarily at the time offers are first made. For example, for stock options, disclosure would be required a reasonable period of time prior to the date of exercise, rather than at the time of grant or when the option becomes exercisable, and deferred compensation plans would have a disclosure delivery obligation a reasonable period of time prior to the date the employee makes the irrevocable election to defer.

We do not believe that this limited disclosure would be unduly burdensome to private companies. In proposing such requirements, we note that issuers with deferred compensation plans would be required to disclose the material risks that may be associated with such plans, such as the risks arising from the unsecured nature of the companies' obligations.

Commenters are asked to address whether any specific disclosure requirements should be adopted. In this regard, commenters may want to address any differences between a disclosure regime for compensatory purposes and one for capital-raising purposes. Comment also solicited comment as to whether additional disclosure, such as the other requirements of Form 1-A, should be required. Commenters should address whether these disclosure requirements should apply to all Rule 701 sales, or only to those sales that exceed a specified minimum amount per 12-month period, such as \$1 million. That approach would harmonize Rule 701 with Rule 504.

C. Other Disclosure Approaches

We considered information requirements other than Regulation A, such as those reflected in Rule 502 of Regulation D.¹⁸ We decided however, not to use the Rule 502 requirements because, among other things, they require audited financial statements and more non-financial information. They would therefore be more burdensome on these companies, many of which are small businesses. At the same time, it does not appear that this level of information should be necessary for all persons participating in compensatory benefit plans. We also considered requiring the information requirements of Form SB-1,¹⁹ which allows small business issuers to offer and sell up to \$10 million worth of securities in any 12-month period under a Regulation-A-type format, and Form SB-2²⁰ which uses the simplified Regulation S-B²¹ rules. However, both of those forms also require audited financial statements as well as more non-financial information than what we propose. We request comment as to whether other informational requirements should be utilized rather than the proposed risk factor and financial, such as those in Rule 502, Form SB-1 or Form SB-2.

As an alternative, should the level of disclosure to employees depend on their

level of sophistication? For example, executive officers (as defined by Rule 3b-7 under the Exchange Act), directors and general partners are very knowledgeable about the company/partnership and may not benefit significantly from a mandated disclosure document. "Officers" as defined by Rule 3b-2 can be presumed to be somewhat knowledgeable about the company but may have less access to company information than executive officers. For this group, the proposed financial statements and risk factor disclosure may be appropriate. For more junior employees, former employees, consultants, advisors, disclosure substantially similar to Form 1-A may be appropriate.²² Would this approach be practical and better protect those employees who may not have the requisite knowledge about the company?

D. Plain-English Technical and Clarifying Revisions

We also propose to recast Rule 701 by making various non-substantive technical and clarifying revisions in plain English to make it more concise, readable and understandable. In this regard, we propose changes to make it clear that an issuer may combine several different exemptions under the Securities Act (such as Rule 701 and Rule 506²³), and that Rule 701 is available to plans and agreements encompassing consultants and advisors that are natural persons without regard to exclusivity of representation of the issuer, as long as they render *bona fide* services that are not in connection with capital-raising. Comment is solicited on to whether there should be other changes to make the rule more understandable. Comment also is solicited as to whether the proposed modifications would be helpful.

E. Other Interpretive Revisions

We would amend the rule in several ways to address a variety of questions that have arisen since its adoption.²⁴ This section describes each of these proposed changes.

1. Treatment of Affiliates

In the past few years, it has become increasingly commonplace to sell stock of a private subsidiary to employees of

²² If this regime were adopted, the private nature of these companies may justify less disclosure about executive compensation than you would expect from a public company.

²³ 17 CFR 230.506.

²⁴ Not all staff interpretations need specific changes in Rule 701. For example, although the ability to make offerings to employees through a trust is not specifically stated in the rule, the staff has interpreted the rule to allow for such offerings.

¹⁸ 17 CFR 230.502.

¹⁹ 17 CFR 239.9.

²⁰ 17 CFR 239.10.

²¹ 17 CFR 228.10 *et seq.*

a parent or affiliate subsidiary. Given that these transactions appear to retain the envisioned compensatory aspect, the proposed amendments would expand coverage to sales to employees of majority-owned subsidiaries of the issuer's parent (i.e., brother-sister subsidiaries).

We also understand that some subsidiaries, particularly those intending to use the rule for deferred compensation arrangements, may not be able to utilize to great effect the two formulas in the calculation of the maximum sales per 12-month period. They may not have sufficient assets or independent business operations to make the "15% of assets" formula meaningful or enough securities to make the "15% of outstanding securities" formula meaningful. Therefore, we propose to provide that if a parent (whether or not a reporting company) of a wholly-owned subsidiary fully and unconditionally guarantees the obligations of the subsidiary, and if such guarantee does not exceed 15% of the parent's assets, the subsidiary can use the 15% of assets formula with respect to its parent. In that situation, the parent would deliver its financial statements to satisfy the disclosure obligations.²⁵ Comment is requested as to whether employees of related companies would be sufficiently informed about their affiliates such that the information provided would suffice to protect them?

2. Treatment of Former Employees, Advisors and Consultants

The proposed amendments also would clarify an interpretive question relating to former employees by specifying that sales may be made to former employees under the rule. A condition to this treatment would be that at the time the offer of those securities was originally made the employee must have been a current employee. Comment is solicited as to whether companies similarly should be allowed to use the rule to sell securities to former directors, consultants and advisors.

Historically, the staff has interpreted broadly the definition of "employee" and "consultant" for purposes of Rule 701.²⁶ This interpretation does not

appear to have resulted in any significant abuses. However, comment is solicited as to whether consultants and advisors should be restricted from using Rule 701 if they are directly or indirectly promoting the company's securities. Comment also is solicited as to whether sales to consultants and advisors who sell the company's products or services should be limited to those who derive a certain minimum percentage of their income from sales on behalf of the issuer, such as 20 percent.

3. Valuation of Services

The proposed amendments also would simplify the determination of value of consultant services for purposes of calculating aggregate sales limit. Rather than retaining different rules for employees and consultants, such as currently not counting employee services while counting consultants' and advisors' services, proposed Rule 701 would treat employee services the same as consultant/advisor services so that in both cases they would count for determining aggregate sales.

4. Transfers to Family Members

As senior and mid-management personnel receive an increasing proportion of their compensation in the form of securities, these investments assume greater significance in the context of estate planning transactions and other intra-family transfers, such as property settlements in connection with divorce. Given the common economic interest of family members evidenced by estate planning transactions and the non-capital raising nature of these transactions, we believe that Rule 701 should be available for sales to family donees of such securities and transferees who receive these securities in divorce proceedings. Therefore, we propose to amend Rule 701 so that it is available for immediate family members who have acquired such securities through a gift or a domestic relations order. For this purpose "immediate

shops considered consultants and advisors; *Herff Jones, Inc.* (November 13, 1990), *Microship Technology, Inc.* (November 4, 1992) and *Optika Imaging Systems, Inc.* (October 1, 1996), independent sales representatives for the distribution of the issuer's products considered consultants and advisors within the meaning of Rule 701; *US Web Corporation* (November 7, 1996), non-employee franchisees considered consultants and advisors within the meaning of Rule 701; and *The Morgan Health Group, Inc.* (December 18, 1995), *Princeton Medical Management Resources, Inc.* (September 12, 1997), *PHM Management, Inc.* (September 12, 1997) and *Talbert Medical Corporation* (September 12, 1997), participating physicians who contract to provide medical services pursuant to various managed care arrangements considered consultants and advisors within the meaning of Rule 701.

family" would be defined as in Form S-8 to include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, siblings, aunt, uncle, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, trusts for the exclusive benefit of these persons, and other entities owned solely by these persons. This proposal would be consistent with the treatment of transferable securities pursuant to the pending proposals for Form S-8.²⁷

5. Form 701

Should Form 701, a notice filing required to be filed when Rule 701 was first adopted, be reinstituted completely or substantially? How would this type of information be useful to investors? Should the form, if reinstituted, be required to be filed electronically on EDGAR? Should we require that copies of any consultant or advisor agreements be filed along with or described in Form 701? Would public disclosure help ensure that only *bona fide* consultants and advisors purchase securities from the company under the Rule?

IV. General Request for Comment

Any interested person wishing to submit written comments on the proposed rule amendments or suggest additional changes or comments on other matters that might have an impact on the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. We request comment as to the impact of the proposals from the point of view of the public, as well as the entities required to make available information to persons covered by Rule 701. We will consider comments on this inquiry in complying with our responsibilities under section 19(a) of the Securities Act.²⁸ We further request comment on any competitive burdens that may result from adoption of the proposals. We will consider comments on this inquiry in complying with our responsibilities under section 23(a) of the Exchange Act.²⁹ Comment letters should refer to File No. S7-5-98. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

²⁷ See Release No. 33-7506.

²⁸ 15 U.S.C. 77s(a).

²⁹ 15 U.S.C. 78w(a).

²⁵ Rule 701 would provide that, in limited situations, the guarantee also would be exempt from the registration requirements of the Securities Act even though the guarantee may be issued by a reporting company.

²⁶ See *Exceptional Producers Holding Company* (August 17, 1989), agents who serve as independent sales representatives for an affiliate of an insurance company are considered "consultants and advisors" under Rule 701; *Golfpro, Inc.* (October 3, 1989), golf pros who serve as independent agents for the distribution of golf products through their pro

V. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603 we have prepared an initial Regulatory Flexibility Analysis ("IRFA") regarding the proposed amendments.

The analysis notes that we are proposing the amendments to Rule 701 as a result of:

- (i) Concerns expressed to us by practitioners;
- (ii) Feedback that the current dollar limitations unduly constrain the ability of many eligible issuers to utilize Rule 701; and
- (iii) The specific Congressional mandate expressed in the legislative history of NSMIA. The purpose of the revisions is to remove unnecessary constraints. We have determined that the proposed amendments will not impair investor protection.

As the IRFA describes, we are aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of "small business" under Rule 157 of the Securities Act.³⁰ The proposals do not impose any new recordkeeping requirements or require reporting of additional information. Thus, we believe that the proposals will not increase reporting, recordkeeping or compliance burdens, and may reduce those burdens for smaller businesses.

As discussed more fully in the IRFA, several possible significant alternatives to the proposals were considered. These included establishing different compliance or reporting requirements for small entities, exempting them from all or part of the proposed requirements, or requiring them to provide more disclosure, such as more Form 1-A items, more information pursuant to Rule 502 of Regulation D or the full disclosure requirements of Form SB-1 or SB-2. The IRFA also indicates that no current federal rules duplicate, overlap, or conflict with the proposed rule amendments.

We encourage written comments on any aspect of the IRFA. In particular, we seek comment on:

- (i) The number of small entities that would be affected by the proposed rule amendments; and
- (ii) The determination that the proposed rule amendments would not increase (and in some cases may reduce) reporting, recordkeeping and other compliance requirements for small entities. If you believe the proposals will significantly impact a substantial number of small entities, please describe the nature of the impact and

estimate the extent of the impact. For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),³¹ we are also requesting data regarding the potential impact of the proposed amendments on the economy on an annual basis. Your comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, we request the views and other supporting information of the public. We believe that the proposed rule amendments, if adopted, would result in significant cost savings for issuers without compromising investor protection. We believe that the expanded use of Rule 701 may provide significant savings to small issuers and considerable benefits to compensated persons who in the past may have been deprived of the opportunity to receive securities as an incentive or in payment for their services. We note that during the period from mid-1988 through mid-1993, when persons relying upon the exemption were required to file a report with us concerning reliance on the exemption, that 1,294 filings were made covering approximately \$2.28 billion worth of securities.

We request your comment on whether the proposed rule amendments would be a "major rule" for purposes of the SBREFA. We have concluded preliminarily that the proposed rule amendments would not result in a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation or small business. We believe that those persons who will rely on the rule will not have significantly increased costs for providing the proposed information since many of these persons either provide to or have such information readily available for their employees and other persons covered by the rule now. We request comments on whether the proposed rule amendments are likely to have an

annual effect on the economy of \$100 million or more. Your comments should provide empirical data to support your views.

VII. Paperwork Reduction Act

Our staff has consulted with the Office of Management and Budget ("OMB") and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 ("the Act").³² The title to the affected information collection is: "Rule 701." The specific information that must be included is explained in the rule itself, and relates to the issuer and the risk factors that may be associated with investment in securities under the plan or agreement. The information is needed by prospective purchasers to make informed investment decisions.

The proposed amendments, if adopted, would increase the flexibility and utility of Rule 701 for private companies using securities to compensate their employees.

The collection of information in Rule 701 will be required in order for companies to use the rule for sales of their securities to their employees and other persons covered by the rule. The likely respondents to the rule are those companies that have heretofore utilized the rule, but were being constrained by its limits and those private companies who could not utilize the two formulas. While we cannot estimate the number of respondents that may use expanded Rule 701, there were 1,294 Form 701 filings during the period from mid-1988 through mid-1993, when persons relying upon the exemption were required to file a report with us concerning reliance on the exemption. We expect that approximately 300 companies each year will be relying on the exemption. If expanded Rule 701 is adopted, the estimated burden for responding to the collection of information in Rule 701 would not increase for most companies due to the current disclosure requirements in Rule 701, but may increase slightly for other companies who may not be currently providing risk factor information and financial statements to employee purchasers. We estimate that the burden hours per respondent each year will be two. Therefore, we estimate an aggregate of 600 burden hours per year.

The information collection requirements imposed by Rule 701 are mandatory to the extent that a company elects to utilize the Rule 701 exemption. The information will be disclosed to third parties or the public. We may not require a response to the collection of

³¹ Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified in scattered sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

³² 44 U.S.C. 3501 *et seq.*

³⁰ 17 CFR 230.157.

information if the rule does not display a current valid OMB control number.

In accordance with the Act,³³ we solicit comment on the following: whether the proposed changes in the collection of information is necessary; on the accuracy of our estimate of the burden of the proposed changes to the collection of information; on the quality, utility and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond; including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirement should direct them to: Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7-5-98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis, Text of Proposals and Authority

The amendments to our rules and forms are being proposed pursuant to sections 2, 3(b), 6, 7, 8, 10, 19(a) and 28 of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 78ss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section 230.701 is revised to read as follows:

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

Preliminary Notes

1. This section relates to transactions exempted from the registration requirements of section 5 of the Act (15 U.S.C. 77e). These transactions are not exempt from the antifraud, civil liability, or other provisions of the federal securities laws. Issuers have an obligation to provide investors with any additional material information as may be necessary to make the information required under this regulation, in light of the circumstances under which it is furnished, not misleading.

2. In addition to complying with this section, the issuer also must comply with any applicable state law relating to the offer and sale of securities.

3. An issuer that attempts to comply with this section, but fails to do so, may claim any other exemption that is available.

4. This section is available only to the issuer of the securities. Affiliates of the issuer may not use this section to offer or sell securities. This section also does not cover resales of securities by any person. This section provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

5. The purpose of this section is to provide an exemption from the registration requirements of the Act for securities issued in compensatory circumstances. This section is not available for plans or schemes to circumvent this purpose, such as to raise capital. This section also is not available to exempt any transaction that is in technical compliance with this section but is part of a plan or scheme to evade the registration provisions of the Act. In any of these cases, registration under the Act is required unless any other exemption is available.

(a) Exemption. Offers and sales made in compliance with all of the conditions of this section are exempt from section 5 of the Act (15 U.S.C. 77e).

(b) Issuers eligible to use the rule—(1) General. This section is available to any issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. 78m or 78o(d)) and is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(2) Issuers that become subject to reporting. If an issuer becomes subject

to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) after it has made offers complying with this section, it may nevertheless rely on this section to sell the securities previously offered to the persons to whom those offers were made.

(3) Guarantees by reporting companies. An issuer subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78o(d)) may rely on this section if it is merely guaranteeing the repayment of a subsidiary's securities that are sold under this rule.

(c) Transactions exempted by the rule. This section exempts offers and sales of securities (including plan interests and guarantees pursuant to § 230.701(d)(1)(ii)) under a written compensatory benefit plan (or written compensation contract) established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent, for the participation of their employees, former employees, directors, general partners, trustees (where the issuer is a business trust), or consultants and advisors, and their immediate family who acquire such securities from such persons through gifts or domestic relations orders. In the case of a former employee, this section exempts offers and sales only if the former employee was employed by the issuer at the time the securities were offered to the employee.

(1) Special requirements for consultants and advisors. This section is only available if bona fide services are provided by the consultants or advisors that are natural persons and the services are not provided in connection with the offer and sale of securities in a capital-raising transaction.

(2) Definition of “Compensatory benefit plan”. For purposes of this section, a *compensatory benefit plan* is any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, deferred compensation, pension or similar plan.

(d) Amounts that may be sold—(1) Offers. Any amount may be offered in reliance on this section.

(2) Sales. The aggregate sales price or amount of securities sold in reliance on this section in any consecutive 12-month period, shall not exceed the *greatest* of the following:

(i) \$1,000,000;

(ii) 15% of the total assets of the issuer (or of the issuer's parent if the issuer is a wholly-owned subsidiary and the securities represent obligations that the parent fully and unconditionally

³³ 44 U.S.C. 3506(c)(2)(B).

guarantees), measured at the issuer's most recent balance sheet date; or

(iii) 15% of the outstanding amount of the class of securities being offered and sold in reliance on this section, measured at the issuer's most recent balance sheet date.

(3) Rules for calculating prices and amounts—(i) Aggregate sales price. The term aggregate sales price means the sum of all cash, property, notes, cancellation of debt or other consideration received or to be received by the issuer for the sale of the securities. Non-cash consideration must be valued by reference to *bona fide* sales of that consideration made within a reasonable time or, in the absence of such sales, on the fair value as determined by an accepted standard. The value of services exchanged for securities issued to employees, as well as to consultants and advisors, should be included in the aggregate sales price.

(ii) Derivative securities. In calculating outstanding securities for purposes of paragraph (d)(2)(iii) of this section, treat the securities underlying all currently exercisable or convertible options, warrants, rights or other securities, other than those issued under this section, as outstanding. In calculating the amount of securities sold for purposes of paragraph (d)(1) of this section, count the amount of securities that would be acquired upon exercise or conversion in connection with sales of options, warrants, rights or other exercisable or convertible securities.

(iii) Other exemptions. Amounts of securities sold in reliance on this section do not affect amounts that may be sold in reliance on other exemptions, and amounts of securities sold in reliance on other exemptions do not affect amounts that may be sold in reliance on this section.

(e) Disclosure that must be provided—The issuer must deliver the following disclosure to investors a reasonable period of time prior to the date of sale:

(1) A copy of the compensatory benefit plan or the contract, as applicable;

(2) If the plan is subject to the Employee Retirement

Income Security Act of 1974 ("ERISA") (29 U.S.C. 1104–1107), a copy of the summary plan description required by ERISA;

(3) If the plan is not subject to ERISA, a summary of the material terms of the plan;

(4) Information about the risks associated with investment in the securities sold pursuant to the compensatory benefit plan or compensation contract; and

(5) Financial statements required to be furnished by Part F/S of Form 1–A (Regulation A Offering Statement) (§ 239.90 of this chapter). Such financial statements must be as of a date no more than 180 days prior to the sale of securities in reliance on this section. If the issuer is relying on § 230.701(d)(2)(ii) to use its parent's total assets to determine the amount of securities that may be sold, the parent's financial statements must be delivered. If the parent is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)), the financial statements of the parent required by Rule 10–01 of Regulation S–X (§ 210.10–01 of this chapter) and Item 310 of Regulation S–B (§ 228.310 of this chapter), as applicable, must be delivered.

(6) If the sale involves a stock option or other exercisable or convertible security, the issuer must deliver disclosure a reasonable period of time prior to the date of exercise or conversion. For deferred compensation or similar plans, the issuer must deliver disclosure to investors a reasonable period of time prior to the date the irrevocable election to defer is made.

(f) No integration with other offerings. Offers and sales exempt under this section are deemed to be a part of a single, discrete offering and are not subject to integration with any other offers or sales, whether registered under the Act or otherwise exempt from the registration requirements of the Act.

(g) Resale limitations—(1) Securities issued pursuant to this section are deemed to be "restricted securities" as defined in § 230.144.

(2) Resales of securities issued pursuant to this section must be in compliance with the registration requirements of the Act or an exemption therefrom.

(3) Ninety days after the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)), securities issued pursuant to this section may be resold by persons who are not affiliates (as defined in § 230.144) in reliance on § 230.144 without compliance with paragraphs (c), (d), (e) and (h) of § 230.144, and by affiliates without compliance with paragraph (d) of § 230.144.

By the Commission.

Dated: February 27, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–5728 Filed 3–4–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 97N–0135]

Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify over-the-counter (OTC) test sample collection systems for drugs of abuse testing from class III (premarket approval) into class I (general controls), and to exempt them from the premarket notification (510(k)) and current good manufacturing practice (CGMP) requirements. FDA is also proposing to designate OTC test sample collection systems for drugs of abuse testing as restricted devices under the Federal Food, Drug, and Cosmetic Act (the act), and to establish restrictions intended to assure consumers that: The underlying laboratory test(s) are accurate and reliable; the laboratory performing the test(s) has adequate expertise and competency; and the product has adequate labeling and methods of communicating test results to consumers. Finally, FDA is proposing a conforming amendment to the existing classification regulation for specimen transport and storage containers, to clarify that it does not apply to specimen transport and storage containers that are part of an OTC test sample collection system for the purpose of testing for the presence of drugs of abuse or their metabolites in a laboratory.

DATES: Written comments on the proposed rule by July 6, 1998. FDA proposes that any final regulation based on this proposal become effective 1 year after its date of publication in the **Federal Register**.

Written comments on the information collection requirements should be submitted by April 6, 1998.

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

Submit written comments on the information collection requirements to the Office of Information and Regulatory

Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

Steven Gutman, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-3084.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, there has been increasing interest in extending testing for drugs of abuse to the home setting and test sample collection systems for such purposes have been developed and marketed. Test sample collection systems that have been developed for use in the home setting have generally consisted of: A collection cup or other container for collecting a specimen; directions for use; packaging for storage or mailing; access to a laboratory testing service; and access to test results. The consumer collects a specimen (such as urine) from the body and mails it to a laboratory, which performs the actual testing for the drugs or their metabolites. The specimen usually is identified by a code number, which maintains confidentiality and protects against mix-ups. The test results are communicated back to the consumer. Because these test systems for OTC use were not in commercial distribution prior to enactment of the 1976 Medical Device Amendments, they are new devices that are automatically classified by statute into class III. FDA's proposal would reclassify these test sample collection systems into class I and subject them to less stringent controls.

A specimen transport and storage container is one component of an OTC drugs of abuse test sample collection system. Under 21 CFR 864.3250, a specimen transport and storage container is identified as a device intended to contain biological specimens, body waste, or body exudate during storage and transport in order that the matter contained therein can be destroyed or used effectively for diagnostic examination. The container is classified as class I under the regulation and, if intended for professional use, it has been exempt from the premarket notification requirements. If the container is intended for OTC use, i.e., a specimen from the body is collected outside of a medical setting (e.g., at home) and mailed to a laboratory for testing, the agency has historically required the submission of a premarket notification

(510(k)) or premarket approval application (PMA). FDA's proposal would amend this identification to recognize that a specimen collection container that is intended to be part of an OTC test sample collection system for drugs of abuse should be regulated as part of that system and subject to less stringent controls.

The appropriate level of regulation for OTC test sample collection systems for drugs of abuse testing has been the subject of considerable public discussion. Two public hearings on the issue have been held by the House Subcommittee on Oversight and Investigations—the first on September 26, 1996, and the second on February 6, 1997. Critics at the September hearing argued that the agency's categorization of these test systems as class III medical devices is unnecessarily stringent and that there are benefits to making these products available to parents. Another criticism raised at that time was the inconsistency between the agency's regulation of drugs of abuse test systems for use in the home setting and its exercise of enforcement discretion with respect to the same or similar products used in the workplace, insurance, sports, and law enforcement settings.

After considering these concerns, the agency committed to reevaluate its policy to determine the appropriate level of regulation for home drugs of abuse test sample collection systems. While the policy was being reevaluated, FDA established an interim policy on the availability of home test sample collection systems sold directly to parents for drugs of abuse testing. The interim policy, dated October 3, 1996, set forth FDA's intention to exercise its enforcement discretion and not take regulatory action against persons distributing home drugs of abuse test sample collection systems so long as three criteria were met: (1) The laboratory conducting the testing used an FDA-cleared test; (2) the testing laboratory met standards set by the Substance Abuse and Mental Health Services Administration (SAMHSA) or equivalent standards for performing such testing; and (3) the product had accurate labeling (Ref. 1).

In reevaluating the policy on home drugs of abuse test sample collection systems, the agency reached a number of conclusions, as described in testimony before the House Subcommittee on Oversight and Investigations on February 6, 1997 (Ref. 2).

The first conclusion was that these test sample collection systems must be accurate and reliable. Because there currently are more than 200 FDA-

cleared urine tests for detecting drugs of abuse and hundreds of laboratories believed to be capable of conducting this testing, the agency concluded that accurate and reliable testing is readily available.

The second conclusion was that there is a public benefit in having drugs of abuse test sample collection systems available for use in the home setting. Thus, the agency should reduce the difficulty of getting these products onto the market for such use. FDA believes it can accomplish this and still ensure that consumers get accurate and reliable answers from these test sample collection systems.

The third conclusion related to the degree of consistency needed between FDA's regulation of drugs of abuse test sample collection systems for use in the home setting and the regulation of such systems used in the workplace, insurance, and sports settings. Because the same concerns about getting an accurate and reliable answer apply in all of these settings, FDA concluded that the same rules should govern drugs of abuse test sample collection systems used in all of these nonprofessional settings.

Fourth, FDA concluded that the agency should continue to exercise its enforcement discretion with respect to testing for drugs of abuse in the law enforcement setting because there are other protections to ensure sample integrity and test accuracy that are not available in the home, workplace, insurance, and sports settings. The additional protections include the use of rules of evidence in judicial proceedings and the representation of the accused (i.e., the person being tested) through the judicial process.

Finally, FDA concluded that it is important to give the marketplace time to adjust to any changes in regulatory approach. Therefore, FDA would propose to provide an adequate transition period for implementing its proposed policy.

FDA's testimony also noted that, on January 21, 1997, the agency approved the first PMA for an OTC test sample collection system for drugs of abuse. The product is marketed as Dr. Brown's Home Drug Testing System, made by Personal Health and Hygiene Inc. (Ref. 3). The product met all the criteria in FDA's interim policy of October 3, 1996.

FDA recognizes the importance of empowering parents to address the abuse of drugs by their children through access to products that can detect drug use. FDA also recognizes that it has a statutory obligation to assure parents of the accuracy and reliability of such products for home use. In light of these

conclusions, FDA is proposing a new approach for the regulation of OTC test sample collection systems for drugs of abuse.

II. Proposal for Regulating OTC Test Sample Collection Systems for Drugs of Abuse

Based on FDA's knowledge of these products, the accuracy and reliability of the tests currently available, and the low potential risk to health, FDA believes that use of sample collection systems for drugs of abuse testing outside of a medical setting does not raise new issues that warrant premarket approval. Accordingly, FDA is proposing to reclassify OTC test sample collection systems for drugs of abuse testing from class III into class I, the least restrictive of the three regulatory classes, and is proposing to exempt such systems from the requirements of premarket review subject to restrictions established in accordance with section 520(e) of the act (21 U.S.C. 360j(e)). Under the proposed rule, three restrictions would be established, as follows.

First, the laboratory test(s) incorporated in these systems would be required to have been cleared, approved, or otherwise recognized by FDA as accurate and reliable for laboratory use. This would ensure that drugs of abuse test sample collection systems that are sold to consumers are accurate and reliable. Under the proposed rule, FDA would be able to utilize the expertise of another Federal agency (e.g., SAMHSA) when that agency reaches a formal determination regarding the suitability of a particular laboratory test or method for identifying the presence of drugs of abuse or their metabolites.

Because FDA has already cleared more than 200 laboratory urine tests to detect drugs of abuse, companies would have a relatively easy route to marketing OTC drugs of abuse urine test sample collection systems. Once this new policy is implemented, however, companies seeking to market a system that uses any test that has not been recognized by FDA (e.g., tests using hair as the test specimen) would need to establish the validity of the test with FDA prior to marketing. FDA's proposed transition period would allow ample time for companies to make this showing.

The second proposed criterion for ensuring that drugs of abuse test sample collection systems are accurate and reliable for use in a nonprofessional setting is that the laboratory performing the underlying test(s) must be able to reliably perform the necessary screening and confirmatory tests. This would

ensure that testing is performed by individuals with appropriate levels of training, knowledge, and proficiency; that confirmatory testing is systematically performed on presumptively positive samples prior to issuance of the test results; and that assistance with interpretation of the test results and followup counseling is available to the consumer by a trained health professional, if requested. FDA plans to rely on existing laboratory certification programs to identify those individual laboratories that meet this criterion.

FDA believes that this criterion can also be readily met. There are 70 laboratories certified by SAMHSA that would clearly meet these requirements (Ref. 4). In addition, FDA believes that high-complexity laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) that are certified in the area of toxicology by the Health Care Financing Administration, the College of American Pathologists, or other organizations with deemed status in the area of toxicology accreditation, would also have the appropriate types of controls (Ref. 5). FDA solicits comment on whether these or other existing certification programs would be adequate to establish competency of testing laboratories for these purposes. FDA also solicits comments on whether mandatory confirmatory testing of presumptive positive samples is an appropriate restriction on such OTC test sample collection systems.

The third proposed criterion to ensure that drugs of abuse test sample collection systems are accurate and reliable for use in a nonprofessional setting is that samples be adequately identified to avoid mix-ups and the test sample collection system be accurately labeled so that consumers can readily use it. This would ensure that the test sample collection system is accompanied by adequate directions that enable the lay person to: (a) Understand the purpose of the test—i.e., what drugs are and are not to be identified in the specimen; (b) understand the detection period; and (c) properly collect the test specimen and mail it to the laboratory. The labeling also would provide information regarding interpretation of test results (e.g., false positives and false negatives) and how the consumer can contact a qualified health professional for assistance in that interpretation, and obtain professional counseling, if needed.

To help manufacturers meet this criterion, FDA plans to develop guidance on issues such as how to label the test sample collection system so that

the consumer can understand the test results and how to ensure that the specimen and the container remain properly identified and intact during mailing to the laboratory. The guidance also would address methods for providing consumers with adequate professional assistance in interpreting/understanding test results and providing counseling referrals, if needed. FDA believes this third criterion would also be relatively easy to meet.

FDA believes that these three criteria are needed to ensure that drugs of abuse test sample collection systems are accurate and reliable for use in a nonprofessional setting—e.g., in the home, insurance, sports, or workplace setting. Without these restrictions, FDA believes that there cannot otherwise be reasonable assurance of the safety and effectiveness of OTC test sample collection systems for drugs of abuse testing. FDA is interested in comments from other agencies concerned with drug testing about the impact of the agency's proposal.

If the above criteria are met, FDA proposes to allow companies to market OTC drugs of abuse test sample collection systems without first obtaining premarket approval or clearance, i.e., if the criteria are met, manufacturers or distributors of the product could go directly to market. FDA believes that these three criteria are clear and that manufacturers or distributors of OTC drugs of abuse test sample collection systems can readily determine for themselves if those criteria are met. Should a manufacturer or distributor market such a product without meeting these restrictions, the product would be adulterated under section 502(q) of the act (21 U.S.C. 352) and subject to enforcement action. FDA solicits comments on whether 510(k)'s for these devices should be required, rather than the 510(k) exempt status that is being proposed.

Under FDA's proposal, FDA would regulate drugs of abuse test sample collection systems used in the insurance, workplace, and sports settings in a consistent manner with those systems that are used in the home, because the need for providing assurance of test accuracy and reliability applies equally in all these areas. However, as noted above, FDA would continue to exercise its enforcement discretion with respect to testing for drugs of abuse in the law enforcement setting because there are other protections to ensure sample integrity and test accuracy that are not available in the home, workplace, insurance, and sports settings.

FDA believes it is important to give the marketplace time to adjust to any changes in regulatory approach. Therefore, the agency is proposing that the final rule become effective 1 year after publication in the **Federal Register**, but not earlier than 2 years from the date of publication of this proposed rule. FDA believes this provides manufacturers and distributors adequate notice so that, if they wish to market a test sample collection system that uses a specimen for which there is currently no cleared laboratory test (e.g., hair), there is adequate time to conduct the necessary testing and submit the results to FDA for review. Following the 2-year period, a manufacturer or distributor would not be able to market an OTC test sample collection system for drugs of abuse testing unless the underlying test has been cleared by FDA.

Following publication of this proposed rule, FDA will hold a public hearing to solicit additional public comment on its proposal. A separate **Federal Register** notice will announce the date, location, and proposed agenda for the hearing.

FDA's interim policy for drugs of abuse home test sample collection systems will remain in place until the final rule becomes effective. During that time, FDA intends to exercise its enforcement discretion with respect to drugs of abuse test sample collection systems used in the workplace, insurance, or sports settings. Because the exercise of that discretion has been FDA's policy for test sample collection systems used in those settings, the agency believes it is appropriate to provide notice and an opportunity for comment before instituting a change in this policy.

This proposed rule does not affect OTC tests for drugs of abuse that are performed in the home setting—i.e., the testing is performed in the home setting and the test results are read and interpreted directly by the consumer, without involvement or input from a health professional. These are referred to as “point of care” tests. When manufacturers or distributors market “point of care” tests, they are selling the consumers the actual test rather than a collection system that uses a laboratory to perform the test. Under these circumstances, FDA cannot determine whether the test is accurate and reliable without premarket review of the product. Accordingly, no changes are being proposed in FDA's current policy of reviewing “point of care” tests prior to marketing.

III. Proposed Reclassification

As part of this new regulatory scheme, and in accordance with section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)), FDA, on its own initiative, is proposing to reclassify test sample collection systems for drugs of abuse testing from class III to class I. The device would be identified in proposed § 864.3260 as a device intended to collect biological specimens (such as hair, urine, sweat, or saliva), outside of a medical setting and not on order of a health care professional (e.g., in the home, insurance, sports, or workplace setting); to maintain the integrity of such specimens during storage and transport in order that the matter contained therein can be tested in a laboratory for the presence of drugs of abuse or their metabolites; and to provide access to test results and counseling.

FDA is also proposing that the device be exempt from the premarket notification requirements and, unless it is labeled or otherwise represented as sterile, that it would be exempt from the current good manufacturing practice regulations, with the exception of 21 CFR 820.198, with respect to complaint files. FDA solicits comments on whether there may be other unique circumstances for which the exemption from CGMP regulations would not be appropriate.

Reclassification of a postamendments class III device is governed by section 513(f)(2) of the act. This section provides that FDA may, on its own initiative or in response to a petition, reclassify a postamendments device classified by statute into class III. When FDA reclassifies a postamendments device on its own initiative, the agency follows the same statutory provisions and regulations that apply to reclassifications of such devices in response to a petition.

Under section 513(f)(2) of the act, the agency is authorized, in accordance with section 513(d)(2)(A), to exempt a generic type of device from, among other things, the requirement of premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) after stating the reasons for making such requirement inapplicable. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

The primary risk to health presented by these products is the possibility that they may result in an incorrect diagnosis. No in vitro diagnostic test yields perfect results. Sometimes the test misses the presence of what it is

supposed to be detecting (false negative). Sometimes it registers the presence of the substance even though it is not present (false positive). False positives and/or false negatives may also result from an error in the laboratory testing process. Knowing the probability of false negatives and false positives, not just in abstract terms, but why they occur and whether and how the rate varies among different populations, and at various intervals following drug exposure, is essential in order to properly interpret and communicate the results.

FDA believes that this risk to health would be adequately controlled by the proposed restrictions on the sale, distribution and use of these products. The proposed restrictions, which focus on the accuracy and reliability of the underlying test(s), the capability of the laboratory performing the underlying test(s), and the adequacy of the products' labeling, would be sufficient to ensure that drugs of abuse test sample collection systems are accurate and reliable for use in a nonprofessional setting. Further, FDA believes that premarket notification is unnecessary because a manufacturer or distributor can determine for themselves if their product meets the restrictions being proposed in accordance with section 520(e) of the act.

In developing its proposed regulatory approach for these products, FDA relied upon the existence of more than 200 FDA-cleared urine tests for detecting drugs of abuse and several hundred laboratories with sufficient capability to conduct the testing, as well as the agency's experience with premarket review of such test sample collection systems. This information led FDA to conclude that the agency can ensure the accuracy and reliability of OTC drugs of abuse test sample collection systems, while minimizing the disruption to the marketplace, by reclassifying them into class I and exempting them from premarket notification subject to restrictions on the sale, distribution, and use under section 520(e) of the act.

IV. Comments

Interested persons may, on or before July 6, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. "Parents' Access to Tests for Drugs of Abuse;" Interim Policy; October 3, 1996.
2. Testimony of William Schultz before the House Subcommittee on Oversight and Investigations; February 6, 1997.
3. Summary of Safety and Effectiveness for P950040; Dr. Brown's Home Drug Testing System.
4. Mandatory Guidelines for Federal Workplace Testing; Substance Abuse and Mental Health Services Administration; June 9, 1994.
5. Clinical Laboratory Improvement Amendments of 1988.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). The proposed rule has been determined to be a significant regulatory action as defined by the Executive Order and so is subject to review under the Executive Order. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed reclassification of OTC test sample collection systems for drugs of abuse testing (class III into class I exempt) is reasonably expected to provide economic benefit to the health care system, individual consumers, and regulated industry. At this time, only a very limited number of OTC products

for drugs of abuse testing (without professional assistance) are available to parents. By greatly increasing access, this reclassification would provide benefits to families similar to that which workplace drug testing now provides to employers. First, testing may serve as a deterrent to drug use. Because these products are marketed to parents for testing their children, they have the potential to prevent the initial experimentation with drugs of abuse by children. Next, where test results already indicate the use of drugs, intervention and treatment based on evidence may be initiated earlier than intervention and treatment based on suspicion of drug use alone. Early intervention and treatment has the potential to be more successful. Finally, products for drugs of abuse testing marketed to parents may be used to monitor children already undergoing treatment for drug use, deterring or at least detecting recidivism, which is currently estimated at 30 to 50 percent.

FDA cannot quantify the beneficial effect on the nation's public health that will result from easier access to these tests. Nevertheless, the agency finds that the product has significant potential to reduce drug use. As the nation's economic costs of drug abuse are staggering, estimated at up to \$66 billion in 1990, the potential benefit from even a modest reduction would be substantial.

Moreover, the cost to industry will fall. Under the current classification, OTC test sample collection systems for drugs of abuse testing is a class III medical device requiring a PMA. FDA has found that the median development cost for a PMA ranges from \$0.5 to \$1 million. Reclassifying these devices as class I exempt, which do not undergo premarket review, means that neither new sponsors, nor product purchasers will incur these costs. Consequently, FDA expects the rule to reduce regulatory costs at the same time that it decreases the economic burdens of drug abuse.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would not require premarket review of the vast majority of OTC test sample collection systems for drugs of abuse

testing, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements which are subject to review by OMB under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: OTC Test Sample Collection Systems for Drugs of Abuse Testing.

Description: The proposed rule would amend the labeling requirements for certain in vitro diagnostic products to require that manufacturers of OTC test sample collection systems for drugs of abuse testing provide certain information to consumers for the proper use of the test sample collection system and for interpreting the results. The purpose of the regulation is to assure that lay persons collecting samples for testing have adequate instructions for sample collection and handling and for receiving and understanding the test results reported by laboratories performing the analyses.

Description of Respondents: Businesses and other for profit organizations.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
809.10(f)	20	1	20	100	2,000

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA requests comments on the accuracy of these estimates concerning the number of entities likely to be affected by the rule and the costs to meet these requirements.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted the collections of information contained in the proposed rule to OMB for review. Other organizations and individuals desiring to submit comments regarding the burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to the Office of Information and Regulatory Affairs, OMB (address above). Written comments on the information collection requirements should be submitted by April 6, 1998.

List of Subjects

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers, Specimen collection systems.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 809 and 864 be amended as follows:

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

1. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

2. Section 809.10 is amended by adding new paragraph (f) to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

* * * * *

(f) The labeling for over-the-counter (OTC) test sample collection systems for drugs of abuse testing shall bear the following information in language appropriate for the intended users:

(1) Adequate instructions for specimen collection and handling, and

for preparation and mailing of the specimen to the laboratory for testing.

(2) An identification system to ensure that specimens are not mixed-up or otherwise misidentified at the laboratory, and that user anonymity is maintained.

(3) The intended use or uses of the product, including what drugs are and are not to be identified in the specimen, a quantitative description of the performance characteristics for those drugs (e.g., sensitivity and specificity), and the detection period.

(4) A statement that confirmatory testing will be conducted on all samples that initially test positive.

(5) A statement of warnings or precautions for users as established in the regulations contained in 16 CFR part 1500 and any other warnings appropriate to the hazard presented by the product.

(6) Adequate instructions on how to obtain test results from a person who can explain their meaning, including the probability of false positive and false negative results, as well as how to contact a trained health professional if additional information on interpretation of test results from the laboratory or followup counseling is desired.

(7) Name and place of business of the manufacturer, packer, or distributor.

3. New § 809.40 is added to subpart C to read as follows:

§ 809.40 Restrictions on the sale, distribution, and use of OTC test sample collection systems for drugs of abuse testing.

(a) OTC test sample collection systems for drugs of abuse testing (§ 864.3260 of this chapter) are restricted devices under section 520(e) of the act subject to the restrictions set forth in this section.

(b) Sample testing shall be performed in a laboratory using screening tests that have been approved, cleared, or otherwise recognized by FDA as accurate and reliable for the testing of such specimens for identifying drugs of abuse or their metabolites.

(c) The laboratory performing the test(s) shall have, and shall be recognized as having, adequate capability to reliably perform the necessary screening and confirmatory tests, including adequate capability to

perform integrity checks of the biological specimens for possible adulteration.

(d) All OTC test sample collection systems for drugs of abuse testing shall be labeled in accordance with § 809.10(f) and shall provide an adequate system to communicate the proper interpretation of test results from the laboratory to the lay purchaser.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

4. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 864.3250 *Specimen transport and storage container* is amended in paragraph (a) by adding the following sentence to the end of the paragraph:

§ 864.3250 Specimen transport and storage container.

(a) * * * This section does not apply to specimen transport and storage containers that are intended for use as part of an OTC test sample collection system for drugs of abuse testing.

* * * * *

6. New § 864.3260 is added to subpart D to read as follows:

§ 864.3260 OTC test sample collection systems for drugs of abuse testing.

(a) *Identification.* An over-the-counter (OTC) test sample collection system for drugs of abuse testing is a device intended to: Collect biological specimens (such as hair, urine, sweat, or saliva), outside of a medical setting and not on order of a health care professional (e.g., in the home, insurance, sports, or workplace setting); maintain the integrity of such specimens during storage and transport in order that the matter contained therein can be tested in a laboratory for the presence of drugs of abuse or their metabolites; and provide access to test results and counseling. This section does not apply to collection, transport, or laboratory testing of biological specimens for the presence of drugs of abuse or their metabolites that is performed to develop evidence for law enforcement purposes.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification requirements in part 807, subpart E of this chapter if it is sold, distributed, and used in accordance with the restrictions set forth in § 809.40 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.198, with respect to complaint files.

Dated: September 25, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98-5521 Filed 3-3-98; 8:45 am]

BILLING CODE 4160-01-F

NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Minimum Internal Control Standards for Gaming Operations for Indian Lands

AGENCY: National Indian Gaming Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document announces the initiation of the rulemaking process and requests information relevant to implementing regulations governing minimum internal control standards for gaming operations operated on Indian lands. The Commission has determined that minimum internal control standards are needed to ensure the integrity of gaming on Indian lands and to safeguard this source of tribal revenues.

DATES: Comments in response to this advance notice must be submitted by April 5, 1998. The Commission will be holding a hearing on this matter on April 1, 1998, in Portland, Oregon.

ADDRESSES: Commentors may submit their comment by mail, facsimile, or delivery to: Minimum Internal Control Rule Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street N.W., Washington, DC 20005. Fax number: 202-632-7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

The public hearing will be held at the Doubletree Hotel at Lloyd Center, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mia Dinh at 202-632-7003, or by facsimile at 202-632-7066 (not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

1. Introduction

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). The IGRA was enacted for several purposes, primary among them was to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting economic development self-sufficiency and strong tribal governments, as well as to provide for the regulation of gaming by Indian tribes adequate to shield them from organized crime. The Commission has determined that minimum internal control standards are needed to ensure the integrity of gaming on Indian lands and to safeguard this source of tribal revenues.

The IGRA expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement the provision of this [Act]." 25 U.S.C. 2706(b)(10).

2. Advance Notice of Proposed Rulemaking

After consideration of this issue, the NIGC has determined that the appropriate course of action is to publish an Advance Notice of Proposed Rulemaking to collect further information.

Before the NIGC proceeds in this area, it intends to have the benefit of a full airing of the issues through the public comment process.

3. Request for Comments

Public comment is requested to assist the NIGC in the drafting of minimum internal control regulations. Comment is requested on the following issues:

(a) Should standards be tiered based on the physical size of the operation, the amount of the gross revenues derived from gaming, or some other criteria? Please explain.

(b) If yes, what tiers should be adopted. Please explain.

(c) What standards should apply to all operations and what standards should apply to only one or two tiers and not the others?

(d) What are the major internal control issues/problems that Indian gaming operations face?

(e) How long should the Commission allow the tribes to implement internal controls that would comply with the regulations?

The Commission solicits any additional suggestions and/or interpretations regarding the issues raised in this Advance Notice of Proposed Rulemaking.

4. Public Participation

Interested parties are invited to submit comments on any or all of these and other pertinent issues related to minimum internal control regulations by April 5, 1998, in triplicate to Minimum Internal Control Rule Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street N.W., Washington, DC 20005. Fax number: 202-632-7066 (not a toll-free number). All written comments submitted in response to this notice will be available for inspection and copying in the NIGC office from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday. All timely written submissions will be considered in determining the nature of any proposal.

Authority and Signature

This Advance Notice of Proposed Rulemaking was prepared under the direction of Larry Rosenthal, Chief of Staff, National Indian Gaming Commission, 1441 L St. N.W., Suite 9100, Washington, DC 20005.

Signed at Washington, D.C. this 27th day of February, 1998.

Larry Rosenthal,

Chief of Staff, National Indian Gaming Commission.

[FR Doc. 98-5656 Filed 3-4-98; 8:45 am]

BILLING CODE 7565-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-209276-87]

RIN 1545-AV32

Abatement of Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to REG-209276-87, which was published in the **Federal Register** on Thursday, January 8, 1998 (63 FR 1086), relating to the abatement of interest attributable to unreasonable errors or delays by an officer or employee of the IRS.

FOR FURTHER INFORMATION CONTACT: David Auclair, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The notice of proposed rulemaking that is the subject of this correction is under section 6404 of the Internal Revenue Code.

Need for Correction

As published, REG-209276-87 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-209276-87), which is the subject of FR Doc. 98-19, is corrected as follows:

On page 1087, column 3, in the preamble under the paragraph reading "Explanation of Provisions", the first full paragraph in the column is corrected to read:

The provisions of the regulations are proposed to apply to interest accruing with respect to deficiencies or payments of any tax described in section 6212(a) for taxable years beginning after July 30, 1996.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98-5641 Filed 3-4-98; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 131**

[FRL-OW-5974-3]

RIN 2040-AC65

Water Quality Standards for Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing water quality standards that would be applicable to certain waters of the United States in the State of Alabama. If promulgated as final standards, they will supersede use designations for nine stream segments that EPA disapproved in 1986 and 1991 and which have not been revised by the State. EPA is taking this action because it believes these disapproved State water quality standards are inconsistent with the Clean Water Act and EPA's implementing regulations. Specifically, EPA is proposing new use designations for waters of the State whose current use designations under State law do not meet applicable requirements of the Clean Water Act.

DATES: EPA will accept public comments on this rulemaking until May 4, 1998. Comments postmarked after this date may not be considered. A public hearing will be held in Montgomery, Alabama, on April 22, 1998. Both oral and written comments will be accepted at the hearing.

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Fritz Wagener, Water Quality Standards Coordinator, U.S. EPA Region 4, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303-3104. A public hearing will be held at the Holiday Inn Hotel and Suites, 120 Madison Avenue, Montgomery, Alabama, 36104 (334-264-2231) from 1-5 p.m. and 6-10 p.m. on April 22, 1998. The administrative record for today's proposed rule is available for public inspection at U.S. EPA Region 4, Water Management Division, 15th Floor, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303-3104, between 8:00 a.m. to 4:30 p.m. Copies of all or portions of the record will be made available for a charge of 20¢ per page.

FOR FURTHER INFORMATION CONTACT: Fritz Wagener, Water Quality Standards Coordinator, U.S. EPA Region 4, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia, 30303-3104 (telephone: 404-562-9267).

SUPPLEMENTARY INFORMATION: This Supplementary Information Section is organized as follows:

I. Potentially Affected Entities**II. Background**

- A. Statutory and Regulatory Background
- B. Rebuttable Presumption of Section 101(a) Uses
- C. Factual Background
- D. Current Alabama Water Quality Standards

III. Use Designations for Alabama Streams

- A. Overview
- B. Proposed Use Designations for Specific Waters of Alabama
 1. Buck Creek
 2. Lost Creek
 3. Cane Creek—Oakman Segment
 4. Flint Creek
 5. Cane and Town Creeks (Jasper Segments)
 6. Mobile River
 7. Chickasaw Creek
 8. Three Mile Creek
- C. Request for Comment and Data

IV. Alternative Regulatory Approaches and Implementation Mechanisms

- A. Designating Uses
- B. Site-Specific Criteria
- C. Variances
- D. Total Maximum Daily Loads (TMDLs)
- V. Regulatory Impact Analysis

- A. Evaluation of Possible Pollutant Reduction Responsibilities
- B. Overview of Methodology to Estimate Potential Costs Related to New Use Designations
- C. Results for Stream Segments with Federal Use Designations
- VI. Executive Order 12866
- VII. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996
- VIII. Unfunded Mandates Reform Act
- IX. Paperwork Reduction Act
- X. Executive Order 12875
- XI. Endangered Species Act
- XII. National Technology Transfer and Advancement Act

I. Potentially Affected Entities

Citizens concerned with water quality in Alabama may be interested in this rulemaking. Entities discharging pollutants to certain waters of the United States in Alabama could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Potentially affected entities include:

Category	Examples of affected potentially entities
Industry	Industries discharging pollutants to Alabama surface waters listed in section 131.34 of this proposed rule.
Municipalities.	Publicly-owned treatment works discharging pollutants to Alabama surface waters listed in section 131.34 of this proposed rule.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company or business may be affected by this proposed action, you should carefully examine the list of waters identified in § 131.34 of today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the proceeding "For Further Information Contact" Section.

II. Background**A. Statutory and Regulatory Background**

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or "the Act") directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance

the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that water quality standards shall include the designated use or uses to be made of the water, taking into account the water's use, and criteria necessary to protect those uses. The beneficial uses to be considered by States in establishing water quality standards are specified in the Act: public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that have been disapproved, or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. Today EPA is proposing federal standards to supersede portions of Alabama's standards that have been disapproved by EPA and have not been revised by the State.

EPA regulations implementing section 303(c) are published at 40 CFR Part 131. Under these rules, the minimum elements that must be included in a State's water quality standards include: use designations for all water bodies in the State, water quality criteria sufficient to protect those use designations, and an antidegradation policy. See 40 CFR 131.6. States may also include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are also subject to EPA review and approval.

Water quality standards establish the "goals" for a water body through the designation of beneficial uses. Designated uses in turn determine what water quality criteria apply to specific water bodies. Section 101(a)(2) of the Act establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water," wherever attainable. These national goals are commonly referred to as the "fishable/swimmable" goals of the Act. Section 303(c)(2)(A) requires water quality standards to "protect the public health and welfare, enhance the quality

of water, and serve the purposes of this Act." EPA's regulations at 40 CFR part 131 interpret and implement these provisions by requiring that water quality standards provide for fishable/swimmable uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability, i.e., a default designation of fishable/swimmable beneficial uses should apply. The mechanism in EPA's regulations used to overcome this presumption is a use attainability analysis. (See discussion below.)

Under 40 CFR 131.10(j), States are required to conduct a use attainability analysis (UAA) whenever the State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the CWA, or when the State wishes to remove a designated use that is specified in section 101(a)(2) of the Act, or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers, and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. 40 CFR 131.10 lists grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use.

A UAA is defined in 40 CFR 131.3(g) as a "structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical, biological, and economic factors" (see §§ 131.3 and 131.10). In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

Guidance on water body survey and assessment techniques is contained in the Technical Support Manual, Volumes I-III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses. Volume I provides information on water bodies in general, Volume II contains information on estuarine systems and Volume III contains information on lake systems; Volumes I-II, November 1983; Volume III, November 1984). Additional guidance is provided in the Water Quality Standards Handbook: Second Edition (EPA-823-B-94-005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the Interim Economic Guidance for Water Quality Standards:

Workbook (EPA-823-B-95-002, March 1995).

In developing today's proposal, EPA developed water quality standards according to the procedures set out for States in 40 CFR Part 131, and EPA's implementing policies, procedures, and guidance. The basis for the proposed rule is described more fully below.

B. Rebuttable Presumption of Section 101(a) Uses

As discussed in section II.A., above, EPA regulations effectively establish a "rebuttable presumption" that "fishable/swimmable" uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA adopted this approach in order to help achieve the national goal articulated by Congress that, "wherever attainable," water quality provide for the "protection and propagation of fish, shellfish and wildlife" and for "recreation in and on the water." CWA 101(a). While facilitating achievement of Congress' goals, the "rebuttable presumption" approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that States have to determine that "fishable/swimmable" uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible, "structured scientific assessment" of use attainability. See 40 CFR 131.3(g) (defining use attainability analysis).

EPA believes that the rebuttable presumption policy reflected in these regulations is an essential foundation for effective implementation of the Clean Water Act as a whole. The "use" of a water body is the most fundamental articulation of its role in the aquatic and human environments, and all of the water quality protections established by the CWA follow from the water's designated use. If a use lower than "fishable/swimmable" is designated based on inadequate information or superficial analysis, water quality-based protections that might have enabled the water to achieve the goals articulated by Congress in section 101(a) may not be put in place. As a result, the true potential of the water body may never be realized, and a resource highly valued by Congress may be forever lost.

EPA seeks, through its oversight under section 303(c) of the Act, to ensure that any State's decision to forego protection of a water body's potential to support "fishable/swimmable" uses results from an appropriately "structured" analysis of use attainment. Where, as in the case of these waters in Alabama, EPA concludes that the State failed to adequately justify a lower than "fishable/swimmable" use designation, EPA disapproves the use designation. In some cases, as Alabama has done with regard to most of the use classifications originally disapproved by EPA (see section II.C., below), the State will revise its use classifications to protect fishable/swimmable uses. In other cases, the State will conduct a more thorough analysis of use attainability sufficient to rebut the rebuttable presumption reflected in the regulations. Indeed, Alabama has done so for several of the streams originally disapproved by EPA in 1986. Where, however, a State does neither, EPA will undertake federal rulemaking to ensure the water quality goals of the Act are effectively implemented.

In undertaking such federal rulemakings, EPA believes that it is appropriate to follow the same rebuttable presumption approach that applies under the regulation to State decision-making. EPA believes this is appropriate for several reasons. First, the Agency does not believe that it would be appropriate to alter the Part 131 approach to making use designations merely because the forum for decision-making has changed from the State to the federal level. Attaining the goals articulated by Congress is no less important when EPA, as opposed to a State, is making use designation determinations. Moreover, EPA believes that failure to apply the rebuttable presumption in the federal context could undermine how that presumption currently applies to State decision-making under the Part 131 regulations. If the presumption did not apply equally in the State and federal decision-making process, a State could effectively shift the burden of demonstrating attainability simply by failing to adequately justify its use designation and thereby triggering a federal rulemaking proceeding.

Therefore, in reaching the decisions reflected in this proposed rule, EPA applied a rebuttable presumption that fishable/swimmable uses are attainable for these nine waters. EPA acknowledges that the information related to actual and potential uses of these waters is, in some cases, not extensive, and that deciding upon the

appropriate use designations is an inexact practice. At this time, and as explained in detail below, EPA believes the available information regarding these nine water body segments does not rebut the presumption that "fishable/swimmable" uses are attainable.

EPA's approach in this rulemaking does not undermine the State's primary role in designating uses for waters in Alabama. As before, if, prior to EPA's finalizing this rule, the State undertakes a sound analysis of use attainability, taking into account appropriate biological, chemical and physical factors, and concludes that the "fishable/swimmable" use is not attainable for these waters, EPA would approve the State's action and not finalize this rule (or initiate withdrawal if the State submits a sound analysis after EPA takes final action). EPA encourages the State and any other party that is aware of relevant information bearing upon the decisions in this rule to provide such information in this rulemaking. EPA also encourages the State to continue evaluating the appropriate use designations for these waters.

C. Factual Background

In a letter dated October 14, 1986, the EPA Regional Administrator for Region 4 disapproved use designations adopted by the Alabama Department of Environmental Management (ADEM) for 49 stream segments because the State failed to justify use classifications lower than "fishable/swimmable" uses in accordance with 40 CFR 131.10(j). Although the State had previously submitted use attainability analyses for these stream segments, the analyses did not adequately describe the basis for the lower use classifications, nor did they provide adequate information to determine if such classifications were appropriate. From 1986 to 1991, 20 of the use designations were either upgraded to the Fish and Wildlife use classification (F&W use) by ADEM or approved as the Agricultural and Industrial Water Supply use classification (A&I use) by EPA. On July 18, 1991, the EPA Regional Administrator for Region 4 disapproved 30 beneficial use designations adopted by ADEM, 29 of which were previously disapproved in 1986, plus the beneficial use designation for one additional stream segment which lacked a use attainability analysis.

Between July 18, 1991 and today's proposal, ADEM has upgraded to the F&W use 13 of the stream segments disapproved by EPA. Most recently, on May 30, 1997, ADEM adopted F&W use

classifications for Hog Bayou, Pigeon Creek, Unnamed Tributary of Pigeon Creek, Rocky Creek, Hollinger Creek, Sougahatchee Creek, Sugar Creek and Little Bear Creek. EPA approved these changes to the Alabama water quality standards on December 9, 1997. Thus, as of today's proposal, there are 17 stream segments for which EPA has disapproved the State use designation classifications. In a separate State action on April 22, 1997, the length of seven of these 17 remaining segments classified for less than "fishable/swimmable" uses was reduced, reflecting upgrades of a portion of each of these segments to the F&W use classifications by the State. However, the remaining portions of these seven streams remains subject to EPA's disapproval.

On September 18, 1996 the Legal Environmental Assistance Foundation, Inc. (LEAF) filed suit in District Court in Alabama against EPA for failing to propose replacement Water Quality Standards for 12 stream segments in Alabama designated as "Agricultural and Industrial Water Supply" or "Industrial Operations" which EPA had previously disapproved. *LEAF v. Browner* No. CV-96-ETC-2454-S. On September 11, 1997 EPA and the plaintiffs entered into a consent decree covering 9 of these stream segments. (EPA agreed outside the context of the consent decree to continue evaluation of the other three segments identified in the lawsuit). Under the terms and conditions of the consent decree, EPA was required to sign a **Federal Register** notice proposing federal use designations, or withdraw the EPA disapproval of the existing Alabama standards for these waters, by February 28, 1998. Since the signing of the consent decree, 2 of these 9 streams have been upgraded to the F&W use classification by ADEM and approved by EPA, and therefore are not covered by today's proposed federal water quality standards. Today's proposal covers the remaining 7 streams subject to the consent decree, as well as an additional 2 other streams still subject to EPA's outstanding disapproval. EPA is continuing to evaluate available information regarding the remaining 8 segments subject to EPA's outstanding disapproval for the purposes of determining whether federal use designations should be proposed for those waters.

On January 29, 1997, EPA published in the **Federal Register** (62 FR 4115) a notice of request for information and announced a public hearing to solicit any information from interested parties which would assist the Agency in

evaluating existing and potential beneficial uses of waters of the State of Alabama. A public hearing was held on February 26, 1997 in Montgomery, Alabama. EPA received 91 oral and written comments from interested parties, and has considered that information in the development of today's proposal.

As discussed above, the federal water quality standards regulations require that water quality standards provide for fishable/swimmable uses unless it has been demonstrated that attaining the designated beneficial uses is not feasible for any of the reasons described in 40 CFR 131.10(g). Whenever the State designates or has designated uses that do not include these fishable/swimmable uses or when the State wishes to remove a designated use that is not an existing use, a use attainability analysis must be completed and submitted to EPA for review.

D. Current Alabama Water Quality Standards

Alabama's water quality regulations at 335-6-10 and 335-6-11, revised most recently on May 30, 1997, contain the following use classification categories: surface waters for public water supply, swimming and other whole body water contact sports, shellfish harvesting, fish and wildlife, agricultural and industrial water supply, industrial operations, and navigation. Alabama has not adopted a default use classification for unsurveyed waters into the state water quality standards. The seven use designations contained in 335-6-10 have been applied, singly or in some combination, to all surface waters of Alabama. As discussed above, in section II.C., EPA disapproved A&I use classifications for the 9 streams segments in today's proposal. Based upon written correspondence and conversations with Alabama's Department of Environmental Management, it is EPA's understanding that current State practice relies on a demonstration that "fishable/swimmable" uses have actually been attained before the State takes action to adopt the higher use into water quality standards. In EPA's view, Alabama's approach assumes the unattainability of "fishable/swimmable" uses, in impaired waters, by requiring a demonstration that fishable/swimmable uses are actually attained before they will be protected. This is inconsistent with the requirements of 40 CFR Part 140 131.10. (See discussion above.)

EPA is proposing that nine stream segments be classified as subject to the Fish and Wildlife use set out at 335-6-10-.03 of the State's regulations. In developing today's proposal, EPA

evaluated Alabama's existing water quality standards to determine which State use designations correspond to "fishable/swimmable" uses, and would therefore ensure protection of the CWA section 101(a) goals. Rather than establish new federal use designations for these Alabama waters, EPA believes it is preferable to apply use designations that both meet the goals of the CWA and would be consistent with longstanding State standards regulations. Because water quality standards for these segments, if ultimately promulgated, will be the basis for establishing NPDES permit limits by the State, the Agency believes that utilizing an existing State use designation will facilitate implementation of the standards. This also facilitates withdrawal of federal standards in the future, if Alabama takes appropriate action justifying such withdrawal.

Subsection 335-6-10-.09(4) includes the descriptions of the Fish and Wildlife uses and conditions and specific criteria necessary to support the Fish and Wildlife use. Subsection 335-6-10-.09(4) (a), (b), (c) and (d) specify the usage of waters classified for Fish and Wildlife uses, as follows:

(4)(a) Best usage of waters: Fishing, propagation of fish, aquatic life, and wildlife, and any other usage except for swimming and water-contact sports or as a source of water supply for drinking or food processing purposes.

(4)(b) Conditions related to best usage: the waters will be suitable for fish, aquatic life and wildlife propagation. The quality of salt and estuarine waters to which this classification is assigned will also be suitable for the propagation of shrimp and crabs.

(4)(c) Other usage of waters: It is recognized that the waters may be used for incidental water contact and recreation during June through September, except that water contact is strongly discouraged in the vicinity of discharges or other conditions beyond the control of the Department or the Alabama Department of Public Health.

(4)(d) Conditions related to other usage: The waters, under proper sanitary supervision by the controlling health authorities, will meet accepted standards of water quality for outdoor swimming places and will be considered satisfactory for swimming and other whole body water-contact sports.

If EPA promulgates final water quality standards as proposed, Alabama's existing water quality criteria adopted to protect the F&W use would apply to these waters. These criteria are set out at 335-6-10-.05 (General Conditions Applicable to All Water Criteria), 335-6-10-.06 (Minimum Conditions Applicable to All State Waters), 335-6-10-.07 (Toxic Pollutant Criteria Applicable to State Waters), and 335-6-

10-.09(4) (Specific Water Quality Criteria—Fish and Wildlife use).

Subsection 335-6-10-.05 establishes State policies applicable to all State waters regarding analytical procedures, collection of samples used to determine compliance with water quality criteria, mixing zones, criteria exceedances due to natural conditions, recreational use of State waters, and schedules of compliance with new water quality standards. Compliance with a modified effluent limit based on a new standard is required as soon as possible, "but in all cases within three years of the adoption of the new standard."

Subsection 335-10-.06 contains the "free from" toxicity provisions of Alabama's water quality standards applicable to all State waters. These provisions relate to general protection of State waters from adverse effects due to substances attributable to sewage, industrial wastes or other wastes from settling, floating, and toxicity.

Section 335-6-10.07 includes a tabular listing of water quality criteria applicable to State waters pursuant to applicable designated uses. Included are numeric criteria or criteria equations for protection of aquatic life from acute toxic effects for 24 parameters (which apply to all State waters except those waters classified for Navigation or Industrial Operations uses), numeric criteria or criteria equations for protection of aquatic life from chronic toxic effects for 29 parameters (which apply to all State waters except those waters classified for Navigation, Industrial Operations, or Agricultural and Industrial Water Supply uses), human health-based criteria equations and Maximum Contaminant Levels for 100 parameters (applicable to waters classified for drinking water purposes), and the minimum instream design flows to be used in application of water quality criteria.

This section also includes the criteria equations for 98 parameters for protection of human health from the consumption of fish and shellfish applicable to all State waters. Since the State's human health-based water quality criteria apply to all State waters, regardless of classification, human health criteria were not considered to have a direct effect in the analysis of proposed revised classifications of Fish and Wildlife uses for waters considered in this rulemaking.

Subsection 335-6-10.09(4)(e) (Specific criteria) contains the water quality criteria related to the protection of the above uses, including numeric and/or narrative criteria for pH, temperature, dissolved oxygen, whole

effluent toxicity, bacteria, radioactivity and turbidity.

Criteria for protection of aquatic life for dissolved oxygen (DO) are contained in the Alabama water quality standards at Subsection (4)(e)(4), which includes, in pertinent part:

(i) For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg/l at all times; except under extreme conditions due to natural causes, it may range between 5 mg/l and 4 mg/l, provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels.

(ii) In coastal waters, surface dissolved oxygen concentrations shall not be less than 5 mg/l, except where natural phenomena cause the value to be depressed.

(iii) In estuaries and tidal tributaries, dissolved oxygen concentrations shall not be less than 5 mg/l, except in dystrophic waters or where natural conditions cause the value to be depressed. (iv) In the application of dissolved oxygen criteria referred to above, dissolved oxygen shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth, dissolved oxygen criteria will be applied at mid-depth.

Subsection 335-6-10-.09(4)(e) also includes a reference to toxicity-based criteria applicable to the Fish and Wildlife use in section 335-6-10-.07. This Subsection includes narrative criteria for the protection from adverse effects of taste, odor, and color effects, including aesthetic qualities, as well as narrative criteria for the protection of palatability and marketability of fish, wildlife, shrimp and crabs taken from State waters.

III. Use Designations for Alabama Streams

A. Overview

As discussed above, the Agency believes that it is appropriate to apply a rebuttable presumption that "fishable/swimmable" uses are attainable in these waters. In terms of Alabama's water quality standards, the Agency believes that the F&W use designation appropriately reflects "fishable/swimmable" uses. EPA has evaluated the information available to the Agency to determine whether that information demonstrates the F&W use is not attainable for any of these waters (i.e., to rebut the rebuttable presumption). EPA's analysis has been informed by regulatory provisions and technical guidance that EPA has provided to

States for the development of UAAs. As noted above, EPA regulations define a use attainability analysis as an assessment of the factors affecting attainment of a use, which may include "physical, chemical, biological and economic factors * * *," 40 CFR 131.3(g). Consistent with this provision, but within the limitations of the data and information available, EPA evaluated several categories of information in today's analysis of use attainability.

First, the Agency evaluated available information regarding the existing characteristics of the waters in terms of the biological communities that are present. If, in fact, the waters currently support biological communities commensurate with the F&W use designation, EPA considered this to be very strong evidence in favor of the conclusion that such a use is, in fact, attainable. To facilitate evaluation, EPA reviewed the technical literature and examined studies performed by federal, State, or local agencies. EPA considered all the information that it could obtain prior to today's proposal regarding these streams' biology. However, in certain cases, this information was quite limited. As discussed below, EPA is interested in obtaining from the public any additional information regarding the biological state of these waters.

EPA recognizes the presence of aquatic life in a water is not the only information which should be reviewed when evaluating designated uses. Significant exceedances of criteria established to protect "fishable/swimmable" uses may indicate that, notwithstanding the existing aquatic community, the use is impaired to some extent. In such cases, full attainment of the use might lead to development of a more robust and diverse aquatic community than is currently present. Therefore, in addition to evaluating available biological information, the Agency also reviewed available information regarding ambient stream chemical characteristics. EPA extracted chemical-specific data from the EPA Storage and Retrieval (STORET) data base, which houses ambient water quality data for water bodies throughout the United States, including Alabama. EPA's evaluation focused on those pollutant parameters for which new or more stringent criteria would apply to the affected stream segment under the proposed rule. According to the procedures contained in Chapter 335 of the Alabama Department of Environmental Management Regulations, chronic aquatic life protection criteria are applied to stream segments classified as F&W use,

whereas only acute aquatic life criteria are applied for A&I use protection. For all pollutants except dissolved oxygen (DO), EPA generated summary statistics (minimum, average, and maximum values on record) for the ambient water quality within each affected stream segment and compared them to the State water quality criteria applicable to the F&W use designation. EPA then evaluated the extent to which current ambient stream chemical concentrations met the applicable criteria.

Alabama's criterion for DO adopted to protect and maintain the F&W use is a minimum of 5 mg/L unless natural factors preclude the attainment of a 5 mg/L standard, in which case the criterion is 4 mg/L. In determining whether stream segments currently meet this criterion, data were obtained from STORET and analyzed by year and month. September generally had the lowest DO concentrations and the lowest stream flow and was considered to represent the worst situation that would be found on average. For purposes of EPA's analysis, if the mean of September DO values was above 4 mg/L, then the criterion was deemed to be met. If the mean of September DO values was below 4 mg/L, then EPA performed an analysis using a mathematical model to project the increase in DO that would result from removing the biological oxygen demand (BOD) from point source discharges to each segment. If the resulting DO concentration was above 4 mg/L, then EPA concluded that the criterion could be met if appropriate controls were established for point and nonpoint source discharges.

The above analysis was carried out solely to provide an estimate of the extent to which DO conditions appear to be commensurate with the F&W use. It should be recognized that the completion of more definitive wasteload allocations could be needed for the purposes implementing water quality control programs to ensure attainment of the F&W use designation ultimately promulgated by EPA.

If significant exceedances of F&W water quality criteria (in terms of relative magnitude above the applicable criteria, duration and frequency of exceedance above the criteria, and the number and types of pollutants) had occurred on a consistent basis, such information could suggest that a F&W use is not being fully attained currently. Considerable judgment, however, must be exercised when evaluating the extent to which current exceedances of water quality criteria in the stream indicate that the F&W use is not, in fact, attainable within the meaning of the

water quality standards regulations. Findings regarding attainability must take into account not only present circumstances, but also the pollutant reductions that would be achieved, at a minimum, through imposition of technology-based controls for point sources as well as implementation of best management practices for nonpoint sources.

Moreover, where the biological and other information indicates that a water body is or could be generally supportive of the F&W use, exceedances of criteria for particular pollutant parameters might not, in fact, support a conclusion that such a use is not currently being attained or is otherwise unattainable. Rather, in some cases an aquatic community could have acclimated to ambient conditions which are less than ideal and the best approach may be to adopt site-specific criteria protective of that F&W use for the particular water body (see discussion of alternative regulatory approaches in section IV.B., below). Thus, in evaluating the significance of a water body's exceedance of F&W criteria, EPA weighed that information along with consideration of other related factors (e.g., biological and physical characteristics, habitat, flow regime, tidal influences, etc.), as well as the types of pollutants at issue and the significance of any impairment, as well as discharger-specific information described below.

The last broad category of information considered by EPA in its decision-making process was monitoring information for each of the dischargers on the nine stream segments (as reflected in Discharge Monitoring Reports or DMRs). As discussed in detail in section V.C., below, EPA analyzed the extent to which the proposed federal use designations would require any facility to meet more stringent NPDES permit limits and, if so, what types of controls would be needed by these facilities to meet such limits. Discharger information was used in one of two ways by the Agency. First, monitoring data was used to assess the contribution of the point source dischargers to the affected stream segment in order to assist in the determination of whether F&W uses could be achieved. Second, the Agency used the monitoring data to determine whether dischargers would need to significantly alter their operations (or could, in fact, meet permit limits that would be associated with the F&W use). Information indicating that dischargers could generally meet such revised limits would support the presumption that the F&W use is attainable.

An additional factor considered carefully by EPA in its analysis has been the State of Alabama's analysis of use attainability. As discussed above, the State has previously determined that the A&I use was appropriate for these waters and, in some cases, submitted some analyses in support of those designations. While EPA disapproved the use designations on the grounds that the State had not provided use attainability analyses that would meet applicable EPA requirements (i.e., the analyses provided by the State focused on a facility's inability to meet revised F&W permit limits instead of a broader evaluation of the factors which might preclude a stream segment from attaining the F&W use), the Agency nonetheless carefully evaluated the State's conclusions and any supporting information. EPA also considered initiatives that may be underway to address point and nonpoint sources of pollution.

Finally, one important factor considered by EPA was the use designations adopted by the State for similar or proximate areas. Where a segment designated as A&I was similar in character to segments designated as F&W by the State, in particular if the F&W stream segment was located close to the A&I stream segment, the Agency considered such information to strongly favor the presumption of attainability of the F&W use.

B. Proposed Use Designations for Specific Waters of Alabama

Based upon the approach described above, EPA has evaluated any available information to determine whether it is sufficient to rebut the presumption the Fish and Wildlife use designation is attainable for the nine stream segments in today's proposal. Each segment is addressed below.

If, prior to any final rulemaking by EPA, Alabama classifies any of the nine stream segments with use designations consistent with the CWA and 40 CFR Part 131, EPA will approve those use designations and not include such stream segments in any final rule promulgated by EPA.

1. Buck Creek

Ambient monitoring for several pollutants (including in part, nutrients, DO, and BOD), was performed by EPA in Buck Creek for 4 days in 1995. According to these monitoring data, the DO (reported as an average of two samples on each occasion) upstream from the Alabaster Waste Water Treatment Plant (WWTP), which is the only permitted point source on Buck Creek, was below the 5 mg/L criterion

on 3 of 4 occasions; DO directly downstream from the Alabaster WWTP was above the DO criterion on all four occasions; DO about 1 mile downstream from the Alabaster WWTP, was above 5 mg/L on 3 of 4 occasions. However, the stream DO levels never fell significantly below the DO criterion and were typically above 3.8 mg/L.

Alabama recently upgraded the lower portion of Buck Creek to the F&W use. EPA is unaware of information indicating that water quality conditions on the portion of Buck Creek that is subject to this proposal is significantly different from the portion that Alabama has upgraded to the F&W use. The alleged inability of the Alabaster WWTP to meet permit limits based on the F&W criteria for DO is the rationale ADEM is using to maintain the A&I use for this portion of Buck Creek. However, as discussed further below, EPA does not believe that designated uses should be determined solely based upon the ability of a particular discharger to meet permit limits for a particular pollutant. In the case of this discharger, moreover, EPA believes that the existing effluent quality is very close to the permit limit that would likely be imposed to assure compliance with the DO criterion for the F&W use, based on the natural, low-flow conditions of this water body.

Taking into account the proximity of the segment to waters designated as F&W, the available (although limited) DO data, as well as the likely negligible impact of an upgrade on the only discharger on this segment, EPA believes that proposing the F&W use designation for this stream is appropriate.

2. Lost Creek

In 1993, two field studies were performed by ADEM on Lost Creek. During the June 1993 study of Lost Creek, DO values at all stations, including stations downstream from the Carbon Hill WWTP discharge, were reported above the 5.0 mg/L F&W criterion. The results from the second study performed in September 1993 were similar to the first in that DO values at most stations were reported above the 5.0 mg/L criterion. However, the DO occasionally dropped to just below the F&W criterion at two stations located 6 to 7 miles downstream from the discharge from the Carbon Hill WWTP. These two stations are also located just downstream from Mill Creek and Cheatham Creek, two tributaries to Lost Creek.

Based on available information, EPA proposes to upgrade this stream segment to the F&W use designation. This segment of Lost Creek is 8.2 miles long,

and is located between upstream and downstream segments each classified as F&W. The geographic relationship between this segment and other segments classified as F&W by the State supports a conclusion that the appropriate use designation for this segment should also be the F&W use. EPA is aware of no information indicating that the biological, physical or chemical characteristics of this segment are so substantially different from the surrounding segments that its use designation should be lower than those segments. Moreover, given the length of this segment, EPA believes it is reasonable to infer fish migration from the stream segments classified as F&W into the segment currently classified as A&I.

The primary characteristic distinguishing this stream segment and the surrounding segments classified as F&W by the State is that it is influenced by the discharge from the Carbon Hill Wastewater Treatment Plant. In a draft UAA provided to EPA, ADEM sought to justify the A&I use designation for this segment on the presumed inability of that plant to meet NPDES permit limits that would need to be imposed on that plant to meet the F&W criterion for DO. As stated above, however, EPA believes that determining the appropriate use designation for a water requires consideration of both the actual and potential circumstances in the water body, and should not be determined solely based upon the ability of a particular discharger to meet permit limits for a particular pollutant. As discussed further below, if attainment of a particular permit limit is not feasible for a particular discharger, the appropriate mechanism for dealing with that circumstance may be a variance, rather than failing to protect the attainable uses of the water body as a whole. While Alabama has chosen not to include variance procedures in its standards, EPA does not believe that the use designation for an entire water body should necessarily turn on the feasibility of a particular discharger's meeting certain permit limits. For the purposes of this rule, moreover, the Agency is proposing a federal variance procedure (see discussion in section IV.).

In any case, based on an evaluation conducted by EPA, the Agency believes that the existing effluent discharged by the Carbon Hill plant is currently of sufficient quality to meet permit limits consistent with F&W uses, and that the plant would similarly be able to meet such limits operating at its design capacity. The Agency bases this conclusion on a review of the existing

treatment capabilities and operations, and discussions with the plant operator and State officials.

3. Cane Creek—Oakman Segment

In September 1997, EPA conducted a biological survey of Cane Creek (from Alabama Highway 69 to its source). The survey compared a site in the stream segment classified as F&W upstream from the Oakman WWTP and a site in the A&I segment 2.5 miles downstream from the facility. The results of this survey indicate that both sites were very similar. This biological assessment in late summer indicates that the stream has a substantial aquatic community. Chemical-specific water quality data also collected during this survey, indicate no exceedances of applicable F&W criteria, but did show potential water quality impacts from discharges from mining areas within the watershed (as indicated by elevated conductivity measurements found below the mining areas). While these discharges from mining areas are having an impact on the aquatic community, EPA does not believe, overall, that the level of stress placed on the aquatic community is sufficient to warrant an A&I use designation.

This segment of Cane Creek (Oakman Segment) is located below the discharge of the Oakman WWTP (with a discharge design flow of 90,000 gallons per day). ADEM provided to EPA a draft UAA which indicated the reason for not upgrading this stream segment is due to the presumed inability of the WWTP to meet NPDES permit limits for carbonaceous BOD that are necessary to achieve the F&W DO criterion.

As indicated above, however, the potential inability of a particular discharger to meet certain permit limits should not alone determine the appropriate use classification for the entire water body. In any case, the facility is currently scheduled to upgrade its existing treatment system. Because the quality of the discharge from this facility should therefore improve, EPA does not believe that the facility-specific concerns previously expressed by the State should alone be relied upon to conclude that the F&W use is unattainable within the meaning of the CWA. Taking into account the totality of the available information, including the biological and chemical information described above, EPA does not believe that the presumption of attainability has been rebutted for this segment. EPA proposes to upgrade this stream segment to the F&W use designation.

4. Flint Creek

The A&I segment of Flint Creek is located downstream from the Hartselle WWTP and between two segments classified by the State as F&W. EPA is aware that the Flint Creek watershed (including waters classified as F&W by the State) is generally subject to adverse water quality impacts. Both EPA and the State have committed substantial resources to evaluating the sources and the extent of these impacts, as well as potential solutions. These efforts have resulted in water quality improvements over the last several years. For example, in 1992 and 1995, ADEM performed a macroinvertebrate bioassessment on the segment of Flint Creek subject to this proposal, and concluded that water quality had improved, as reflected by an increase in taxa richness, diversity and equitableness during that period. EPA has developed a total maximum daily load (TMDL) for the watershed indicating the reduction in pollutant loads that would achieve the DO criterion for F&W uses.

While the Agency recognizes that currently this segment is not as vital and robust a water body as it could be, EPA believes that there are sufficient indicators of both actual and potential uses of this water to support the F&W use. This conclusion is supported by the fact that the State has classified certain segments in the watershed as F&W, and those segments are comparable to the segment the State has classified as A&I. EPA is not aware of information that would justify treating these segments differently than other F&W stream segments in the watershed. Therefore, EPA is proposing to upgrade this stream segment to the F&W use designation.

5. Cane and Town Creeks (Jasper Segments)

In September 1997, EPA conducted a biological survey of the Jasper Segments of Town and Cane Creeks. These two streams are currently classified as A&I at their confluence, Town Creek from its mouth to a distance 1.1 miles upstream, and Cane Creek from the confluence to Mulberry Branch. This survey indicated that viable benthic macroinvertebrate populations exist within both creeks, except within one segment of Town Creek, just downstream from the discharge from the Jasper WWTP. While the Cane Creek A&I segment was sufficiently impacted by the discharge to warrant an impaired rating in ADEM's biotic survey, that aquatic community was significantly improved as compared to the aquatic community of the upstream A&I Town Creek segment impacted by the Jasper WWTP.

Further, the ADEM biotic survey indicates that the A&I segment of Cane Creek has good potential to further improve its ability to support a healthy aquatic community.

Although no data are provided in STORET for the Jasper Segments of Cane and Town Creeks, EPA conducted a sampling investigation in June 1997. The long term BOD results and other data from the June sampling have recently been completed and the data are being used to calibrate and validate the water quality model for these streams. Preliminary analysis of the data indicates that there are natural stagnant flow conditions during low flow periods which may have an adverse impact on DO levels. Further model analysis is necessary to better quantify the impact the Jasper WWTP is having on the stream water quality and to better assess the natural DO levels in the streams during critical low flow conditions. The Jasper WWTP is currently undergoing an upgrade, which includes the installation of an equalization basin to assist in control and treatment of high infiltration and inflow from the collection system. The installation of this basin is expected to enhance treatment plant performance, which should result in improved DO levels in the stream.

Based on EPA's review of the available information, the Agency has concluded that it is appropriate to propose to upgrade this stream segment to the F&W use designation. As noted above, viable benthic communities are present, except in one segment just downstream from the discharge from the Jasper WWTP. The aquatic community in the lower A&I segment of Cane Creek is comparable to that of the upper F&W segment. While stressed, the aquatic community in both these stream segments currently classified as A&I is not incompatible with the aquatic community found in the F&W segments of Cane and Town Creeks.

While the discharge from the Jasper treatment plant has some impact on water quality, this plant is currently undergoing a facility upgrade that should positively affect conditions in the stream. EPA believes that the totality of the information does not indicate that the F&W use is unattainable. EPA recognizes that additional work is needed to assess the natural DO levels in the stream during critical low flow conditions. A site-specific criterion for DO for these stream segments that would both protect the F&W use classification while recognizing natural conditions may be appropriate (see discussion of site-specific criteria below, section IV.B.).

6. Mobile River

EPA identified numerous studies that have been performed on the Mobile Bay watershed, which includes the Mobile River from its mouth to the Spanish River. Most studies focused on evaluating the factors that contribute to the relatively low levels of DO within the Bay itself. As described further below, several of these studies included the Mobile River. Several studies indicate the occurrence of a diversity of freshwater, estuarine and marine invertebrate and vertebrate species in the Mobile Bay watershed, which supports the presumption that the portion of the Mobile River currently classified as A&I should be able to attain the F&W use designation.

EPA evaluated several years of chemical-specific ambient monitoring data provided in STORET for one station (Station MO2) on the segment of the Mobile River affected by the new use designation. At Station MO2, pH, metals, hardness and salinity are monitored. Station MO2 is located approximately 2 miles downstream from discharges from two pulp and paper facilities, as well as 1 mile downstream from Chickasaw Creek. Of the pollutants for which there are data, Station MO2 reports occasional water quality criteria exceedances for total cadmium and total mercury. There were 28 analyses for total cadmium from 1982 to 1989. Cadmium was detected three times above the criterion, with a maximum of 30 µg/L and a minimum of 10 µg/L. The criterion for that part of the river is 4.5 µg/L (based on the mean hardness value reported in STORET). There were only five analyses for total mercury from 1981 to 1985. Mercury was detected once at 1.4 µg/L; the criterion for mercury is 0.012 µg/L.

Many of the studies of DO within the Mobile Bay estuary show levels of DO below the F&W criterion of 5 mg/L. Several factors have been identified as the potential causes of the low DO levels, including BOD from upstream segments and natural influences associated with tidal movements. Other studies point to the potential impact of past dredging activities within the Mobile River that fundamentally change the hydraulic characteristics of the river, and subsequently affect DO levels.

In EPA's analysis of DO conditions for this proposal, it was determined that the DO criterion applicable to the F&W use designation could be met under low-flow conditions in the A&I segment of the Mobile River, but episodic variations in upstream DO would occasionally cause the standard to be exceeded. Evaluation and control of

some upstream point and nonpoint BOD sources, and control of in-segment point and nonpoint BOD sources would facilitate achievement of the DO criterion with greater consistency.

EPA recognizes that the periodic low DO conditions in the Mobile River are current impairments to development of a more robust aquatic community. Nonetheless, available ambient monitoring data does not show significant exceedance of criteria for metals. Moreover, even under low-flow conditions, monthly average DO conditions at most times are consistent with a F&W use designation. Taken together, EPA believes that, while existing conditions may be somewhat impaired, there is not sufficient information to conclude that the F&W use designation is not attainable for this stream segment. Therefore, EPA is proposing to upgrade this stream segment to the F&W use designation.

7. Chickasaw Creek

EPA conducted water quality assessments of Chickasaw Creek in 1974 and 1990. In EPA's 1974 assessment, DO levels were found to be zero or nearly zero in the lower portions of the water column within Chickasaw Creek. The 1990 assessment showed improvement from 1974, but DO values were still depressed in the lower portions of the water column. However, the 1990 assessment concluded that surface DO values met DO criteria for the F&W use at all monitoring stations.

EPA also extracted ambient monitoring data from STORET for two stations on Chickasaw Creek. As reported in the STORET data set, data indicate relatively few instances where ambient conditions do not meet F&W water quality criteria. The stations are located at U.S. Highway 43 near the City of Mobile, and halfway between this upstream station and the mouth of Chickasaw Creek at Mobile River.

Occasionally, total cadmium, total copper, and total mercury exceeded the applicable F&W water quality criteria at the upstream U.S. Highway 43 Station. There were 28 analyses for total cadmium between 1981 and 1991. Cadmium was detected twice above the criterion, once at 20 µg/L and once at 10 µg/L. The total cadmium criterion for that part of the river is 1.5 µg/L (based on the mean hardness value reported in STORET). Also, there were 41 analyses for total copper from 1974 to 1991. Copper was detected six times above the criterion at a maximum of 250 µg/L and a minimum of 10 µg/L. The mean of the detected values was 57 µg/L. The total copper criterion for that part of the river is 25 µg/L. There were only five

analyses for total mercury between 1981 and 1985. Mercury was detected once at 1.4 µg/L; the criterion for mercury is 0.012 µg/L.

The downstream station reports occasional exceedances of F&W water quality criteria for total cadmium, total copper, and total mercury. There were 26 analyses of total cadmium between 1981 and 1991. Cadmium was detected above the criterion once at 30 µg/L. The criterion for that part of the river is 3.8 µg/L (based on the mean hardness value reported in STORET). There were 44 total copper analyses between 1974 and 1991. Copper was detected seven times, with a mean of 57 µg/L. On one occasion, however, copper was detected at 230 µg/L, an exceedance of the 76.4 µg/L criterion for this part of the river. In addition, there were five analyses for total mercury between 1981 and 1985. Mercury was detected once at 1.4 µg/L; the criterion for mercury is 0.012 µg/L. Thus, monitoring indicates that the water segment meets the F&W criteria in most cases.

Based on analysis of STORET data for Chickasaw Creek, a 5/4 mg/L DO standard would not be achieved under low-flow conditions without additional evaluation and control of upstream point (Prichard Brooks WWTP) and nonpoint sources of BOD. Additional evaluation and control of point (Chickasaw Lagoon WWTP and Shell Oil) and nonpoint sources of BOD within the segment would facilitate achievement of the DO criterion on a more consistent basis.

While existing conditions in Chickasaw Creek indicate depressed DO levels, monitoring for other pollutants (cadmium, copper and mercury) indicate that the stream segment meets the F&W criteria in most cases. EPA recognizes that additional controls on point and nonpoint sources would need to be implemented in order to support a robust F&W use. However, based on currently available information, it has not been demonstrated that implementation of such control measures is not feasible (impacts of achieving reductions through point source controls are discussed further in section V. below). Therefore, EPA is proposing to upgrade the use of this segment to the F&W use designation.

8. Three Mile Creek

Ambient monitoring data were provided in STORET for one monitoring station on Three Mile Creek which has several years of chemical-specific data. The data show relatively few instances during which ambient concentrations exceeded the water quality criteria for total copper, total lead, and total

mercury. There were 40 analyses for total copper from 1974 to 1991. Copper was detected five times, with a maximum of 230 µg/L and a minimum of 20 µg/L. The mean of the detected values was 106 µg/L. The criterion for that part of the river is 32 µg/L (based on the mean hardness value reported in STORET). There were 27 measurements of total lead from 1981 to 1991. Lead was detected once above the criterion at 20 µg/L. The criterion for that part of the river is 3.9 µg/L. There were only five analyses for total mercury between 1981 and 1985. Mercury was detected once at 2.1 µg/L. The criterion for mercury is 0.012 µg/L.

For Three Mile Creek, a 5/4 DO standard could be met under low-flow conditions by controlling the BOD discharges from the Mobile Smith and Prichard Morris WWTPs. Control of upstream point and nonpoint, as well as in-segment point and nonpoint, sources of BOD would facilitate achievement of the DO criterion with greater consistency.

While existing conditions in this segment currently indicate some difficulty in meeting F&W-based DO limits, the data for other pollutants generally indicates no substantial impairment of the F&W use. EPA recognizes that additional control measures would be needed to support a robust F&W use. However, available information does not indicate that implementation of such measures would be infeasible (impacts of point source controls are discussed in section V. below). Therefore, EPA is proposing to upgrade this stream segment to the F&W use designation.

C. Request for Comment and Data

EPA believes the above proposed designated uses are appropriate considering the requirements of the CWA and the data and information available to EPA at the time of today's proposal. EPA acknowledges that additional data and information may exist which may further support or refute the attainment of today's proposed designated uses. Accordingly, the Agency will evaluate any data and information submitted to EPA by the close of the public comment period with regard to designating uses for these nine stream segments. Based on that evaluation EPA will make a final decision whether the designated uses in today's proposal are appropriate and consistent with the Act. To assist the Agency in ensuring that these decisions are based on the best available information, the Agency is soliciting additional information. To assist commenters, the following paragraphs

provide guidance on the type of information EPA considers as relevant.

Specifically EPA is seeking information that would assist in determining whether the beneficial uses identified above are currently being attained or have been attained in the past; whether natural conditions or features or human caused conditions prevent the attainment of these uses and whether these conditions can or cannot be remedied or would cause more environmental damage to correct than to leave in place; or whether the controls more stringent than those required by section 301(b) and 306 of the CWA would be needed to attain the uses and implementation of such controls would result in substantial and widespread social and economic impact. Below is a general discussion of the types of data/information requested by the Agency:

Ambient Monitoring Information: (1) Any in-stream data for any of the above stream segments reflecting either natural conditions (e.g., in-stream flow data or other data relating to stream hydrology) or irretrievable human-caused conditions which cannot be remedied and which prevent the uses or water quality criteria from being attained; (2) any available in-stream biological data; (3) any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions; and (4) any in-stream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Current and Historical Effluent Data: (1) Any data and information relating to mass loadings from point source discharges of pollutants such as BOD, NH₃-N, chlorine, metals (e.g., As, Cd, Cr, Cu, Pb, Hg, Ni, Ag, Zn), other toxics (e.g., volatile organic chemicals such as benzene or toluene, acid extractables such as pentachlorophenol, base neutrals such as anthracene, fluorene or pyrene, and pesticides such as aldrin, lindane, DDT, dieldrin, endrin and toxaphene); (2) data and information related to facility or treatment plant effluent quality; and (3) any information related to releases of pollutants from other sources such as landfills, transportation facilities, construction sites, agriculture/silviculture, incinerators, and contaminated sediments.

Water Quality Modeling Information: (1) Any data or information on analytical models which can be used to evaluate or predict stream quality, flow, morphology; (2) any physical, biological or chemical characteristics relating to beneficial uses; and (3) the results of

any such models which can be used to evaluate the attainment of beneficial uses.

Economic Data: Any information relating to costs and benefits associated or incurred as a result of facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

IV. Alternative Regulatory Approaches and Implementation Mechanisms

As explained above in section II., EPA's regulation supports a rebuttable presumption approach for designation of beneficial uses. Today's proposal reflects EPA's determination of appropriate use designations for these nine streams, based upon the information available to EPA at this time. EPA will consider any data or information submitted to the Agency by the close of the comment period in developing a final rule. However, it is possible that data and information may become available after completion of this rulemaking that will be material to water quality standards for these streams. If EPA ultimately promulgates federal use designations for these nine streams, there are several mechanisms available to ensure that the water quality standards and their implementing mechanisms appropriately take into account such information. These mechanisms are described below.

A. Designating Uses

States have considerable discretion in designating uses. The State may find that changes in use designations are warranted. As stated above, EPA will review any new or revised use designations adopted by the State for

any of the water bodies in today's proposal to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would subsequently initiate withdrawal of any final federal water quality standards which may result from today's proposal. However, EPA cautions the State that it must conduct a use attainability analyses as described in 40 CFR 131.3(g) when adopting water quality standards which result in uses which are not specified in section 101(a)(2) of the CWA, or which result in subcategories of uses specified in section 101(a)(2) which require less stringent criteria.

B. Site-Specific Criteria

The State may also develop data which indicates a site-specific water quality criteria for a particular pollutant is appropriate and take action to adopt such a criteria into their water quality standards. Site specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11 requires States to adopt criteria to protect designated uses which are based on sound scientific rationale and which contain sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States must establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site specific conditions, or other scientifically defensible methods, or establish narrative criteria where numerical criteria cannot be determined, or to supplement narrative criteria.

Currently, EPA guidance has specified three procedures for States and Tribes to follow in deriving site-specific criteria. These are the Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the *Water Quality Standards Handbook* (EPA-823-B940005a, 1994). There is not currently any specific guidance for the development of site-specific criteria for the protection of human health, although the Agency is developing options for such guidance which it expects to include in the proposed revisions to the *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*, expected in early 1998. EPA also recognizes there may be naturally occurring concentrations of pollutants which may exceed the national criteria published under section 304(a) of the CWA, and has issued policy guidance on establishing site specific aquatic life criteria equal to natural background. (Memo from Tudor T. Davies, Director, Office of Science and Technology to the

Regional Water Management Division Directors, and State and Tribal Water Quality Management Program Directors, dated 11/5/97)

C. Variances

Water quality standards variances are another alternative which can provide a facility with a limited period of time to comply with water quality standards. EPA recognizes that Alabama has chosen not to include a variance procedure in its State standards. Such procedures have, however, been adopted in many States and been approved by EPA. The Agency is providing an explanation of this procedure as additional information the public may find useful, and as discussed below, the proposed rule contains a federal variance procedure.

EPA believes variances are particularly suitable when the cause of unattainment is discharger-specific and/or it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States in circumstances which would otherwise justify changing a use designation on grounds of unattainability (i.e., the six circumstances contained in 40 CFR 131.10(g)). In contrast to a change in standards which removes a use designation for a water body, a water quality standards variance can apply only to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based; the underlying standard remains in effect for all other purposes.

For example, if a designated aquatic life use is currently precluded because of high levels of metals from past mining activities which cannot be remediated in the short term, but it is expected that water quality will eventually improve, a temporary variance may be granted to a discharger with relaxed criteria for such metals, until remediation progresses and the use becomes attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA that require NPDES permits to meet applicable water quality standards, while granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to

grant variances from federally adopted standards. EPA believes that it is appropriate to provide comparable federal procedures where, as proposed here, EPA adopts use designations which rely, at least in part, on a rebuttable presumption that fishable/swimmable uses are attainable or adopts more stringent criteria for the State's use designations. Therefore, EPA is proposing to authorize the Region 4 Regional Administrator to grant water quality standard variances where a permittee submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This variance procedure will apply to standards promulgated by EPA for the specific stream segments named in today's proposal.

Today's proposed rule spells out the process for applying for and granting such variances. The Administrator is delegating to the Regional Administrator the authority to propose and grant these variances. This delegation should expedite the processing of variance requests. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 40 CFR 131.34(b)(4) of today's proposed rule. Because water quality standard variances are technically revised water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and provide for an opportunity for public comment. EPA understands that variance related issues can often arise in the context of permit issuance. EPA Region 4 will seek to work closely with the State permitting authorities to ensure that variance requests will be considered in tandem with the State NPDES permitting process.

The proposed variance procedures require an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his delegatee) with supporting information.

The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the applicant implementing reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in

question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

D. Total Maximum Daily Loads (TMDLs)

State development of TMDLs are also an alternative approach for allocating loads of pollutants and ensuring attainment of designated uses in these water bodies. Section 303(d) of the CWA and its implementing regulations establish the TMDL process to provide a mechanism for allocating more stringent water quality-based requirements when technology-based controls are inadequate to achieve State water quality standards. The TMDL process can broaden the opportunity for public participation, expedite water quality based NPDES permitting, and lead to technically sound and legally defensible decisions for attaining and maintaining water quality standards. In addition, the TMDL process provides a mechanism for integrating the management of both point and nonpoint pollution sources that together may contribute to a water body's impairment. (See Guidance for Water Quality-based Decisions: The TMDL Process, EPA 440-4-91-001, April 1991)

V. Regulatory Impact Analysis

As explained more fully below in section VII. (Regulatory Flexibility Act), EPA's proposed rule does not itself establish any requirements directly applicable to regulated entities. While implementation of today's proposed rule may ultimately result in some new or revised permit conditions for some dischargers, EPA's action today does not impose any of these as yet unknown requirements on dischargers. Nonetheless, EPA is attempting, within the limits of these uncertainties, to make an estimate of the possible indirect costs which might ultimately result from this rulemaking.

The following is a summary of the proposed methodology being used for the regulatory impact analysis (RIA) prepared for this proposed rule. Further discussion is included in the full RIA, which is included in the docket as part of this rulemaking.

In the time prior to proposal EPA attempted to assess, to the best of its ability, compliance costs for facilities that could eventually be indirectly

affected by the designated uses of today's proposed rule. As described below, EPA searched available data sources in order to estimate as accurately as possible these potential costs. Although the costs are not expected to be significant, EPA has developed a methodology to estimate the potential indirect cost impacts on facilities discharging pollutants to waters subject to the numeric water quality criteria and uses established by this proposal.

However, because of data limitations, EPA's methodology and analysis is restricted to estimating costs associated with controls to reduce pollutants from industrial and municipal point source discharges in the nine stream segments covered by today's proposal. As such, EPA's methodology is unable to directly take into account the use of more cost-effective "best management practices and control technologies" that could be applied to other point sources (e.g., storm water outfalls) and nonpoint sources (e.g., runoff from agricultural and animal farming operations) that would improve water quality and reduce or possibly eliminate treatment costs for these industrial and municipal facilities.

EPA is soliciting public comment and supporting data on the fourteen facilities and nine stream segments it evaluated as part of the RIA, and on the methodology used to estimate costs associated with implementation of the proposed rule, as well as information and data on other point and nonpoint sources of pollution affecting the proposed F&W stream segments. EPA will review the comments and data provided by the public as well as any information and data it gathers during the public comment period, and will revise as necessary, the potential costs to facilities as an indirect result of attaining uses proposed in this rule. EPA will include this information as part of the final rulemaking.

A. Evaluation of Possible Pollutant Reduction Responsibilities

As explained previously, in proposing F&W Use designations for the 9 stream segments in today's proposal, EPA recognizes that, in certain cases, contributions from point and nonpoint sources may be impacting existing water quality. The State of Alabama has considerable discretion in determining how to allocate pollutant load reductions in order to achieve applicable water quality standards (see discussion of TMDLs, above). In many cases, the most efficient and cost-effective means of reducing pollutant discharges may be through controls of

nonpoint source contributions instead of requiring point sources to bear the brunt of the responsibility for meeting water quality standards in the water body. Indeed, when faced with the possibility of imposing significant treatment costs on point sources, EPA believes that all other feasible alternatives for achieving the CWA's goals should be fully explored.

For purposes of the RIA, however, EPA has effectively made the "worst-case" assumption from a costing perspective under its high-end scenario that point sources in the segments covered by this rule will bear full responsibility for bringing about any pollutant reductions that would be associated with meeting criteria applicable to the F&W Use designation for these waters. EPA made this assumption not because it believes that the State should choose to exercise its discretion in this fashion. Indeed, EPA would fully anticipate that the State would seek to rationally apportion any pollutant reduction responsibilities in a more cost-effective manner. Rather, EPA took this approach first because detailed information was not available regarding nonpoint source pollutant contributions to these waters and the measures that could reduce such nonpoint source loadings. Second, EPA wanted to ensure that the impacts to point sources located in these nine stream segments would be subject to complete analysis by the Agency and review by the public. The Agency believes that this approach ensures fully informed decision-making about possible worst-case impacts from the proposed rule. Thus, while it is conceivable that the costs described below could be incurred by point source discharges indirectly affected by the rule, it should not be assumed that such costs would actually be incurred. If EPA finalizes these use designations, the Agency will work closely with the State to ensure that responsibilities for meeting water quality standards are rationally apportioned among the sources of pollution. As discussed above in section IV., various options for regulatory alternatives and implementation mechanisms are available.

B. Overview of Methodology to Estimate Potential Costs Related to New Use Designations

The use designations being proposed by EPA, by themselves, will have no impact or effect. However, when the Alabama water quality criteria to protect these uses are applied to dischargers through the National Pollutant Discharge Elimination System (NPDES) permit program, then costs may be

incurred by regulated entities (i.e., point source dischargers) but these costs can vary significantly because of the wide range of control strategies available to dischargers. Due to the flexibility and discretion available in implementing water quality criteria, analysis of all potential costs would be difficult to perform for all potentially affected entities. EPA attempted to estimate the potential costs attributable to the proposal by developing detailed cost estimates for the 14 point source dischargers that may be impacted by the proposed rule. The following discussion addresses the approach that EPA used and is planning to follow as more data are obtained through the public comment and rulemaking process.

The actual impact of the proposed rule will depend upon (1) the procedures and policy decisions that will be established by the permitting authority to implement the rule, and (2) the control strategy the discharger selects in order to bring the facility into compliance. The procedures and policy decisions established by the permitting authority typically provide the methods to determine the need for water quality-based effluent limits (WQBELs) and, if WQBELs are required, how to derive WQBELs from applicable water quality criteria. The implementation procedures used to derive WQBELs for this analysis were based on the methods recommended in the EPA "Technical Support Document for Water Quality-based Toxics Control" (or TSD) EPA/505/2-90-001; March 1991). Specifically, a projected effluent quality (PEQ) was calculated and compared to the projected WQBEL. A PEQ is considered an effluent value statistically adjusted for uncertainty to estimate a maximum value that may occur.

For each facility, EPA performed an evaluation of reasonable potential to exceed WQBELs based on applicable water quality criteria to protect the proposed federal use designations (i.e., fish and wildlife). EPA considered any pollutant for which water quality criteria existed and for which data were available. EPA assumed that reasonable potential existed if a permit limit for the pollutant of concern was included in the existing permit for the facility. In the absence of a permit limit, but where monitoring data were available, EPA evaluated reasonable potential based on the monitoring data and the procedures contained in the TSD. To account for the possible effect of the oxygen demand potential from these facilities, EPA assumed that any discharger with a permit limit for dissolved oxygen, biochemical oxygen demand, or chemical oxygen demand had a

reasonable potential to exceed the dissolved oxygen criteria.

To calculate WQBELs, EPA used the TSD procedures to derive maximum daily and monthly average limits. Background concentrations were based on the average of data contained in STORET for upstream monitoring stations (including nearby tributaries); in the absence of background data, EPA assumed the background value to be zero. Critical low flows were extracted from the NPDES permit files or calculated from data contained in the United States Geological Survey (USGS) Daily Flow file data base for nearby gage stations. As required in Chapter 335 of the Alabama Department of Environmental Management Regulations, the 7-day, 10-year low flow (7Q10) was used for chronic aquatic life protection. In the absence of stream flow data, EPA conservatively assumed zero low flow. Once WQBELs were derived, EPA derived cost estimates that represent the cost to remove the incremental amount of pollutant(s) to levels needed to comply with WQBELs.

Prior to estimating compliance costs, an engineering analysis of how each facility could comply with the projected WQBEL was performed. The costs were then estimated based on the decisions and assumptions made in the analysis. To ensure consistency and reasonableness in estimating the general types of controls that would be necessary for a facility to comply with the proposal (assuming that implementation of the rule resulted in more stringent discharge requirements), as well as to integrate into the cost analysis the other alternatives available to regulated facilities, a costing decision matrix was used for each facility. Specific rules were established in the matrix to provide the reviewing engineers with guidance for consistently selecting options.

Under the decision matrix, costs for minor treatment plant operation and facility changes were considered first. Minor, low-cost modification or adjustment of existing treatment was determined to be feasible where literature indicated that the existing treatment process could achieve the projected WQBEL and where the additional pollutant reduction was relatively small (e.g., 10 to 25 percent of current discharge levels).

Where it was not technically feasible to simply adjust existing operations, the next most attractive control strategy was determined to be waste minimization/pollution prevention controls. However, costs for these controls were estimated only where they were considered feasible based on the reviewing

engineer's understanding of the process(es) at a facility. The practicality of techniques was determined based on several criteria established in the decision matrix. Decision considerations included the level of pollutant reduction achievable through waste minimization/pollution prevention techniques, appropriateness of waste minimization/pollution prevention for the specific pollutant, and knowledge of the manufacturing processes generating the pollutant of concern.

If waste minimization/pollution prevention alone was deemed not feasible to reduce pollutant levels to those needed to comply with the F&W-based WQBELs, a combination of waste minimization/pollution prevention, simple treatment, and/or process optimization was considered. If these relatively low-cost controls could not achieve the projected WQBELs, more expensive controls (e.g., end-of-pipe treatment) were considered.

The decision to add new treatment systems or to supplement existing treatment systems was based on a review of existing treatment at each facility. For determining the need for additional or supplemental treatment, sources of performance information included the EPA Office of Research and Development (ORD), Risk Reduction Engineering Laboratory's "RREL Treatability Database" (Version 4.0). The pollutant removal capabilities of the existing treatment systems and/or any proposed additional or supplemental systems were evaluated based on the following criteria: (1) The effluent levels that were being achieved currently at the facility; and (2) the levels that are documented in the EPA "RREL Treatability Database." If this analysis showed that additional treatment was needed, unit processes that would achieve compliance with the projected WQBELs were chosen using the same documentation.

Due to the uncertainty of the State's approach to implementation at this time, a range of costs was developed to represent a potential range of impacts based on certain implementation assumptions. The following generally

describes how the low-and high-end of the range of costs were developed for this study.

Under the low-end cost scenario, if the F&W-based permit limit was more stringent than existing effluent concentrations, costs were estimated for the incremental pollutant reductions required to achieve the F&W-based limit. In the absence of any monitoring data, it was assumed that no impact would occur even if a permit limit exists that is less stringent than the F&W-based permit limit. (It was assumed that if a permitted facility was not monitoring for a pollutant, it was not expected to be present in the effluent.) If monitoring data were available, but all values were reported below analytical detection levels, it was assumed that no costs would occur. Finally, if the estimated annualized cost for removal of a pollutant exceeded \$200 per toxic pounds-equivalent, it was assumed that dischargers would explore the use of alternative regulatory approaches. When it was assumed that facilities would pursue regulatory alternatives, no treatment cost was estimated for a facility. However, costs associated with the pursuit of the regulatory alternative were estimated for the facility and included in the total estimated costs for the proposal.

Under the high-end cost scenario, if the F&W-based permit limit was more stringent than the existing permit limit (or detectable effluent concentration in the absence of a permit limit), costs were estimated for the incremental pollutant reductions required to achieve the F&W-based limit. If there were no permit limit and all monitored values were reported below analytical detection levels, it was assumed that no impacts would occur. Finally, acknowledging that opportunities for the use of alternative regulatory approaches may be limited depending upon the particular circumstances for a facility, it was assumed that no alternative regulatory approaches would be allowed, and therefore, the \$200 per toxic pounds-equivalent trigger was removed from the decision matrix for the high-end cost scenario.

The \$200 per toxic pounds-equivalent trigger should not be construed as an absolute measure of when a facility should pursue regulatory alternatives or be granted relief from installing additional treatment. This trigger, based on the one used for the low-end in the EPA Assessment of Compliance Costs Resulting from Implementation of the Final Great Lakes Water Quality Guidance (March 13, 1995), was used to establish the low-end of a potential range of costs that reflects the flexibility available when implementing and complying with water quality-based permit limits. EPA acknowledges that some additional treatment costs could result from the rule for a facility, even if a regulatory alternative is granted for an individual pollutant. This could occur since some incremental level of treatment could be required as a condition of the action to grant the regulatory alternative. Therefore, the actual cost of this rule is expected to fall somewhere between the low-and high-end cost estimates. For this proposed action, EPA believes the actual cost will most likely occur below the mid-point of the estimated cost range because, as described earlier, EPA's methodology did not account for more cost-effective best management practices and control technologies that could be applied to other upstream and in-segment point and nonpoint sources of pollution to reduce or possibly eliminate treatment costs associated with industrial and municipal facilities discharging directly to stream segments covered by today's proposal.

C. Results for Stream Segments With Federal Use Designations

EPA identified 14 facilities that possess NPDES permits to discharge to stream segments with specific use designations for which new use designations are being proposed in this rule. Of these 14 facilities, 11 are classified as major dischargers, and 3 are classified as minor dischargers. The following table presents the universe of facilities EPA analyzed for today's proposed rulemaking.

SUMMARY OF DISCHARGERS TO STREAM SEGMENTS WITH PROPOSED FEDERAL USE DESIGNATIONS

Stream Segment	Facility name	NPDES permit number	Major (M)/minor (m) dis-charger	SIC code*
Buck Creek	Alabaster WWTP	AL0002801	M	4952
Cane Creek (Oakman Segment)	Oakman WWTP	AL0025348	m	4952
Chickasaw Creek	Chickasaw Lagoon	AL0020885	M	4952
Chickasaw Creek	Occidental Chemical	AL0003514	M	2812

SUMMARY OF DISCHARGERS TO STREAM SEGMENTS WITH PROPOSED FEDERAL USE DESIGNATIONS—Continued

Stream Segment	Facility name	NPDES permit number	Major (M)/minor (m) dis-charger	SIC code*
Chickasaw Creek	Shell Oil Company	AL0055859	M	2911
Chickasaw Creek	UOP Molecular Sieve	AL0002666	M	2819
Flint Creek	Hartselle WWTP	AL0054640	M	4952
Lost Creek	Carbon Hill WWTP	AL0024341	m	4952
Mobile River	International Paper—Mobile Mill	AL0002780	M	2621
Mobile River	Kimberly Clark Tissue	AL0002801	M	2621
Three Mile Creek	City of Mobile (Smith WWTP)	AL0023094	M	4952
Three Mile Creek	Cavenham Forest Industries	AL0001104	m	2491
Three Mile Creek	City of Prichard (Carlos A. Morris WWTP)	AL0023205	M	4952
Town and Cane (Jasper Segment) Creeks	Jasper WWTP	AL0023418	M	4952

* Standard Industrial Classification (SIC) Code.

Based on evaluation of the facilities that may be impacted, EPA estimates that the total potential cost resulting from new designations for the above nine stream segments will range from \$1.6 million to \$14.7 million. Under the low-end, the annual costs for individual facilities ranged from \$0 (i.e., no projected impact) to just over \$780,000. Under the low-end, four facilities were assumed to pursue alternative regulatory approaches. Under the high-end, the annual costs for individual facilities ranged from \$0 (i.e., no projected impact) to over \$8.6 million. Under the high-end, no facilities were assumed to pursue alternative regulatory approaches.

The total baseline pollutant load for the 14 facilities is approximately 240,000 toxic pound-equivalents per

year (pollutant toxic weights were derived using the EPA criterion for copper, 5.6 micrograms per liter, as the standardization factor). The pollutant load reduction under the low-end scenario is 20 percent or about 47,500 toxic pound-equivalents per year. Mercury accounts for over 99 percent of the total pollutant load reduction under the low-end. Under the high-end scenario, the pollutant load reduction is over 90 percent or over 218,000 toxic pound-equivalents per year. Mercury and chromium (VI) account for over 98 percent of the total pollutant load reduction under this scenario.

The overall cost-effectiveness is estimated to be \$34 per toxic pound-equivalent and \$67 per toxic pound-equivalent for the low-and high-end scenarios, respectively. Pollutant load

reductions associated with implementation of the proposed rule do not include estimates of load reductions from controls to comply with applicable Alabama dissolved oxygen criteria. Although costs were estimated for these controls and included in the estimated compliance costs for the proposal, the absence of toxic weights for dissolved oxygen prohibited calculation of toxic-weighted pollutant load reductions for this pollutant. As such, the cost-effectiveness for this proposal is significantly better than estimated above, which only accounts for loads reduced for toxic pollutants (e.g., mercury, lead and cadmium). The estimated costs and load reductions by pollutant, including those associated with compliance with the dissolved oxygen criteria, are presented below.

Pollutant	Low-end scenario		High-end scenario	
	Annual costs	Load reduction (lbs-eq/year)	Annual costs	Load reduction (lbs-eq/year)
Dissolved Oxygen	\$574,122	*406,905	\$3,775,568	*1,374,413
Cadmium	51,362	77	1,773,735	1,685
Chromium (VI)	7,239	0	1,720,120	26,325
Lead	61,034	340	1,916,628	2,066
Mercury	897,616	47,086	4,747,721	188,436
Zinc	9,864	0	749,197	199

*Pollutant load reductions for dissolved oxygen are presented as pounds of BOD reduced each year. Since a toxic weight does not exist for either dissolved oxygen or BOD, toxic-weighted load reductions could not be estimated and included in the total estimated pollutant load reduction for the proposal.

Under the low-end scenario, capital and operation & maintenance (O&M) costs account for over 75 percent of the total costs, and costs associated with pursuit of alternative regulatory approaches account for just over 12 percent of the annual costs. Under the high-end scenario, capital and O&M costs account for over 97 percent of the total costs. Under the low-end, which assumed that more aggressive controls

on indirect dischargers would be utilized (as compared to end-of-pipe treatment under the high-end), waste minimization costs accounted for 8 percent of the total estimated annual costs. Under the high-end, waste minimization costs account for 2 percent of the total annual costs. Under both scenarios, monitoring costs account for less than 1 percent.

EPA is requesting comments, data, and information for the 14 facilities that

could assist EPA in evaluating the potential costs to these facilities, including, but not limited to, descriptions of existing treatment systems and pollutant control systems; pollutants expected in effluent discharge; long-term average pollutant effluent concentrations; long-term average receiving water pollutant concentrations; and critical low flow

values for receiving water stream segments.

While EPA was only able to gather limited economic information on the affected facilities in the time allowed for this proposal, this information and EPA's regulatory impact analysis did not support a finding that the uses in today's rule are not attainable. EPA's analysis indicated that under the high-end scenario two facilities could potentially incur relatively higher costs when compared to the other 12 facilities subject to today's rule. In particular, EPA is concerned about the level of treatment estimated under the high-end scenario that may be required of municipal facilities discharging to Three Mile and Chickasaw Creek if regulatory alternatives such as TMDLs and site-specific criteria are not pursued. It is reasonable to expect, however, that the State or affected municipalities will not ignore regulatory alternatives and implementation options that could, if pursued, substantially reduce the costs to facilities discharging to streams covered by today's proposal.

In addition, EPA is also concerned about the levels of mercury being discharged into Chickasaw Creek. If the limited mercury data are accurate, these levels could present a significant risk to individuals fishing and recreating in this watershed. EPA suspects that the limited discharge data on mercury are inaccurate because the information for one municipal facility indicates that it may be discharging mercury at levels over 1,000 times higher than effluent concentrations observed by EPA using "clean" analytical detection methods. EPA will work with the State to further evaluate the validity of the data.

EPA could not conclude based on the information gathered prior to proposal that costs estimated for this action are not justified or would result in widespread social and economic impact. Should such information become available for any of the facilities, the Agency would consider this information for the final rule. EPA is committed to working with the State and the various stakeholders affected by this rule to ensure protection of public health and the environment, and that costs remain reasonable.

VI. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

VII. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), federal agencies generally are required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of a proposed rulemaking. However, under section 605(b) of the RFA, if the Administrator for the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, the agency is not required to prepare an IRFA. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an initial regulatory flexibility analysis.

Under the CWA water quality standards program, states must adopt water quality standards for their waters that must be submitted to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES)

program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved State program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet State water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of federally-promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Alabama will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of discretionary choices associated with permit writing. While Alabama's implementation of the final rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. See *United States Distribution Companies v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

VIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the State or any local government or the private sector; rather, this rule proposes designated uses for certain stream segments of Alabama, which, when combined with State adopted water quality criteria constitute water quality standards for those stream segments. The State may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and therefore, is not subject

to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

IX. Paperwork Reduction Act

This action requires no new or additional information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, no Information Collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the prior consultation and written communications with representatives of affected State, local and Tribal governments and an Agency statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

For the same reasons as stated above in section VIII., EPA has determined this proposed rule does not impose federal mandates on State, local or Tribal governments. Moreover, this rulemaking proposal is required by statute. See CWA 303(c)(4) (requiring the Administrator to promptly propose regulations setting forth revised or new water quality standards where the Agency has disapproved State standards as being inconsistent with the Act). Thus today's proposed rule is not subject to E.O. 12875.

Nonetheless, EPA has involved State and local governments in the development of this rule. Prior to this

proposed rulemaking action, EPA had numerous phone calls, meetings and exchanges of written correspondence with representatives of Alabama's Division of Environmental Management to discuss EPA's concerns with the State's water quality standards, possible remedies for addressing the disapproved sections of the water quality standards, the use designations in today's proposal and the federal rulemaking process. The data and descriptive information from these exchanges was essential to evaluating and analyzing the attainment of use designations for the nine stream segments in today's proposal. In addition, EPA issued a notice in the **Federal Register** on January 29, 1997, requesting information from the public on specific streams in Alabama, and held a public hearing in Montgomery, Alabama on February 26, 1997. EPA will continue to work with affected parties before finalizing these water quality standards for Alabama.

EPA has scheduled a public hearing on April 22, 1998, in Montgomery, Alabama. EPA's public notification process is targeting parties across a wide range of interests, both within and outside of government, to ensure them the opportunity for involvement. For additional information contact the person listed under the **FOR ADDITIONAL INFORMATION CONTACT** section at the beginning of this preamble.

XI. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as "critical." Consultation is designed to assist federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice and guidance on whether an action complies with the substantive requirements of ESA.

As a result of consultation under section 7 of the ESA between EPA and FWS, the FWS issued a biological opinion dated October 8, 1997 regarding the State of Alabama's Water Quality Standards program. The opinion determined that the Alabama water quality standards program is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of species' critical habitat. The opinion also concluded that the standards will

result in "take" of listed species, including water bodies classified with the Fish and Wildlife use. An Incidental Take Statement was issued with the opinion that authorizes "take" associated with the Alabama Water Quality Standard program. Within the body of the opinion, the FWS stated that:

Any reclassification and/or classification of uses to less than fishable/swimmable in stream segments harboring listed species would be subject to section 7 (of the ESA) consultation on a case-by-case basis, and would include an evaluation of the appropriateness of criteria values at that time. (page 29)

In a letter dated June 5, 1997, the Fish and Wildlife Service notified EPA that further consultation will not be necessary for actions establishing F&W use designations for Alabama stream segments. In today's proposed federal rulemaking, EPA is proposing F&W use designations for nine stream segments.

XII. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement

Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how today's notice is subject to the NTTAA and identify any potentially applicable voluntary consensus standards.

List of Subjects in 40 CFR Part 131

Environmental protection, Intergovernmental relations, Water pollution control.

Dated: February 27, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart D—[Amended]

2. Section 131.34 is added to read as follows:

§ 131.34 Alabama.

(a) *Use designations for surface waters.* In addition to the State adopted use designations, the following water body segments in Alabama have the beneficial uses designated in paragraph (a) of this section.

Basin	Stream Segment	From	To	Classification
CAHABA	Buck Creek	Cahaba Valley Creek	Shelby Co. Road 44	FISH&WILDLIFE.
MOBILE BAY	Chickasaw Creek	Mobile River	Limits of Tidal Effects (Highway 43).	FISH&WILDLIFE.
MOBILE BAY	Mobile River	Its Mouth	Spanish River	FISH&WILDLIFE.
MOBILE BAY	Three Mile Creek	Mobile River	Its Source	FISH&WILDLIFE.
TENNESSEE	Flint Creek	Alabama Highway 36	Shoal Creek	FISH&WILDLIFE.
WARRIOR	Cane Creek (Jasper)	Mulberry Fork	Town Creek	FISH&WILDLIFE.
WARRIOR	Cane Creek (Oakman)	County Road 2.5 Miles Southeast of Oakman.	Alabama Highway 69	FISH&WILDLIFE.
WARRIOR	Lost Creek	Downey Branch	US Highway 78 crossing one mile southeast of Carbon Hill.	FISH&WILDLIFE.
WARRIOR	Town Creek	Cane Creek (Jasper)	100 Yards Upstream of Southern Railway Crossing (1.1 Miles Upstream of Cane Creek).	FISH&WILDLIFE.

(b) *Water quality standard variances.*

(1) The Regional Administrator, EPA Region 4, is authorized to grant variances from the water quality standards in paragraph (a) of this section where the requirements of this paragraph (b) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306

of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (b)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) *Procedures.* An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 4. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (b)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Alabama's NPDES program.

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 98-5722 Filed 3-4-98; 8:45 am]

BILLING CODE 6560-50-U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC72

Disaster Assistance; the Declaration Process

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule, with request for comments.

SUMMARY: This proposed rule would establish the financial criteria under which a cost-share adjustment would be granted for permanent restorative work and for emergency work unless otherwise adjusted, and caps that cost-share at 90 percent Federal. Secondly, it would phase in the threshold for granting cost-share adjustments to current dollars over a two-year period, and would allow that threshold to be adjusted annually for inflation.

DATES: We invite your comments, which may be submitted on or before May 4, 1998.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-4066, (facsimile) 202-646-4060.

SUPPLEMENTARY INFORMATION:

Background

In 1985, the State of West Virginia was struck with an extraordinarily severe disaster (753-DR), for which a cost-share adjustment was granted to the normal 75 percent Federal/25 percent non-Federal cost-share of assistance under sections 403 and 406 of the Disaster Relief Act of 1974 (later amended and named the Robert T. Stafford Disaster Relief and Emergency Assistance Act). (For purposes of this rule the Disaster Relief Act and its successor are called the Stafford Act). That disaster had an impact of \$64 dollars (of Stafford Act costs) per capita, based on statewide population. Since Hurricane Hugo in 1989, a number of extraordinary disasters have continued to occur throughout the United States causing significant impact to the local, State, and Federal governments.

FEMA has used the precedent set in the 1985 West Virginia disaster as a gauge to determine when to recommend

to the President that cost-share adjustments be granted. However, in keeping with the supplemental nature of Federal assistance under the Stafford Act, adjustments were granted to the cost-share only in those rare instances when the disaster had an extraordinary impact.

Since 1985, over 435 major disaster declarations have been made under the Stafford Act and its predecessor. Yet, only 32 cost-share adjustments have been granted. Moreover, since Hurricane Andrew occurred in 1992, there have been no cost-share adjustments for permanent restorative work with greater than a 90% Federal share. This also serves to maintain the supplemental nature of Federal disaster assistance, and ensures at least some level of non-Federal cost-share for disaster assistance.

The purpose of this proposed rule would be two-fold. First, it would establish in regulation the financial criteria under which a cost-share adjustment could be granted for permanent restorative work under section 406 of the Stafford Act, and for emergency work under sections 403 and 407 under the Stafford Act, if not otherwise adjusted for the disaster, and caps that cost-share at 90 percent Federal. Secondly, this proposed rule would phase in the threshold for granting cost-share adjustments to current dollars over a two-year period, and would allow that threshold to be adjusted annually for inflation. Since 1985, the threshold for granting cost-share adjustments has been \$64 per capita. In current dollars, that figure would be raised to \$100 per capita. (Per capita costs are based on actual obligations under the Stafford Act only, excluding FEMA administrative costs and the non-Federal cost-share).

This rule would apply only to sections 403, 406, and 407 of the Stafford Act, which stipulate that the Federal share of assistance will not be less than 75 percent of the total eligible costs. The Stafford Act contains no provision for waiver of cost-sharing for the Individual and Family Grant program (section 411), the construction or site development costs at a manufactured home group site (section 408), or the Hazard Mitigation program (section 404). The Federal share of grants under these sections is limited by law to 75 percent of the total eligible costs.

In order to retain the supplemental nature of disaster assistance, the Consumer Price Index for All Urban Consumers published by the Department of Labor has been applied to the 1985 \$64 per capita figure to raise

that threshold to current dollars. The Consumer Price Index is also the measure used to adjust grants annually under the Individual and Family Grant Program (section 411 of the Stafford Act) and the small projects under the Public Assistance Program (section 422 of the Stafford Act.) Under this proposed rule the threshold would be \$100 per capita, and would be adjusted annually for inflation. Since this is such a large increase in the threshold, the adjustment would be made over a two-year period. In FY 1998 the threshold would be increased by \$16 dollars to \$80 per capita statewide. Beginning October 1, 1998, the threshold would be increased to \$100 per capita statewide, with an adjustment made for inflation thereafter.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10. No environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

List of subjects in 44 CFR Part 206:

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 206 is proposed to be amended as follows:

PART 206 SUBPART B—THE DECLARATION PROCESS

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.47 is added to read as follows.

§ 206.47 Cost-share adjustments.

(a) In accordance with the supplemental nature of assistance under the Stafford Act, and to demonstrate the fiscal responsibility of both State and Federal governments, a measure of non-Federal cost-sharing will always be retained. The standard 75 percent Federal and 25 percent non-Federal cost-share ratio will remain in effect for most Presidentially declared major disasters. For extraordinary disasters, the following standard will be used to evaluate whether costs under the Act for assistance to State and local governments should be adjusted. This adjustment applies to permanent restorative work under section 406 of the Stafford Act and to emergency work under sections 403 and 407 of the Stafford Act unless otherwise adjusted.

(b) Beginning in FY 1998 and effective for major disasters declared on or after [the effective date of the final rule] a qualifying threshold of \$80 per capita of State population will be used where individual States are severely impacted by a major disaster. This threshold will be based on actual obligations under the Stafford Act only, and will exclude FEMA administrative costs and the non-Federal cost-share.

(c) Beginning October 1, 1998, a qualifying threshold of \$100 per capita of State population (as adjusted for inflation), will be used where individual States are severely impacted by a major disaster. Thereafter, this threshold will be adjusted annually for inflation using the Consumer Price Index for all Urban Consumers published by the Department of Labor. This threshold will be based on actual obligations under the Stafford Act only and will exclude FEMA administrative costs and the non-Federal cost-share.

(d) Where future cost-share adjustments are authorized, the Federal share of assistance to State and local governments for impacts to public and eligible private-nonprofit facilities may be increased above 75 percent but may not be greater than 90 percent of the total eligible cost. One hundred percent Federal funding may be provided for direct Federal assistance emergency work, or for emergency work under

sections 403 and 407, as conditions warrant.

Dated: January 13, 1998.

James L. Witt,

Director.

[FR Doc. 98-5708 Filed 3-4-98; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE52

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Threatened Status for Howell's Spectacular Thelypody

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed threatened status for *Thelypodium howellii* ssp. *spectabilis* (Howell's spectacular thelypody). In addition, the Service has reopened the comment period to accommodate a public hearing that was requested by the Oregon Cattlemen's Association. All parties are invited to submit comments on this proposal.

DATES: The comment period now closes on April 20, 1998. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held on April 9, 1998, from 6:00 p.m. to 8:00 p.m.

ADDRESSES: The public hearing will be held at the Geiser Grand Hotel, 1996 Main Street, Baker City, Oregon. Comments and materials concerning this proposal should be sent to the Supervisor, U. S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (see ADDRESSES section) or (208) 378-5243.

SUPPLEMENTARY INFORMATION:

Background

Thelypodium howellii ssp. *spectabilis* is known from 11 sites in Baker and Union counties, Oregon. This taxon is threatened by a variety of factors including habitat destruction and fragmentation from agricultural and urban development, grazing by domestic livestock, competition from non-native vegetation, and alterations of wetland hydrology.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species listed above;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

On January 13, 1998, the Service published a rule proposing threatened status for *Thelypodium howellii* ssp. *spectabilis* in the **Federal Register** (63 FR 1948). The original comment period was to close on March 16, 1998. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 et seq.) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request from Mr. Rod Dowse of the Oregon Cattlemen's Association in Portland, Oregon, was received within the allotted time period. The Service has scheduled a public hearing to be held on April 9, 1998, at the Geiser Grand Hotel in Baker City, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral

statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period now closes on April 20, 1998. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author: The primary author of this notice is Edna Rey-Vizgirdas (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: February 26, 1998.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98-5666 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 63, No. 43

Thursday, March 5, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Tuesday, March 17, 1998, in Randle, Washington, at the Randle Fire Hall, located ½ mile east of Randle, on south side of US Highway 12. The meeting will begin at 10 a.m. and continue until 4:30 p.m. The purpose of the meeting is to: (1) Provide an update on the Cispus Adaptive Management Area, (2) Provide information on Survey and Manage Protocols, (3) Share information on the Timber Sale Program Environmental Assessment process, and (4) Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891-5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 N.E. 51st Circle, Vancouver, WA 98682.

Dated: February 27, 1998.

Ted C. Stubblefield,

Forest Supervisor.

[FR Doc. 98-5739 Filed 3-4-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the date specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

	Facility number, name, and location of stockyard	Date of posting
GA-222	B & B Sales, Commerce, Georgia.	January 1, 1998.
IL-175	Greenville Livestock, Inc., Centralia, Illinois.	December 23, 1997.

Done at Washington, D.C. this 26th day of February 1998.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 98-5635 Filed 3-4-98; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock market named herein, originally posted on the date specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under the Act and is therefore, no longer subject to the provisions of the Act.

	Facility number, name, and location of stockyard	Date of posting
MN-152	Spring Valley Sales Co., Inc., Spring Valley, Minnesota.	November 21, 1959.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 26th day of February 1998.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 98-5634 Filed 3-4-98; 8:45 am]

BILLING CODE 3210-KD-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: One-Time Report For Foreign Software or Technology Eligible For De Minimis Exclusion.

Agency Form Number: Not applicable.

OMB Approval Number: 0694-0101.

Type of Request: Extension of a currently approved collection of information.

Burden: 175 hours.

Average Time Per Response: 25 hours per response.

Number of Respondents: 7 respondents.

Needs and Uses: Any company that is seeking exemption from export controls on foreign software and technology commingled with U.S. software or

technology must file a one-time report for the foreign software or technology. The report must include the percentage of relevant values in determining U.S. content, assumptions, and the basis or methodologies for making the percentage calculation. The methodologies must be based upon accounting standards used in the operation of the relevant business, which must be specified in the report.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.
OMB Desk Officer: Dennis Marvich (202) 395-5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 6, 1998 to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: February 26, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5650 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel Monitoring and Communications Requirements.

Agency Form Number: None.

OMB Approval Number: 0648-0307.

Type of Request: Extension of a currently approved collection.

Burden: 9,488 hours.

Number of Respondents: 826 (multiple transmissions).

Avg. Hours Per Response: This varies with type of equipment and requirement. Upon installation, vessel monitoring or transponder systems automatically transmit data, which takes about 5 seconds. For requirements to transmit data on Inmarsat

communications units, transmissions take about 10 minutes.

Needs and Uses: This is a generic collection of information that includes regulatory requirements for vessel monitoring and communication under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing vessels and/or at-sea processing vessels in selected fisheries are required to have installed transponders/vessel tracking systems or Inmarsat Communication Units for onboard communications with the National Marine Fisheries Service. The primary purpose of such equipment is to communicate the vessel's location or, in the case of Inmarsat Communication Units, communicate harvest information collected by observers aboard the vessel. The installation time of the monitoring and/or communication equipment is measured as well as the estimated transmission times for communication.

Affected Public: Businesses or other for-profit organizations, individuals.

Respondent's Obligations: Mandatory.

OMB Desk Officer: David Rostker (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: February 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5653 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tag Recapture Card.

Agency Form Number: None.

OMB Approval Number: 0648-0259.
Type of Request: Reinstatement of a previously approved collection.

Burden: 8 hours.

Number of Respondents: 240.

Avg. Hours Per Response: 2 minutes.

Needs and Uses: The Cooperative Marine Gamefish Tagging Program began in the Southeast Region in 1971. The primary objectives of a fish tagging program are to obtain scientific information on fish growth and movement, information that assists in stock assessments and management. This program asks persons randomly capturing tagged fish to voluntarily supply data on the fish caught—size, weight, location of capture, and similar information.

Affected Public: Individuals.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 6, 1998 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: February 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5657 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Small-Craft Facility Questionnaire.

Agency Form Number: NOAA 77-1.

OMB Approval Number: 0648-0021.

Type of Request: Extension of the currently approved collection.

Burden: 213 hours.

Number of Respondents: 1,600.

Avg. Hours Per Response: 8 minutes.

Needs and Uses: NOAA's National Ocean Service produces nautical charts

to ensure safe navigation. Small-craft charts are designed for recreational boaters and include information on local marina facilities and the services they produce (fuel, repairs, etc). NOAA must collect information to update the charts.

Affected Public: Businesses or other for-profit organizations.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent on or before April 6, 1998 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: February 27, 1998.

Linda Englemeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5658 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: South Pacific Tuna Act.

Agency Form Number: None.

OMB Approval Number: 0694-0218.

Type of Request: Reinstatement of a previously approved collection.

Burden: 248 hours.

Number of Respondents: 32 (multiple responses).

Avg. Hours Per Response: Varies between 15 minutes and 1 hour depending on the requirement.

Needs and Uses: In 1987, the U.S. signed a Treaty with a number of Pacific Island States for the purpose of managing tuna resources in the South Pacific. The information requirements contained in the implementing regulations are specific to the Treaty. All vessels that want to fish for tuna in the management area must be licensed and registered. Catch and unloading

reports are also required and go directly to the Forum Fisheries Agency.

Affected Public: Businesses or other for-profit organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: February 27, 1998

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5659 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Federal Fisheries Permit Family of Forms.

Agency Form Number: None for this revision.

OMB Approval Number: 0648-0202.

Type of Request: Revision of an existing collection.

Burden: 35,531 hours.

Number of Respondents: 44,541.

Avg. Hours Per Response: 2 minutes for the items under revision.

Needs and Uses: Under Amendment 6 and 7 to the Northeast Multispecies Fishery Management Plan (FMP), and under Amendment 1 to the Sea Scallop FMP, a Vessel Monitoring System (VMS) is considered to be a major tool for the monitoring and enforcing of Days-At-Sea restrictions. Certain categories of limited access scallop and multispecies vessels must use a VMS while fishing under the Days-At-Sea program when so notified by the National Marine Fisheries Service (NMFS). When the equipment is

installed, a notification to NMFS is required.

Affected Public: Businesses or other for-profit institutions, individuals, Federal Government, state, local or tribal government.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: February 27, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5661 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Reporting and Recordkeeping Requirements under the Wassenaar Arrangement.

Agency Form Number: Not applicable.

OMB Approval Number: 0694-0106.

Type of Request: Extension of a currently approved collection of information.

Burden: 826 hours.

Average Time Per Response: Between one and five minutes depending on the requirement.

Number of Respondents: 2,275.

Needs and Uses: Thirty-three countries have given approval to establish the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies. The purpose is to prevent unauthorized transfers of such items. To fulfill our obligations under this Agreement, BXA must receive information on shipments

that have been made under a "license exception." This information is shared with participating members of the Agreement.

Affected Public: Businesses or other for-profit organizations.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dennis Marvich (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5730 Filed 3-4-98; 8:45 a.m.]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: License Exception, Humanitarian Donations.

Agency Form Number: None.

OMB Approval Number: 0694-0033.

Type of Request: Extension of a currently approved collection of information.

Burden: 10 hours.

Average Time Per Response: 5 hours.

Number of Respondents: 2.

Needs and Uses: Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Pub. L. 99-64), exempts from foreign policy controls exports of donations to meet basic human needs. Since the re-write of the Export Administration Regulations, an exporter is permitted to ship humanitarian goods identified in Supplement 2 to Part 740, to embargoed destinations using the new License Exception procedures. This regulation reduces the regulatory

burden on these exporters by enabling them to make humanitarian donations with only minimal recordkeeping.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dennis Marvich (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer,
[FR Doc. 98-5731 Filed 3-4-98; 8:45 a.m.]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Application for Transfer of License to Another Party.

Agency Form Number: None.

OMB Approval Number: 0694-0051.

Type of Request: Extension of a currently approved collection of information.

Burden: 11 hours.

Average Time Per Response: 66 minutes.

Number of Respondents: 10.

Needs and Uses: In certain circumstances (i.e., company mergers, takeovers, etc.), it is necessary to transfer ownership of licenses to another party. The information collected is necessary to ensure that all parties are aware of and agree to the transfer, both of the ownership as well as responsibilities associated with export authorizations.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dennis Marvich (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dennis Marvich, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5732 Filed 3-4-98; 8:45 a.m.]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-409-801, C-409-802]

Initiation of Antidumping and Countervailing Duty Investigations: Butter Cookies in Tins from Denmark

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Copyak (antidumping investigation) or Christopher Cassel (countervailing duty investigation), Office of CVD/AD Enforcement VI, International Trade Administration, U.S. Department of Commerce, Room 40120, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-2786.

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

The Petition

On February 6, 1998, the Department of Commerce ("the Department")

received a petition filed in proper form by Hearthside Baking Company, Inc., D/B/A Maurice Lenell Cooky Co. ("the petitioner").

Petitioner alleges, in accordance with section 702(b) of the Act, that producers and/or exporters of butter cookies in tins from Denmark receive countervailable subsidies within the meaning of section 701 of the Act, and, in accordance with section 732(b) of the Act, that imports of butter cookies in tins from Denmark are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act. Petitioner also alleges that imports of such butter cookies in tins are materially injuring or threaten material injury to an industry in the United States.

The Department finds that petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support (*see* discussion below).

Scope of Investigation

For purposes of the antidumping and countervailing duty investigations, the products covered are butter cookies in tins. Butter cookies are flat baked sweet biscuits made from a mixture of ingredients which may include, but are not limited to butter, flour, eggs, and sugar. As defined by the U.S. Food and Drug Administration Compliance Policy Guide 7102.06, Chapter 5, Sec. 505.200, butter cookies are distinguishable from all other cookies in that "all of the shortening ingredient is butter." The butter cookies covered by these investigations are only those in hard containers ("tins"), which include, but are not limited to, those that are made of metal, and are round, printed with colorful decorative logos and/or pictures, and which have closeable lids.

The merchandise subject to these investigations is classifiable under subheadings 1905.30.0041 and 1905.30.0049 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Consultations

On February 20, 1998, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department held consultations with representatives of the European Union and the Government of Denmark about the countervailing duty petition. The officials expressed concerns about the definition of the like product. *See* Tab

B of Antidumping and Countervailing Duty Checklist ("Checklist"), dated February 26, 1998, which is on file in public version form in the public file in room B-099 of the main Commerce building. The officials also expressed concerns about the subsidy allegations made in the countervailing duty petition and, subsequently, submitted information regarding the alleged subsidy programs. *See ex parte* memorandum to file dated February 26, 1998, Consultation with European Union and Government of Denmark Representatives Regarding the Countervailing Duty Petition on Butter Cookies in Tins from Denmark, which is on file in the public file in room B-099 of the main Commerce building. We considered the concerns expressed by the representatives of the European Union and the Government of Denmark for purposes of this initiation.

Determination of Industry Support for the Petition

Sections 702(b)(1) and 732(b)(1) of the Act require that a petition be filed on behalf of the domestic industry. Sections 702(c)(4)(A) and 732(c)(4)(A) of the Act provide that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct statutory authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render

the decision of either agency contrary to the law.¹

Section 771(10) of the Act defines domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has adopted the domestic like product definition set forth in the petition, making only minor adjustments for clarification purposes. In this case, the petitioner established industry support above the statutory requirement. *See* Tab B of Checklist which is on file in public version form in the public file in room B-099 of the main Commerce building. Accordingly, the Department determines that the petition is filed on behalf of the domestic industry within the meaning of sections 702(b)(1) and 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate the antidumping duty investigation is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioner identified several exporters and producers of butter cookies in tins from Denmark. Petitioner provided allegations of sales at less than fair value based on export price ("EP") and constructed export price ("CEP"), within the meaning of sections 772(a) and 772(b) of the Act, and based on normal value ("NV"), within the meaning of section 773 of the Act. The petitioner based EP on price quotes U.S. buyers received from Danish companies. The petitioner calculated a net U.S.

¹ *See Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

price by subtracting the freight costs in Denmark as provided in a market research report ("Foreign Market Research Report") commissioned by petitioner. We discussed the information contained in this report with the author of the report. See Tab C of Checklist which is on file in public version form in the public file in room B-099 of the main Commerce building. The petitioner subtracted the freight costs to the United States to arrive at an ex-factory price. Petitioner provided separate EP calculations using freight costs to the United States based on U.S. Census Import Statistics, and freight costs to the United States based on information contained in the Foreign Market Research Report.

In deriving the CEP, the petitioner began with the price offered to a U.S. buyer from a sales broker that was not related to the Danish producer or its U.S. subsidiary. Next, the petitioner subtracted a loyalty discount offered by Danish producers. Then, the petitioner subtracted the freight cost inside Denmark. As mentioned above, this freight cost was obtained from the Foreign Market Research Report. Next, the petitioner subtracted the freight cost to the United States using as sources both U.S. Census data as well as data contained in the Foreign Market Research Report. Finally, the petitioner subtracted the freight cost inside the United States as provided by a U.S. shipping company, to arrive at the ex-factory price.

Petitioner calculated NV based on information contained in the Foreign Market Research Report. Based on a sales receipt and personal observations provided by the foreign market researcher, petitioner obtained a range of retail prices in Denmark. Then, the petitioner derived the price to the retailer by subtracting a mark-up provided by the researcher from the retail price. Next, the petitioner calculated the price to the wholesaler by subtracting from the price to the retailer the administrative cost at the wholesale level as provided by the researcher. Finally, by subtracting value-add tax and the transportation cost provided by the researcher, the petitioner arrived at NV.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of butter cookies in tins from Denmark are being, or are likely to be, sold in the United States at less than fair value.

Subsidy Programs

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and/or exporters of the subject merchandise in Denmark:

European Union Program

Export Restitution Payments on Butter, Sugar and Wheat Flour

Government of Denmark Programs

1. Export Credit and Insurance Program
2. Export Training Program
3. Assistance for Export Groups

We are not including in our investigation the following program alleged to be benefitting producers and exporters of the subject merchandise in Denmark:

International Tender Program

Information provided in the petition (see Exhibit 22) indicates that this program provides assistance to Danish companies bidding on deliveries abroad of projects, consulting, services or equipment. Because the merchandise subject to this investigation does not fall within the type of items enumerated (i.e., deliveries abroad of projects, consulting, services or equipment), this program does not apply to producers of butter cookies. Therefore, we are not initiating an investigation of this program.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise being sold at less than fair value and benefitting from the bestowal of countervailable subsidies. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioner and the Danish export statistics provided in the petition. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation. See Tab E of the Checklist which is on file in public version form in the public file in room B-099 of the main Commerce building.

Initiation of Antidumping and Countervailing Duty Investigations

We have examined the petition on butter cookies in tins and have found that it meets the requirements of sections 702 and 732 of the Act. Therefore, we are initiating antidumping and countervailing duty investigations to determine whether imports of butter cookies in tins from Denmark are being, or are likely to be, sold in the United States at less than fair value and whether producers and/or exporters of butter cookies in tins from Denmark received subsidies. Unless extended, we will make our preliminary determinations for the countervailing duty investigation no later than May 4, 1998 and for the antidumping duty investigation no later than July 16, 1998.

Distribution of Copies of the Petitions

In accordance with sections 702(b)(4)(A)(i) and 732(b)(3)(A) of the Act, and § 351.203(c)(2) of the Department's regulations, copies of the public version of the petition have been provided to the representatives of the Government of Denmark and to representatives of the European Union. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition.

ITC Notification

We have notified the ITC of our initiations, as required by sections 702(d) and 732(d) of the Act, and § 351.203(c)(1) of the Department's regulations.

Preliminary Determinations by the ITC

The ITC will determine by March 23, 1998, whether there is a reasonable indication that imports of butter cookies in tins from Denmark are materially injuring, or threatening material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to sections 702(c)(2) and 732(c)(2) of the Act and § 351.203(c)(1) of the Department's Regulations.

Dated: February 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5741 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-829]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Cameron Werker at (202) 482-3874 or Frank Thomson at (202) 482-5254, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), 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 the regulations at 19 CFR Part 351 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel wire rod (SSWR) from Korea is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997)), the following events have occurred:

On August 21, 1997, the Department issued a cable to the U.S. Embassy in Korea requesting information identifying potential Korean producers and/or exporters of the subject merchandise to the United States. We did not receive a response from the U.S. Embassy in Korea. However, on September 9, 1997, we received a letter of appearance on behalf of two producers/exporters of SSWR: Changwon Specialty Steel Co., Ltd. (Changwon), and Dongbang Special Steel Co., Ltd. (Dongbang). Based on this

letter of appearance and information contained in the petition, on September 19, 1997, the Department issued antidumping questionnaires to the following companies: Dongbang, Changwon, Pohang Iron and Steel Co., Ltd. (POSCO), and Sammi Steel Co., Ltd. (Sammi).

Also in September 1997, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731-TA-772).

On October 7, 1997, POSCO submitted a letter to the Department stating that it had no shipments or sales of the subject merchandise to the United States during the period of investigation (POI). Following this submission, we requested that the U.S. Customs Service (Customs) confirm POSCO's statement. On December 10, 1997, we received confirmation from Customs that it had no records indicating POSCO had shipments to the United States during the POI.

On October 10, 1997, the petitioners in this case (i.e., AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America) requested that the Department revise its questionnaire to obtain information on the actual nickel, chromium, and molybdenum content for each sale of the SSWR made during the POI. The Department, upon consideration of the comments from all parties on this matter, issued a memorandum on December 18, 1997, indicating its decision to make no changes in the model matching criteria specified in the September 19, 1997, questionnaire (see Memorandum from Team to Holly Kuga, Office Director, dated December 18, 1997).

Also, in October 1997, the Department received responses to Section A of the questionnaire from Dongbang and Changwon (hereinafter "the respondents"). The respondents submitted responses to sections B and C of the questionnaire in November 1997. Sammi failed to respond to the Department's request for information (see the "Facts Available" section of this notice, below).

In November 1997, the petitioners submitted a timely allegation pursuant to section 773(b) of the Act that Dongbang and Changwon had made sales in the home market below the cost of production (COP). Based on our analysis of this allegation, in December 1997 we initiated a COP investigation with respect to these respondents and informed the companies that they were

required to complete Section D of the questionnaire.

On December 11, 1997, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on December 16, 1997, we postponed the preliminary determination until no later than February 25, 1998 (62 FR 66849, December 22, 1997).

We issued supplemental sections A, B, and C questionnaires to Changwon and Dongbang in December 1997 and received responses to these questionnaires in January 1998. We also received a response to Section D of the questionnaire from the respondents in January 1998. We issued a supplemental questionnaire to POSCO in December 1997 and requested that it complete section B of the questionnaire. We received POSCO's response to this questionnaire in January 1998. We issued supplemental section D questionnaires to Changwon and Dongbang on February 11, 1998. Complete responses to these questionnaires are not due until March 4, 1998 and, therefore, could not be considered in this preliminary determination.

The petitioners submitted comments on February 6, 1998, February 11, 1998, and February 12, 1998, regarding issues they considered relevant to the preliminary determination. On February 17 and 18, 1998, Dongbang and Changwon, respectively, submitted responses to the petitioners' comments.

Postponement of Final Determination and Extension of Provisional Measures

On February 19, 1998, Changwon and Dongbang requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register** pursuant to section 735(a)(2)(A) of the Act. Changwon and Dongbang also requested that the Department extend the provisional measures of sections 733(d)(1) and (2) of the Act from a four-month period to not more than six months, in accordance with section 733(d) of the Act. In accordance with 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) Changwon and Dongbang account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until

no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 14399, 14400 (March 26, 1997); see also *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996).

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or

pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-

finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T			
Carbon	0.05 max	Chromium	19.00/21.00
Manganese	2.00 max	Molybdenum	1.50/2.50
Phosphorous	0.05 max	Lead	added (0.10/0.30)
Sulfur	0.15 max	Tellurium	added (0.03 min)
Silicon	1.00 max		
K-M35FL			
Carbon	0.015 max	Nickel	0.30 max
Silicon	0.70/1.00	Chromium	12.50/14.00
Manganese	0.40 max	Lead	0.10/0.30
Phosphorous	0.04 max	Aluminum	0.20/0.35
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is July 1, 1996, through June 30, 1997.

Facts Available

On September 19, 1997, we sent a questionnaire to Sammi, a Korean SSWR producer/exporter which allegedly underwent bankruptcy in 1997. Sammi never responded to our original questionnaire nor at any time filed an extension request. On October 24, 1997, we received a faxed confirmation from the commercial courier that the questionnaire was delivered to and signed for by personnel at Sammi. Therefore, on October 31, 1997, the Department sent a letter to Sammi alerting it to the fact that it had missed its deadlines for responding to the Department's information request, and that the Department would have to use adverse facts available as required under the antidumping statute in

making its determinations. We have received no correspondence from Sammi to date.

Section 776(a)(2) of the Act provides that, if an interested party (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e) of the Act, use facts otherwise available in reaching the applicable determination. Subsections (c)(1) and (e) do not apply to situations where a party provides no responses whatsoever to our correspondence. Therefore, these subsections do not apply with respect to this company. Because Sammi failed to respond to our questionnaire in a timely manner, we must use facts otherwise available to calculate Sammi's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA). Sammi's failure to reply to the

Department's questionnaire or to provide a satisfactory explanation of its conduct demonstrates it has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available for Sammi, an adverse inference is warranted.

In accordance with our standard practice, we determine the margin used as adverse facts available by selecting the higher of (1) the highest margin stated in the notice of initiation, or (2) the highest margin calculated for any respondent.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. In this case, when analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins and determined that the margins in the petition were appropriately calculated and supported by adequate evidence in accordance

with the statutory requirements for initiation.

However, for purposes of corroboration with regard to facts available, the Department re-examined the price information provided in the petition in light of information developed during the investigation. Sales by POSCO during the fourth quarter of 1996 were the basis for the margins contained in the petition. We contacted the U.S. Customs Service, seeking information to determine whether there had been any entries during that period. According to Customs, their records indicated that POSCO did not make any shipments during the fourth quarter 1996. Therefore, we reviewed the general Import Statistics for the USHTS categories corresponding to the scope of this investigation during the fourth quarter 1996.

The U.S. gross prices provided in the petition are corroborated by the average fourth quarter U.S. dollar import value per metric ton obtained from the Import Statistics. Furthermore, we have corroborated the home market gross prices contained in the petition with the fourth quarter 1996 home market prices provided by POSCO in its home market sales listing. Therefore, although the record indicates that POSCO made no shipments to the United States during the POI, we have been able to corroborate the price information contained in petition, in accordance with Section 776(c) of the Act, using information from independent sources that were reasonably at our disposal. As a result we have assigned Sammi the highest rate contained in the petition, 28.44 percent, for purposes of the preliminary determination.

Affiliation Among the Respondents

One of the issues in this case is whether POSCO and its wholly owned subsidiary Changwon are affiliated with Dongbang. Interested parties made several submissions to the Department on this topic in November and December 1997. The petitioners argue generally that POSCO controls Dongbang through a variety of non-equity factors and is thereby affiliated with Dongbang pursuant to section 771(33)(G) of the Act. Petitioners also contend that Dongbang and Changwon are affiliated by virtue of the fact that they are under POSCO's common control pursuant to section 771(33)(F) of the Act. Based on this reasoning, they conclude that these producers should be collapsed for purposes of the Department's margin calculation primarily because they believe that the production facilities are similar and that

there is a significant potential for manipulation of price or production. The respondents disagree, asserting that the facts of record do not indicate that POSCO and Dongbang and, thus, Dongbang and Changwon are affiliated; therefore, the respondents maintain that the circumstances under which the Department would consider collapsing the entities are not present in this case. In order to analyze the issue and understand the relationships between POSCO, Changwon, and Dongbang more fully, we requested that all three entities respond to supplemental questions on this topic. The parties responded to these questions on January 16, 1998.

Our preliminary analysis of the facts of record within the context of the control indicia enumerated in section 351.102(b) of our regulations does not suggest that POSCO controls Dongbang such that Dongbang is affiliated with Changwon based on POSCO's common control of both entities. Consequently, the issue of collapsing all three producers into one entity for purposes of our preliminary margin analysis is moot. However, we will examine this affiliation issue more closely at verification, with respect to close supply factors in particular, and revisit the issue if necessary for purposes of the final determination. For further discussion, see the Decision Memorandum from the Team to Richard Moreland regarding "Whether Pohang Iron and Steel Co., Ltd. (POSCO), and its subsidiary Changwon Specialty Steel Co., Ltd. (Changwon), are affiliated with Dongbang Special Steel Co., Ltd. (Dongbang). Whether to collapse the above-mentioned entities for antidumping analysis purposes," dated February 25, 1998 ("Affiliation Decision Memorandum").

Regarding POSCO and Changwon, given the nature of the affiliation between these two companies (*i.e.*, POSCO owns 100 percent of Changwon, there is significant overlap in the production equipment and processes, and there exists significant potential for price and cost manipulation), we have collapsed POSCO and Changwon as affiliated producers in accordance with § 351.401(f) of our regulations and have assigned to them a single dumping margin as indicated in the "Suspension of Liquidation" section of this notice. However, we have not used POSCO's home market sales of non-finished SSWR (*i.e.*, black coil) for purposes of comparing them to Changwon's U.S. sales of finished SSWR because the POSCO products have not been further processed and, therefore, are not as comparable to the U.S. sales as are Changwon's home market sales of

finished SSWR products. For further discussion, see Affiliation Decision Memorandum.

Fair Value Comparisons

To determine whether sales of SSWR from Korea to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. As discussed in the "Export Price" and "Normal Value" sections of this notice, neither respondent made Constructed Export Price (CEP) sales to the United States. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed

in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

With respect to the characteristics used to make product comparisons, the Department's questionnaire instructed the respondents to report the grades of the SSWR products they sold during the POI in accordance with AISI standards. Changwon and Dongbang argued that it was more accurate and efficient to report their home market and U.S. sales based on internal grade codes because, among other factors, the respondents' sales, production, and accounting systems are maintained by its "internal" grade codes. Moreover, the respondents maintained that their customers do not order by the AISI grade but, rather, by one of the various international grades or "internal" grade codes. Additionally, Dongbang asserted that there are price and cost differences between each of the "internal" grade codes. Changwon stated that its grade codes do not overlap precisely with the AISI grades but instead overlap with multiple AISI grades. The petitioners argued that the respondents should not make changes to the product characteristics once the Department had established such characteristics because it could (a) seriously jeopardize the accuracy of the Department's SSWR investigations, (b) extraordinarily complicate the investigations, and (c) permit substantial manipulation of model matches.

It is not the Department's normal practice to allow companies to change the criteria to be used for model match purposes based on their own internal product coding system once such criteria have been established. Any such deviation leads to the possibility that the margins calculated for each company under investigation could be based on completely different product grouping criteria. In addition, allowing companies to deviate from the criteria may permit manipulation of model matches, not only for the investigation, but also in future reviews, in the event this investigation results in an antidumping duty order.

Furthermore, contrary to Dongbang's argument, there is no compelling evidence on the record that the net prices and costs of Dongbang's internal grade codes vary significantly from one another within a given AISI category (see Concurrence Memorandum dated February 25, 1998 (Concurrence Memorandum)).

Therefore, in instances where a respondent has reported a non-AISI grade (or an internal grade code) for a

product that falls within the chemical content range of an AISI category, we have attempted to use the actual AISI grade rather than the non-AISI grades reported by the respondent for purposes of our preliminary analysis. In instances where the chemical content ranges of the reported non-AISI grade (or internal grade code) are outside the parameters of an AISI grade, we have preliminarily used the grade code reported by the respondents for purposes of our analysis.

With respect to Changwon, even though we were able to identify AISI grades for a number of non-AISI products using the methodology described above, we were unable to consolidate the sales and cost databases on the basis of this AISI grade reclassification, given the lack of information on the record that would enable us to link the two databases by AISI grade. Therefore, for purposes of the preliminary determination, we used the "internal" grades reported by Changwon.

For further discussion of this issue, see the Concurrence Memorandum. We intend to examine this issue further for the final determination.

With respect to home market sales of non-prime merchandise made by Dongbang during the POI, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI, in accordance with our past practice. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37180 (July 9, 1993).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP,

we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Changwon and Dongbang only made EP sales during the POI and neither respondent claimed a LOT adjustment. Nevertheless, we evaluated whether such an adjustment was necessary by examining each respondent's distribution system, including selling functions, classes of customers, and selling expenses. We found that the selling functions performed by each respondent, which included sales administration, billing, and warranties, where applicable, are sufficiently similar in the United States and the home market to consider them as constituting the same LOT in the two markets. Accordingly, all comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

Export Price

For both of the respondents, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise indicated.

We made company-specific adjustments as follows:

A. Dongbang

We calculated EP based on packed, delivered prices to unaffiliated purchasers in the United States. We increased the starting price by the amount of duty drawback reported by Dongbang. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, other transportation expenses (i.e., container tax, wharfage,

document fees, and CFS charges), and international freight pursuant to section 772(c)(2)(A) of the Act.

B. Changwon

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We increased starting price by the amount of duty drawback reported by Changwon.

We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, other transportation expenses (*i.e.*, ocean freight and terminal charge, formal entry charge, ABI filing fee, and devanning cost), international freight, marine insurance, U.S. Customs duties, and U.S. inland freight, pursuant to section 772(c)(2)(A) of the Act.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondents.

2. Affiliated-Party Transactions and Arm's-Length Test

We excluded sales to affiliated customers in the home market not made at arm's-length prices by Dongbang from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing, but inclusive of duty drawback, freight revenue and interest revenue, where applicable.

Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c) and 62 FR at 27355 (preamble to the Department's regulations). In instances where no customer price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar home market model.

3. Cost-of-Production Analysis

Based on the cost allegation submitted by the petitioners, the Department found reasonable grounds to believe or suspect that Dongbang and Changwon had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Dongbang and/or Changwon made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. See Memorandum from the Team to Holly Kuga, dated December 24, 1997. Before making any fair value comparisons, we conducted the COP analysis described below.

a. Calculation of COP

We calculated the COP based on the sum of each respondents' cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses and packing costs in accordance with section 773(b)(3) of the Act. We made company-specific adjustments to the reported COP as follows:

1. *Changwon*: We adjusted Changwon's reported general and administrative (G&A) expenses by excluding miscellaneous income and including foreign currency exchange losses and the amortization of foundation and business starting expenses. In addition, we adjusted Changwon's financing expense calculation to include foreign currency exchange losses and to correct the amount of interest income used as an

offset. See Memorandum to Irene Darzenta from Howard Smith, dated February 25, 1998.

2. *Dongbang*: We adjusted Dongbang's G&A expenses by excluding miscellaneous income and bad debt expense and by including foreign currency exchange losses. In addition, because Dongbang did not report interest expense in accordance with our preferred methodology, we recalculated the reported interest expense rate accordingly. See Memorandum to Irene Darzenta from Howard Smith, dated February 25, 1998.

b. Test of Home Market Prices

We used each respondent's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP (net of selling expenses and packing) to the home market prices, inclusive of duty drawback, less any applicable movement charges, direct and indirect selling expenses, and packing.

c. Results of the COP Test

Pursuant to 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of SSWR, more than 20 percent of Dongbang's and Changwon's home market sales within an extended period

of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act.

d. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses, and profit. As noted above, we adjusted Changwon's COP by recalculating G&A and financing expenses. We also adjusted Dongbang's G&A and financing expense.

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Korea.

Price-to-Price Comparisons

1. Changwon

We based NV on packed prices to unaffiliated home market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where appropriate, for differences in warranties, bank charges, and credit expenses offset by interest revenue.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

2. Dongbang

We based NV on packed, delivered prices to home market unaffiliated customers and prices to affiliated customers that we determined to be at arm's length. We added freight revenue and duty drawback, where applicable. We made deductions for foreign inland freight, where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where

appropriate, for differences in credit expenses, bank charges, interest revenue, and warranties.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where CV was compared to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions* (61 FR 9434, March 8, 1996)). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Korean won did not undergo a sustained movement during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information

determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Dongbang Special Steel Co., Ltd	5.96
Changwon Specialty Steel Co., Ltd./Pohang Iron and Steel Co., Ltd	6.09
Sammi Steel Co., Ltd	28.44
All Others	5.97

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 22, 1998, and rebuttal briefs no later than May 29, 1998. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 2, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5597 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-820]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1776.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), 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 the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel wire rod (SSWR) from Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of

the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997)), the following events have occurred:

During August and September 1997, the Department obtained information from the U.S. Embassy in Italy identifying potential producers and/or exporters of the subject merchandise to the United States. Based on this information, in September 1997, the Department issued antidumping questionnaires to the following companies: Acciaierie Valbruna S.r.l. (including its subsidiary Acciaierie di Bolzano SpA) (collectively "Valbruna"), Cogne Acciai Speciali S.r.l. (CAS), and Rodacciai SpA (Rodacciai).

Also in September 1997, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731-TA-770).

In October 1997, the Department received responses to Section A of the questionnaire from CAS, Rodacciai, and Valbruna. In its response, Rodacciai requested that it not be required to complete the remainder of the questionnaire because it sold only a small volume of SSWR to the United States during the period of investigation (POI). Based on this claim and because the petitioners did not object, we instructed this company that it did not have to respond to the remainder of the questionnaire, in accordance with 19 CFR 351.204(c).

In November 1997, CAS and Valbruna (hereinafter "the respondents") submitted responses to sections B and C of the questionnaire.

On December 4, 1997, the petitioners submitted a timely allegation pursuant to section 773(b) of the Act that CAS had made sales in the home market at prices below the cost of production (COP). Based on our analysis of this allegation, we initiated a COP investigation with respect to CAS and informed this company that it needed to complete section D of the questionnaire.

On December 11, 1997, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. On December 16, 1997, we granted this request and postponed the preliminary determination until no

later than February 25, 1998 (62 FR 66849, Dec. 22, 1997).

We issued supplemental questionnaires to the respondents in December 1997 and received responses to these questionnaires in January 1998. We also received a response to section D of the questionnaire from CAS in January 1998.

Pursuant to section 735(a)(2)(A) of the Act, on February 11 and 12, 1998, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extend the provisional measures pursuant to section 733(d) of the Act from four months to not more than six months. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice.

In February 1998, we issued additional supplemental sales questionnaires to both respondents and a supplemental cost questionnaire to CAS. Also in February 1998, both respondents submitted revised sales listings which contained data that they corrected for minor input errors. Although this data was received too late for use in the preliminary determination, we will consider it for purposes of the final determination.

Postponement of Final Determination and Extension of Provisional Measures

On February 11 and 12, 1998, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. The respondents also requested that the Department extend the provisional measures pursuant to section 733(d) of the Act from four months to not more than six months. In accordance with 19 CFR 351.210(e), because: (1) Our preliminary determination is affirmative; (2) The respondents account for a significant proportion of exports of the subject merchandise; (3) No compelling reasons for denial exist; and (4) Respondents have requested an extension of provisional measures, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other

elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217

inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T			
Carbon	0.05 max	Chromium	19.00/21.00.
Manganese	2.00 max	Molybdenum	1.50/2.50.
Phosphorous	0.05 max	Lead	Added (0.10/0.30).
Sulfur	0.15 max	Tellurium	Added (0.03 min).
Silicon	1.00 max		
K-M35FL			
Carbon	0.015 max	Nickel	0.30 max.
Silicon	0.70/1.00	Chromium	12.50/14.00.
Manganese	0.40 max	Lead	0.10/0.30.
Phosphorous	0.04 max	Aluminum	0.20/0.35.
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Italy to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. As discussed in the "Export Price" section of this notice, neither respondent made Constructed Export Price (CEP) sales to the United States. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department

finds home market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of

trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In instances where a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grade reported by the respondents for purposes of our analysis. However, in instances where the chemical content ranges of reported non-AISI (or an internal grade code) grades are outside the parameters of an AISI grade, we have preliminarily used the grade code reported by the respondents for analysis purposes. We intend to examine this issue further for the final determination.

In certain instances, CAS did not provide sufficient information to determine what constituted the next most similar foreign like product. In those situations, we based NV on CV for the preliminary determination. We have issued a supplemental questionnaire to CAS in order to collect the information necessary to make price-to-price comparisons whenever possible for purposes of the final determination.

In addition, Valbruna defined particular models of SSWR (*i.e.*, control numbers) using the four product characteristics specified in the questionnaire as well as a fifth characteristic, shape. The Department's

practice in past steel cases has been to require respondents to assign control numbers using only the product characteristics requested by the Department. *See Certain Cut-To-Length Carbon Steel Plate From Finland: Final Results of Antidumping Duty Administrative Review*, 61 FR 2792, 2795 (Jan. 29, 1996). Therefore, we have revised the reported control numbers so as not to distinguish individual shapes of SSWR because we did not identify this characteristic specifically in the questionnaire. We recomputed the costs used in Valbruna's difference-in-merchandise adjustments (difmers) accordingly.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP (or CEP) sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Neither CAS nor Valbruna claimed a level-of-trade adjustment. Nevertheless, we evaluated whether such an adjustment was necessary by examining each respondent's distribution system, including selling functions, classes of customers, and selling expenses. We found that the selling functions performed by each respondent, which included sales administration and billing, provision of warranty services, and in some cases arranging freight services, are sufficiently similar in the

U.S. and the home markets to consider them as constituting the same level of trade in the two markets. Accordingly, all comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted. *See Memorandum regarding Level of Trade Analysis from the Team to the File*, dated February 25, 1998.

Export Price

For both respondents, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

We made company-specific adjustments as follows:

A. CAS

We calculated EP based on packed, delivered prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight, international freight, marine insurance, U.S. customs duties, and U.S. brokerage and handling expenses, pursuant to section 772(c)(2)(A) of the Act.

CAS failed to report U.S. customs duties and U.S. brokerage and handling expenses for certain U.S. sales. Therefore, we find that the application of facts available is warranted. Additionally, we find that CAS failed to act to the best of its ability in reporting these U.S. expenses and, accordingly, we based the amount of these expenses on adverse facts available. As adverse facts available, we used the highest duty and brokerage amount reported for any of CAS's other U.S. sales.

B. Valbruna

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for international freight (including foreign inland freight, ocean freight, and marine insurance), U.S. customs duties, harbor maintenance and merchandise processing fees, and U.S. brokerage and handling expenses, pursuant to section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject

merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

A. CAS

Based on the cost allegation submitted by the petitioners, the Department found reasonable grounds to believe or suspect that CAS had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether CAS made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act. *See Memorandum regarding Initiation of Cost Investigation from the Team to Louis Apple*, dated December 15, 1997. Before making any fair value comparisons, we conducted the COP analysis described below.

We calculated the COP based on the sum of CAS's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We adjusted CAS's reported COP by adding interest expenses on currency options and deducting profits on transfers of securities in the calculation of financial expenses. *See Memorandum regarding Cost Calculation Adjustments from William Jones to Chris Marsh*, dated February 25, 1998.

We compared the weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See section 773(b)(1) of the Act.*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CAS's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product

because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of CAS's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of SSWR, more than 20 percent of CAS's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of CAS's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. As noted above, we adjusted CAS's reported costs for interest expenses on currency options and profits on transfers of securities. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by CAS in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Italy.

For those comparison products for which there were sales at prices above the COP, we based NV on packed, delivered prices to home market customers. We made additions to the starting price, where appropriate, for alloy surcharges. We made deductions, where appropriate, for discounts. We also made deductions, where appropriate, for foreign inland freight and insurance expenses, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments by adding U.S. credit (offset by interest revenue), warranty expenses and commissions. We made no adjustment

for home market credit expenses because CAS based its credit periods on estimates rather than on the accounts receivable information requested in the supplemental questionnaire. We also made no adjustment for home market warranty expenses because CAS failed to provide supporting documentation, as requested in the supplemental questionnaire. Moreover, we made no adjustment for imputed credit expenses related to the pre-payment of value-added taxes (VAT) in accordance with our long-standing practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom*, 58 FR 3253 (Jan. 8, 1993) (*Sulfur Dyes from the U.K.*), *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921 (Dec. 28, 1994) (*Stainless Steel Bar from Italy*), and *Ferrosilicon from Brazil: Final Results of Antidumping Duty Administrative Review*, 61 FR 59407 (Nov. 22, 1996) (*Ferrosilicon from Brazil*).

Because CAS paid commissions to unaffiliated agents on sales to the United States, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses, including inventory carrying costs, incurred on the home market sales for the comparison product, up to the amount of the U.S. commissions, in accordance with 19 CFR 351.410(e).

We added U.S. packing costs, in accordance with section 773(a)(6) of the Act. We made no adjustment for home market packing costs because CAS failed to provide supporting documentation, as requested in the supplemental questionnaire. When appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

When NV was based on CV, we made circumstance-of-sale adjustments by adding U.S. credit, warranty expenses, and commissions. We made no adjustments for home market credit and warranty expenses for the reasons noted above. We offset U.S. commissions by using the weighted-average amount of indirect selling expenses and inventory carrying costs incurred on the home market sales for the comparison product, up to the amount of the U.S. commissions, in accordance with 19 CFR 351.410(e).

B. Valbruna

We based NV on packed prices to home market customers. We made deductions, where appropriate, for discounts. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We made no adjustment for Valbruna's claimed pre-sale warehousing expenses because: (1) These expenses largely are not warehousing expenses; and (2) Valbruna did not separately state any amount of expenses that related to warehousing. We also made no adjustment for certain inland freight expenses because these expenses were based on data outside the POI.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and commissions. We recomputed Valbruna's home market interest rate to exclude the short-term portion of a long-term loan and recalculated home market credit expenses accordingly. Moreover, we made no adjustment for imputed credit expenses related to the pre-payment of VAT, in accordance with our long-standing practice. *See, e.g., Sulfur Dyes from the U.K., Stainless Steel Bar from Italy, and Ferrosilicon from Brazil*. We also made no adjustment for inventory carrying costs incurred at one of Valbruna's service centers because Valbruna did not provide an adequate justification as to why these expenses should be considered direct selling expenses.

Because Valbruna paid commissions to unaffiliated agents on home market sales, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses, including inventory carrying costs, incurred on the U.S. sales for the particular product in question, up to the amount of the home market commissions, in accordance with 19 CFR 351.410(e).

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. We reclassified the fixed overhead portion of the reported packing expenses as part of Valbruna's cost of manufacturing. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates

in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions* (61 FR 9434, Mar. 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Italian lira did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SSWR from Italy—except those produced and exported by Valbruna—that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. Normally, we would instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. However, the product under investigation is also subject to a concurrent countervailing duty investigation. Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) provides that “[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or

export subsidization.” This provision is implemented by section 772(c)(1)(C) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies, there is no reason to require a cash deposit or bond for that amount. The Department has determined, in its *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 809 (Jan. 7, 1998), that the product under investigation benefitted from export subsidies. To obtain the most accurate estimate of antidumping duties and to fulfill our international obligations arising under GATT 1994, we are subtracting, for deposit purposes, the cash deposit rate attributable to the export subsidies found in the countervailing duty investigation (i.e., 0.01 percent for CAS). We are also subtracting from the “All Others” rate the cash deposit rate attributable to the export subsidies included in the countervailing duty investigation for the All Others rate, 0.06 percent.

In keeping with Article of 17.4 of the WTO Agreement on Subsidies and Countervailing Measures, the Department will terminate the suspension of liquidation in the companion countervailing duty investigation of certain stainless steel wire rod from Italy, effective May 7, 1998, which is 120 days after the date of publication of the preliminary determination. Accordingly, on May 7, 1998, the antidumping deposit rate will revert to the full amount calculated in this preliminary determination. These suspension of liquidation instructions will remain in effect until further notice. The preliminary weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Bonding percentage
Acciaierie Valbruna/ Acciaierie di Bolzano SpA	1.17	N/A
Cogne Acciai Speciali S.r.l.	5.77	5.76
All Others	5.77	5.71

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded all zero and *de minimis* weighted-average dumping margins from the calculation of the “All Others” rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 22, 1998, and rebuttal briefs no later than May 29, 1998. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 2, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5598 Filed 3-4-98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-828]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4740, or (202) 482-5346, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel wire rod (SSWR) from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997) (*Notice of Initiation*)), the following events have occurred:

On August 21, 1997, the Department issued a cable to the American Institute in Taiwan requesting information identifying potential Taiwanese producers and/or exporters of the subject merchandise to the United States. We did not receive a response from the American Institute in Taiwan. However, on August 29, 1997, and September 18, 1997, we received letters of appearance on behalf of Walsin Cartech Specialty Steel Corporation (Walsin) and Yieh Hsing Enterprise

Corporation, Ltd. (Yieh Hsing), respectively. Based on these letters of appearance and information contained in the petition, on September 19, 1997, the Department issued antidumping questionnaires to both Walsin and Yieh Hsing (hereinafter "the respondents").

In September 1997, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731-TA-775).

On October 10, 1997, the petitioners in this case (i.e., AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America) requested that the Department revise its questionnaire to obtain information on the actual nickel, chromium, and molybdenum content for each sale of the SSWR made during the period of investigation (POI). The Department, upon consideration of the comments from all parties on this matter, issued a memorandum on December 18, 1997, indicating its decision to make no changes in the model-matching criteria specified in the September 19, 1997, questionnaire (see Memorandum from Team to Holly Kuga, Office Director, dated December 18, 1997).

Also in October 1997, the Department received responses to Section A of the questionnaire from the respondents. The respondents submitted responses to sections B, C, and D of the questionnaire in November 1997.

On December 11, 1997, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. On December 16, 1997, we granted this request and postponed the preliminary determination until no later than February 25, 1998 (62 FR 66849, December 22, 1997).

We issued supplemental questionnaires to the respondents in December 1997 and received responses to these questionnaires in January 1998.

On January 26, 1998, the petitioners submitted a "targeted-dumping" allegation with regard to Yieh Hsing's sales in the United States. The petitioners requested that the Department compare transaction-specific export prices in the U.S. market to the weighted-average normal values in calculating the antidumping margin for Yieh Hsing. Yieh Hsing responded to this allegation on February 6, 1998. (See the "Targeted Dumping" section of this notice, below, for further discussion.)

We received comments from the petitioners concerning the information reported in the respondents' questionnaire responses and issues they

considered relevant to the preliminary determination on February 6, 1998, and February 12, 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on February 6, 1998 and February 20, 1998, Yieh Hsing and Walsin, respectively, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On February 18, 1998, Yieh Hsing amended its request to include a request to extend the provisional measures from a four-month period to not more than six months. Walsin included its request to extend the provisional measures in its February 20, 1998 letter. In accordance with 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) Yieh Hsing and Walsin account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches

diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T			
Carbon	0.05 max	Chromium	19.00/21.00.
Manganese	2.00 max	Molybdenum	1.50/2.50.
Phosphorous	0.05 max	Lead	Added (0.10/0.30).
Sulfur	0.15 max	Tellurium	Added (0.03 min).
Silicon	1.00 max		
K-M35FL			
Carbon	0.015 max	Nickel	0.30 max.
Silicon	0.70/1.00	Chromium	12.50/14.00.
Manganese	0.40 max	Lead	0.10/0.30.
Phosphorous	0.04 max	Aluminum	0.20/0.35.
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is July 1, 1996, through June 30, 1997.

Targeted Dumping

On January 26, 1998, the petitioners requested that, for Yieh Hsing, the Department compare the transaction-specific export prices in the United States market to weighted-average normal values, in accordance with the "targeted-dumping" provisions of section 777A(d)(1)(B) of the Act. The petitioners' allegation claimed that Yieh Hsing's prices for the subject merchandise in the United States vary significantly on the basis of purchaser and that using a weighted-average price in the Department's analysis would have the effect of concealing or minimizing the margin of dumping. On February 6, 1998, Yieh Hsing submitted comments challenging the petitioners' targeted-dumping allegation.

The Department has denied the petitioners' request to compare the transaction-specific prices in the United States market to weighted-average normal values because the petitioners' analysis failed to meet the basic requirements of section 777A(d)(1)(B)(i). The petitioners' statistical analysis goes no further than a simple comparison of average prices to different customers. Such a comparison, without further statistical analysis, does not yield meaningful conclusions about a pattern of export prices differing significantly

among purchasers. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 1344 (January 19, 1996). Also *see* Concurrence Memorandum dated February 25, 1998 ("Concurrence Memorandum") for further discussion of this issue.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined normal value (NV) based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP). The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under

section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Neither respondent claimed a LOT adjustment. Nevertheless, we evaluated whether such an adjustment was necessary by examining each respondent's distribution system, including selling functions, classes of customers, and selling expenses. We found that the selling functions performed by each respondent, which included sales negotiation and shipping arrangements, where applicable, are sufficiently similar in the United States and the home market to consider them as constituting the same LOT in the two markets. Accordingly, all comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted. *See* Concurrence Memorandum.

Fair Value Comparisons

To determine whether sales of SSWR from Taiwan to the United States were made at less than fair value, we compared the EP or the CEP to the NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs for comparison to weighted-average NVs.

We have considered price-averaging groups by customer types, but we found no basis on which to conclude that we should use price-averaging groups in our analysis. Accordingly, we have not based price comparisons on customer types.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX v. United States*,

1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

With respect to the characteristics used to make product comparisons, the Department's questionnaire instructed the respondents to report the grades of the SSWR products that they sold during the POI in accordance with AISI standards. In their sales listings, the respondents reported both AISI and non-AISI (or internal) grades in accordance with their sales accounting systems. The petitioners argued that the respondents should not make changes to the product characteristics once the Department had established such characteristics because it could (a) seriously jeopardize the accuracy of the Department's investigations, (b) extraordinarily complicate the

investigations, and (c) permit substantial manipulation of model matches.

It is not the Department's normal practice to allow companies to change the criteria to be used for model-match purposes based on their own internal product-coding system once such criteria have been established. Any such deviation leads to the possibility that the margins calculated for each company under investigation could be based on completely different product-grouping criteria. In addition, allowing companies to deviate from the criteria may permit manipulation of model matches, not only for the investigation, but also in future reviews, in the event this investigation results in an antidumping duty order.

Therefore, in instances where the respondent has reported a non-AISI grade (or an internal grade code) for a product that corresponds to a single AISI category, we have used the actual AISI grade rather than the non-AISI grades reported by the respondent for purposes of our preliminary analysis. However, in instances where the respondents reported a non-AISI (or an internal grade code) that does not correspond to an AISI grade, we have preliminarily used the grade code reported by the respondents for purposes of our analysis. For further discussion of this issue, see the Concurrence Memorandum dated February 25, 1998. We intend to examine this issue further for the final determination.

Both Walsin and Yieh Hsing reported that they made sales of non-prime merchandise in the home market during the POI. However, given the limited home market sales quantity of non-prime merchandise and the fact that no such sales were made to the United States during the POI, where possible, we excluded non-prime sales from our analysis in accordance with our past practice. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37180 (July 9, 1993). For similar reasons, where possible, we excluded from our comparisons all home market sales of defective merchandise. See Concurrence Memorandum.

Export Price/Constructed Export Price

For both respondents, we based our calculations on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold by the

producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. In accordance with section 772(b) of the Act, when the subject merchandise was first sold in the United States by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, we used CEP.

Yieh Hsing classified all of its sales of SSWR in the United States as EP sales in its questionnaire response, including those sales made prior to importation through a U.S. sales agent. We examined several factors to determine whether sales made prior to importation through a U.S. sales agent to an unaffiliated customer in the United States are EP sales. These factors are (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (e.g., arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (e.g., negotiating prices), we treat the transactions as CEP sales. See *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review*, 62 FR 18389, 18391 (April 15, 1997).

Based on our review of the selling activities of the U.S. selling agent, we reclassified Yieh Hsing's U.S. sales of SSWR through the agent as CEP sales because the agent acted as more than a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. customer. The U.S. sales agent performed a variety of selling functions on behalf of Yieh Hsing in connection with Yieh Hsing's SSWR sales in the United States including identifying U.S. customers on its own and negotiating the terms of sale with U.S. customers. Therefore, we preliminarily determine that Yieh Hsing's U.S. sales of SSWR through its U.S. sales agent are CEP sales. For further discussion of this issue, see the Concurrence Memorandum.

A. Export Price

Walsin

We calculated EP based on packed, delivered prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for rebates, foreign inland freight, foreign brokerage and handling expenses, international freight and marine insurance, pursuant to section 772(c)(2)(A) of the Act.

Yieh Hsing

We calculated EP based on packed, delivered prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance, pursuant to section 772(c)(2)(A) of the Act.

B. Constructed Export Price

Walsin

We calculated CEP based on the packed, delivered price to the first unaffiliated customer in the United States in accordance with section 772(b) of the Act. We made deductions from the starting price for rebates, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty and U.S. brokerage as appropriate, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we made additional adjustments to the starting price by deducting direct and indirect selling expenses associated with economic activities occurring in the United States, including credit expenses and unaffiliated-party commissions. Finally, we made an adjustment for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

Yieh Hsing

We calculated CEP based on packed, delivered prices to unaffiliated purchasers in the United States in accordance with section 772(b) of the Act. We made deductions from the starting price, where appropriate, for discounts, foreign inland freight, foreign brokerage and handling, U.S. customs duties and harbor maintenance and merchandise processing fees (which are included in U.S. duties), international freight and marine insurance, pursuant to section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we made additional adjustments to the starting price by deducting selling expenses associated with economic activities occurring in the United States, including credit

expenses and commissions. However, because the deduction of this commission results in a price corresponding as closely as possible to an export price, we have not made any additional deduction of CEP profit. See Concurrence Memorandum of February 25, 1998.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

2. Affiliated-Party Transactions and Arm's-Length Test

We excluded sales to affiliated customers in the home market not made at arm's-length prices from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated parties were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated parties were at arm's length. See 19 CFR 351.403(c) and 62 FR at 27355 (preamble to the Department's regulations). In instances where no affiliated-customer price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products*

from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost-of-Production Analysis

Based on the cost allegation submitted by the petitioners in the petition, the Department found reasonable grounds to believe or suspect that Walsin and Yieh Hsing had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. See *Notice of Initiation*. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP for each company based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A and packing costs. We made company-specific adjustments to the reported COP as follows:

Walsin. We adjusted the cost of copper that Walsin obtained from an affiliate to reflect the market value paid to unaffiliated suppliers. We recalculated Walsin's general and administrative (G&A) expense factor to include certain miscellaneous income and expense items that relate to the general production activity of the company as a whole. See Memorandum to Christian Marsh from Stan Bowen and Laurens van Houten dated February 25, 1998 ("Cost Memo").

Yieh Hsing. Yieh Hsing failed to report a unique COP for each of the product categories it reported on its computer sales listing. Therefore, we calculated a unique cost for each missing product category based on the grade of billet used in that category's manufacturing process. We adjusted the cost of billets that Yieh Hsing obtained from an affiliated supplier to reflect the market value paid to unaffiliated suppliers. In addition, we increased Yieh Hsing's reported billet cost to account for grinding loss. We adjusted the pickling stage direct labor costs reported in the COP and CV databases to reconcile with amounts reported in the Section D supplemental response. We adjusted Yieh Hsing's submitted G&A expenses to exclude miscellaneous income and expense items, which do not relate to the general production

activities of the company as a whole. See Cost Memo.

B. Test of Home Market Sales Prices

We used each respondent's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP (net of selling expenses and packing) to the home market prices, less applicable quantity discounts, rebates, movement charges, direct and indirect selling expenses, and packing.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of SSWR, more than 20 percent of Walsin's and Yieh Hsing's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared

EPs or CEPs to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondents' cost of materials, fabrication, SG&A, profit, and U.S. packing costs. We adjusted the COP included in the calculation of CV as noted, above, in the "Calculation of COP" section of the notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Taiwan.

Price-to-Price Comparisons

Walsin

We calculated NV based on packed, delivered prices to unaffiliated home market customers. We made deductions for foreign inland freight, bank charges and discounts and rebates where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where appropriate, for differences in royalty expenses, credit expenses and interest revenue. Because Walsin paid commissions on U.S. sales, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses and inventory carrying costs incurred on the home market sales for the comparison product, up to the amount of the U.S. commissions. See 19 CFR 351.410(e).

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Yieh Hsing

We calculated NV based on packed, delivered prices to home market unaffiliated customers and prices to affiliated customers that we determined to be at arm's length. We made deductions for early payment discounts and foreign inland freight, where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where appropriate, for differences in credit

expenses and interest revenue. Because Yieh Hsing paid commissions on U.S. sales, in calculating NV, we offset these commissions using the weighted-average amount of indirect selling expenses incurred on the home market sales for the comparison product, up to the amount of the U.S. commissions. See 19 CFR 351.410(e). We did not include inventory carrying costs in the weighted-average amount of home market indirect selling expenses because Yieh Hsing did not calculate this expense in either its original or supplemental responses properly. See Concurrence Memorandum.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where CV was compared to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act. Where CV was compared to CEP, we deducted from CV the weighted-average home market direct selling expenses (which included credit expenses).

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of

benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434 (March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the New Taiwan dollar did not undergo a sustained movement during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacture	Weighted-average margin Percentage
Walsin Cartech Specialty Steel Corporation	27.81
Yieh Hsing Enterprise Corporation, Ltd.	10.50
All Others	17.09

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 22, 1998, and rebuttal briefs no later than May 29, 1998. A list of authorities used and an executive summary of issues must accompany any briefs submitted to

the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 2, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5599 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-401-806]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613 or (202) 482-1766, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), 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 the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel wire rod ("SSWR") from Sweden is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan* (62 FR 45224, August 26, 1997)), the following events have occurred:

In August 1997, the Department obtained information from the U.S. Embassy in Sweden identifying Fagersta Stainless AB ("Fagersta") as the only potential producer and/or exporter of the subject merchandise to the United States. Based on this information, the Department issued the antidumping questionnaire to Fagersta in September 1997. Section A of the questionnaire requests general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings. Section D of the questionnaire requests information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requests information regarding the cost of further manufacture or assembly performed in the United States.

Also in September 1997, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731-TA-770).

In October 1997, the Department received a response to Section A of the

questionnaire from Fagersta. On October 14, 1997, Fagersta requested that the Department modify the reporting period for a U.S. affiliate. The Department granted this request on October 16, 1997. Fagersta (hereinafter "the respondent") submitted its response to sections B, C, and E of the questionnaire in November 1997.

On October 10, 1997, the petitioners in this case (*i.e.*, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Incl, and United Steelworkers of America) requested that the Department revise its questionnaire to obtain information on the actual nickel, chromium, and molybdenum content for each sale of the SSWR made during the period of investigation. On October 17, 1997, the respondent requested that the Department deny the petitioners' request. The Department, upon consideration of the comments from all parties on this matter, issued a memorandum on December 18, 1997, indicating its decision to make no changes in the model-matching criteria specified in the September 19, 1997, questionnaire (*see* Memorandum from Team to Holly Kuga, Office Director, dated December 18, 1997).

On October 20, 1997, Fagersta requested that it be allowed to exclude from its sales listing U.S. sales of certain wire products further manufactured from subject merchandise. On November 6, 1997, the Department denied this request and required Fagersta to report these sales of further-manufactured products in its response. On November 7, 1997, Fagersta requested that it be allowed to exclude certain other sales made in the United States. Fagersta stated that these sales constitute an insignificant amount of its total U.S. sales made during the period of investigation and that they are unrepresentative of Fagersta's normal sales. We granted Fagersta's request on November 12, 1997.

On November 25, 1997, the petitioners submitted a timely allegation pursuant to section 773(b) of the Act that Fagersta had made sales in the home market at less than the cost of production ("COP"). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Fagersta sold SSWR in the home market at prices at less than the COP. Accordingly, we initiated a COP investigation with respect to Fagersta pursuant to section 773(b) of the Act (*see* Memorandum from Team to Louis Apple, Office Director, dated December 16, 1997).

On December 11, 1997, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on December 16, 1997, we postponed the preliminary determination until no later than February 25, 1998 (62 FR 66849, December 22, 1997).

We received Fagersta's response to Section D of the questionnaire in January 1998. We issued supplemental questionnaires for Sections A, B, C and E to Fagersta in January 1998 and received responses to these questionnaires along with a revised U.S. sales listing in February 1998. Fagersta also submitted additional clarifications to its responses in February 1998.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on February 9, 1998, Fagersta requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. On February 12, 1998, Fagersta amended its request to include a request to extend the provisional measures to not more than six months.

In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Fagersta accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max	Chromium	19.00/21.00.
Manganese	2.00 max	Molybdenum	1.50/2.50.
Phosphorous	0.05 max	Lead	added (0.10/0.30).
Sulfur	0.15 max	Tellurium	added (0.03 min).
Silicon	1.00 max		

K-M35FL

Carbon	0.015 max	Nickel	0.30 max.
Silicon	0.70/1.00	Chromium	12.50/14.00.
Manganese	0.40 max	Lead	0.10/0.30.
Phosphorous	0.04 max	Aluminum	0.20/0.35.
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Sweden to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the Normal Value ("NV"), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this

notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In instances where the respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grades reported by respondents for purposes of our analysis. However, in instances where the chemical content ranges of reported non-AISI (or an internal grade code) grades are outside the parameters of an AISI grade, we have preliminarily used the grade code reported by the respondent for analysis purposes. We intend to examine this issue further for the final determination.

With respect to home market sales of non-prime merchandise made by Fagersta during the POI, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI, in accordance with our past practice (see, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea* (58 FR 37176, 37180, July 9, 1993)).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Fagersta reported one customer category (i.e., "wire drawers") and one channel of distribution (i.e., direct sales from mill to end users) for its home market sales. In its response, Fagersta claims that its sales to the unaffiliated customers are at a different LOT than its sales to the affiliated customers because Fagersta provides significantly different selling services to its affiliated customers than what it provides to its unaffiliated customers. Specifically, Fagersta identified the following selling services it provides to its unaffiliated customers: (1) General promotion and marketing services; (2) freight and delivery; (3) post-sale warranty services; and (4) pre-sale technical services. For sales to its affiliated customers, Fagersta listed the following services: (1) Priority production and delivery or just-in-time processing; (2) high level of technical cooperation; (3) network data exchange; (4) prices set annually; (5) warranty service; (6) billet rebates; and (7) freight and delivery. Fagersta claims that, because it offers significantly different services to its affiliated customers, in comparison to its services to unaffiliated customers, Fagersta charges its affiliated customers higher prices. Therefore, Fagersta claimed an LOT adjustment on this basis.

In determining whether separate levels of trade actually existed in the home market, we examined whether Fagersta's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. As noted above, Fagersta's sales to its unaffiliated and affiliated

customers were made through the same channel of distribution and to the same category of customer. With respect to selling activities, we note that, in some instances, the activities Fagersta characterized as selling functions (e.g., billet rebates and annual price setting) are not distinct selling functions which we consider to be relevant to our LOT analysis. Furthermore, based on our analysis, we note that, while there are some differences in selling activities between Fagersta's sales to affiliated customers and unaffiliated customers (e.g., just-in-time processing services), we do not find that such differences are sufficient to establish a difference in marketing stage (or its equivalent). As discussed in the Department's regulations, substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. See 19 CFR 351.412. See also *Notice of Final Results: Antidumping Duty Administrative Review of Antifriction Bearings from France et al.*, 62 FR 2081, 2105 (January 15, 1997). Based on this analysis, we find that Fagersta's home market sales comprise a single level of trade.

Fagersta reported both EP and CEP sales in the U.S. market. For EP sales, Fagersta reported one channel of distribution (i.e., direct sales from the mill to unaffiliated end users). In analyzing Fagersta's selling activities for its EP sales, we noted that the sales involved basically the same selling functions associated with the home market level of trade described above. Therefore, based upon this information, we have determined that the level of trade for all EP sales is the same as that in the home market.

The CEP sales were based on sales made by Fagersta to Sandvik Steel Company ("SSUS"), one of Fagersta's U.S. affiliates, which then sold the merchandise to unaffiliated purchasers in the United States. Based on our analysis, we find that the selling functions performed at the CEP level are essentially the same as those performed in the home market. Specifically, after making deductions pursuant to section 772(d) of the Act, we determined that there were three selling activities performed by Fagersta associated with its sales to SSUS: (1) Freight and delivery; (2) post-sale warranty services; and (3) pre-sale technical services, which are the same functions we found in the home market. Therefore, we determine that Fagersta's CEP sales and its home market sales are made at the same level of trade. Accordingly, because we find the U.S. sales and home market sales to be at the same level of

trade, no level-of-trade adjustment under section 773(a)(7)(A) of the Act is warranted.

Export Price and Constructed Export Price

Fagersta reported as EP transactions its sales of subject merchandise sold to unaffiliated U.S. customers prior to importation through two affiliated companies in the United States (Avesta Sheffield Inc. ("ASI") and SSUS). Fagersta reported as CEP transactions its sales of subject merchandise sold to SSUS for its own account. SSUS then resold the subject merchandise to unaffiliated customers or further manufactured the wire rod into wire products which are outside the scope of this investigation.

With respect to sales made through ASI and SSUS prior to importation, Fagersta claims that these sales are properly classified as EP sales because ASI and SSUS act only as sales-document processors and communication links to facilitate Fagersta's U.S. sales to unaffiliated customers. Specifically, Fagersta states the following: (1) neither ASI nor SSUS takes physical possession of the merchandise; (2) the merchandise is shipped directly from Fagersta to the customer; (3) neither ASI nor SSUS has independent authority to establish prices; (4) the essential terms of sales are set and approved by Fagersta in Sweden; and (5) all relevant sales activities are performed by Fagersta in Sweden before exportation. Therefore, according to Fagersta, ASI and SSUS are mere conduits of sales information for Fagersta's direct mill sales to unaffiliated U.S. customers.

We examine several factors to determine whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales, such as (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (e.g., arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. affiliate is substantially involved in the sales process (e.g., negotiating prices), we treat the transactions as CEP sales.

Based on our review of the selling activities of Fagersta's U.S. affiliates, we preliminarily determine that EP is appropriate for Fagersta's sales to the United States through ASI and SSUS. The customary commercial channel between Fagersta and its unaffiliated customers is that Fagersta ships the EP merchandise directly to the unaffiliated U.S. customers without having the merchandise enter into the inventory of the U.S. affiliates and that the U.S. affiliates' activities are limited to that of a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. buyers. Accordingly, for purposes of the preliminary determination, we are treating the sales in question as EP transactions. We will examine this issue further at verification.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed delivered price to unaffiliated purchasers in the United States. We added to the starting price any alloy surcharges and, where appropriate, made adjustments for price-billing errors and freight revenue. We made deductions for early payment discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

We calculated CEP, in accordance with subsections 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. In addition, Fagersta reported sales of wire and wire products (non-subject merchandise) which were further manufactured from wire rod (subject merchandise) by one of its affiliates in the United States. In deciding whether to base CEP on the sales of subject merchandise that are further manufactured, the Department determines whether the value added is likely to exceed substantially the value of the subject merchandise in accordance with section 772(e) of the Act. Section 772(e) of the Act provides alternatives to backing out the value added after importation, when doing so

would cause an undue burden on the Department. See Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d. Sess. (1994), 825–826. Normally, when the estimated value-added amount exceeds 65% of the value of the merchandise sold to unaffiliated purchasers, the CEP for such merchandise will be established by an alternative methodology in accordance with section 772(e) of the Act. See 19 CFR 351.402(c)(2). In this case, we determine that section 772(e) of the Act does not apply because the value added in the United States by the affiliated person is not likely to exceed substantially the value of the subject merchandise. Therefore, for subject merchandise further manufactured in the United States, we used the starting price of the subject merchandise and deducted the costs of further manufacturing to determine CEP for such merchandise, in accordance with section 772(d)(2) of the Act.

We based CEP on the packed FOB or delivered prices to unaffiliated purchasers in the United States. We added to the starting price any alloy surcharges and, where appropriate, made adjustments for price-billing errors and freight revenue. We made deductions for early payment discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer), and post-sale warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, U.S. repacking expenses, and indirect selling expenses. We also deducted an amount for further-manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act and made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

After testing (1) home market viability; (2) whether sales to affiliates were at arm's-length prices and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the "Price to Price

Comparisons" and "Price to CV Comparisons" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

2. Affiliated-Party Transactions and Arm's-Length Test

Fagersta, in its response, claimed that we should not include in our analysis Fagersta's sales of wire rod to its affiliated customers in the home market. According to Fagersta, due to the close relationship between Fagersta and its affiliates based on their common ownership and interdependence in the production of wire rod and wire products, Fagersta's transactions with these affiliated companies should be treated as internal transfers. Fagersta cited to the *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of the Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) ("*Carbon Steel Flat Products From Korea*") in support of its claim. This case upon which Fagersta relied is inapposite. The issue in *Carbon Steel Flat Products from Korea* was whether to "collapse" affiliated producers/exporters for margin-calculation purposes. We do not use that type of analysis to determine whether transactions between affiliated parties are an appropriate basis for determining NV. The Department's standard practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's-length prices. Therefore, in accordance with that practice, we performed an arm's-length test on Fagersta's sales to affiliates as follows.

Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether

these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c) and 62 FR at 27355. In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina* (58 FR 37062, 37077 (July 9, 1993)). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost of Production Analysis

As stated in the "Case History" section of the notice, based on a timely allegation filed by the petitioners, the Department initiated a COP investigation of Fagersta to determine whether sales were made at prices less than the COP.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Fagersta's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A, interest expenses, and packing costs. We used the information from Fagersta's January 26, 1998, questionnaire response to calculate COP.

Fagersta purchased a major input (i.e., steel billets) for SSWR from affiliated parties. In accordance with section 773(f)(3) of the Act, we used the higher of the transfer price or cost of production to value the billets in our analysis. No information on the market value of billets was available. We excluded from billet costs the net foreign exchange gain that had been charged to material acquisitions because Fagersta did not describe in its response how it derived the amount of the gain and how the gain was related to purchases of materials used to produce the subject merchandise. See

Memorandum to Chris Marsh from Art Stein, dated February 25, 1998.

B. Test of Home Market Sales Prices

We compared the weighted-average COP for Fagersta, adjusted where appropriate, to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain grades of SSWR, more than 20 percent of Fagersta's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1). For those U.S. sales of SSWR for which there were no comparable (above-cost) home market sales in the ordinary course of trade, we compared export prices or constructed export prices to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Fagersta's cost of materials, fabrication, SG&A, interest, and U.S. packing costs. As noted above in the "Calculation of COP" section of the notice, for CV we adjusted billet costs to exclude the net foreign exchange gain that had been charged to materials acquisitions. In accordance with sections 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made deductions, where appropriate, from the starting price for discounts, rebates, inland freight, and "billing error" rebates. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily

exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Swedish Krona did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Fagersta Stainless AB	6.51
All Others	6.51

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports

are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than June 1, 1998, and rebuttal briefs no later than June 8, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 12, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5600 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-824]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT:

Sunkyu Kim or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613 or (202) 482-4194, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), 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 the regulations at 19 CFR part 351 (62 FR 27296, May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel wire rod ("SSWR") from Germany is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on August 19, 1997 (see *Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan* (62 FR 45224, August 26, 1997) ("Notice of Initiation")), the following events have occurred:

On September 15, 1997, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case (see ITC Investigation No. 731-TA-770).

In September 1997, the Department obtained information from the U.S. Embassy in Germany identifying Krupp Edelstahlprofile and BGH Edelstahl Freital GmbH as the potential producers and/or exporters of the subject merchandise to the United States. Based on this information, on September 19, 1997, the Department issued the antidumping duty questionnaire to the following producers/exporters of SSWR to the United States: Krupp Edelstahlprofile GmbH and Krupp Hoesch Steel Products (collectively "Krupp") and BGH Edelstahl Freital GmbH ("BGH Edelstahl").

On October 23, 1997, BGH Edelstahl informed the Department, via facsimile message, that it would not respond to

the Department's antidumping questionnaire.

On October 24, 1997, Krupp submitted its response to Section A of the questionnaire. Subsequently, on October 27, 1997, Krupp informed the Department that it would not respond to Sections B, C, and D of the Department's antidumping questionnaire.

On December 11, 1997, petitioners made a timely request that the Department postpone the preliminary determination in this investigation and the companion investigations of SSWR from Italy, Japan, Korea, Spain, Sweden, and Taiwan to February 25, 1998. We did so on December 16, 1997, in accordance with section 733(c)(1) of the Act (see *Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 66849, 66850 (December 22, 1997)).

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T			
Carbon	0.05 max	Chromium	19.00/21.00.
Manganese	2.00 max	Molybdenum	1.50/2.50.
Phosphorous	0.05 max	Lead	Added (0.10/0.30).
Sulfur	0.15 max	Tellurium	Added (0.03 min).
Silicon	1.00 max.		
K-M35FL			
Carbon	0.015 max	Nickel	0.30 max.
Silicon	0.70/1.00	Chromium	12.50/14.00.
Manganese	0.40 max	Lead	0.10/0.30.
Phosphorous	0.04 max	Aluminum	0.20/0.35.
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR by Krupp and BGH Edelstahl to the United States were made at less than fair value, we compare the export price or constructed export price to the normal value. Because Krupp responded to our questionnaire only in part (*i.e.*, Section A) and BGH Edelstahl did not respond to the questionnaire at all, we were unable to calculate LTFV margins for this preliminary determination using information submitted by the respective companies. Therefore, in accordance with section 776 of the Act, our results are based on facts otherwise available.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination (subject to subsections 782(d) and (e)). As discussed above, both Krupp and BGH Edelstahl failed to respond to the Department's questionnaires. Accordingly, we have determined that use of facts available is appropriate for both respondents. With

respect to Krupp, we note that we cannot perform an antidumping analysis with the Section A response that Krupp did provide. This limited information is so incomplete that it cannot, for purposes of section 782(e)(3), "serve as a reliable basis for reaching the applicable determination."

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information (*see also* the Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870). Given their statements of refusal to comply with the Department's requests for information, Krupp and BGH Edelstahl have clearly failed to cooperate to the best of their ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to both companies.

Consistent with our practice in cases where respondents' refusal to participate precludes us from conducting our LTFV analysis, as facts otherwise available, we are basing Krupp's and BGH Edelstahl's margins on information in the petition. Section 776(c) provides that, when the Department relies on secondary information (*e.g.*, the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, foreign market research reports, and data from U.S. producers). *See Notice of Initiation* and August 19, 1997, "Import Administration AD Investigation Initiation Checklist ("Initiation Checklist").

For purposes of the preliminary determination, we were only able to corroborate part of the information in the petition. We reexamined the export price data provided in the petition in light of information obtained during the investigation and, to the extent that it could be corroborated, found that it continues to be of probative value. However, the Department was provided no useful information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition (as adjusted by the Department). *See* the February 11, 1998, Memorandum to the File. We note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference.

A. Krupp and BGH Edelstahl

Consistent with Department practice, as facts otherwise available, the Department is assigning to Krupp and BGH Edelstahl the highest margin alleged in the petition for any German producer (as adjusted by the Department), which is 21.28 percent (*see Initiation Checklist* and the *Notice of Initiation* for a discussion of the margin calculations in the petition and the Department's recalculations).

B. The All-Others Rate

All foreign manufacturers/exporters in this investigation are being assigned dumping margins on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-

average dumping margins determined for the exporters and producers individually investigated. This provision contemplates that we weight average the facts-available margins to establish the all-others rate. Where the data is not available to weight average the facts-available rates, the SAA, at 873, provides that we may use other reasonable methods.

Inasmuch as we do not have the data necessary to weight average the respondents' facts available margins, we are basing the all-others rate on a simple average of the margins in the petition (as adjusted by the Department). As a result the all-others rate is 19.45 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/manufacturer	Margin percentage
Krupp Edelstahl profile GmbH, Krupp Hoesch Steel Products	21.28
BGH Edelstahl Freital GmbH	21.28
All-Others	19.45

The all-others rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those exported by the named respondents.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than April 9, 1998, and rebuttal briefs, no later than

April 16, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 20, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within thirty days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later than May 11, 1998.

This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5602 Filed 3-4-98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-807]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5193 or (202) 482-5346, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), 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 the regulations at 19 CFR part 351 (May 19, 1997).

Preliminary Determination

We preliminarily determine that stainless steel wire rod (SSWR) from Spain is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997) (*Notice of Initiation*)), the following events have occurred:

In August 1997, the Department issued a cable to the U.S. Embassy in Spain requesting information identifying potential Spanish producers and/or exporters of the subject merchandise to the United States. We did not receive a response from the U.S. Embassy in Spain. However, based on the petition, wherein Roldan, S.A., (Roldan) was the only producer and/or exporter identified, on September 19, 1997, the Department issued an antidumping questionnaire to Roldan.

Also in September 1997, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation No. 731-TA-773).

In October 1997, the Department received Roldan's response to Section A of the questionnaire. Roldan submitted its response to Sections B, C, and D of the questionnaire in November 1997.

On October 10, 1997, the petitioners in this case (i.e., AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America) requested that the Department revise its questionnaire to obtain information on the actual nickel, chromium, and molybdenum content for each sale of the SSWR made during the period of investigation (POI). On October 21, 1997, Roldan requested that the

Department deny the petitioners' request. The Department, upon consideration of the comments from all parties on this matter, issued a memorandum on December 18, 1997, indicating its decision to make no changes in the model-matching criteria specified in the September 19, 1997, questionnaire (see Memorandum from Team to Holly Kuga, Office Director, dated December 18, 1997).

On December 11, 1997, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on December 16, 1997, we postponed the preliminary determination until no later than February 25, 1998 (62 FR 66849, December 22, 1997).

We issued supplemental sections A, B, C, and D questionnaires to Roldan in December 1997 and received responses to these questionnaires in January 1998. We issued an additional supplemental section D questionnaire on February 4, 1998 and received responses to this questionnaire on February 9, and 13, 1998. Due to time constraints, we have not used the sales data that was included in Roldan's February 13, 1998 response. However, we will consider this information for the final determination. Finally, on February 6, and 10, 1998, the petitioners submitted their comments on Roldan's responses

and on issues they considered relevant to the preliminary determination.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on February 20, 1998, Roldan requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135 days after the publication of this notice in the **Federal Register**. The respondent also requested that the Department extend provisional measures from a four-month period to not more than six months pursuant to 19 CFR 351.210(e)(2). In accordance with 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) Roldan accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Roldan's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Open-End Spun Rayon Singles Yarn From Austria*, 62 FR 14399, 14400 (March 26, 1997); see also *Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 30326 (June 14, 1996).

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max	Chromium	19.00/21.00.
Manganese	2.00 max	Molybdenum	1.50/2.50.
Phosphorous	0.05 max	Lead	added (0.10/0.30).
Sulfur	0.15 max	Tellurium	added (0.03 min).
Silicon	1.00 max		

K-M35FL

Carbon	0.015 max	Nickel	0.30 max.
Silicon	0.70/1.00	Chromium	12.50/14.00.
Manganese	0.40 max	Lead	0.10/0.30.
Phosphorous	0.04 max	Aluminum	0.20/0.35.
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Spain to the United States were made at less than fair value, we compared the Constructed Export Price (CEP) to the Normal Value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a

decision in *CEMEX v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using Constructed Value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section

771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade, for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

With respect to the characteristics used to make product comparisons, the Department's questionnaire instructed the respondent to report the grades of SSWR products it sold during the POI in accordance with AISI standards. While Roldan reported most of its sales of SSWR in accordance with AISI standards, certain sales were reported with non-AISI (or internal) grades in accordance with its sales accounting system. Therefore, in instances where Roldan has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grades reported by Roldan for purposes of our analysis. However, in instances where the chemical content ranges of reported non-AISI (or an internal grade code) grades are outside the parameters of an AISI grade, or where Roldan did not report the chemical content ranges of the non-AISI grades, we have preliminarily used the grade code reported by Roldan for analysis purposes. We intend to examine this issue further for the final determination.

Furthermore, with respect to home market sales of non-prime merchandise

made by Roldan during the POI, we excluded these sales from our preliminary analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made in the United States during the POI, in accordance with our past practice. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37180 (July 9, 1993). For further discussion, see the Concurrence Memorandum from The Team to Richard Moreland, dated February 25, 1998 (Concurrence Memorandum).

Cost Reporting

Roldan reported that the cost records it maintains in the ordinary course of business do not allow it to identify separate costs for each unique product as defined by the product characteristics identified in the Department's antidumping questionnaire. Therefore, for some unique products, Roldan reported the same costs despite the Department's instruction to assign a single weighted-average cost to each unique product. Based on Roldan's claim regarding the limitations of its cost accounting system, we have accepted Roldan's cost reporting methodology for the preliminary determination. However, we shall examine Roldan's claims at verification and revisit this issue if necessary for the final determination. For further discussion, see the Concurrence Memorandum.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a

different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Roldan reported all of its sales to the United States during the POI as EP transactions; however, for the reasons identified in the "Constructed Export Price" section of this notice below, we reclassified Roldan's U.S. sales as CEP sales. We determined that there was only one LOT in the comparison-market and, therefore, we compared the CEP LOT to the NV LOT. Roldan did not claim a LOT adjustment. Nevertheless, we evaluated whether such an adjustment was necessary by examining Roldan's distribution system, including selling functions, classes of customers, and selling expenses. After making deductions pursuant to section 772(d) of the Act, we found that the selling functions performed at the CEP LOT, which included invoicing and technical support, were sufficiently different from the selling functions performed at the NV LOT, which included sales negotiation, customer contact, and technical support, to consider these to be different levels of trade. We therefore considered whether the difference in LOT affected price comparability. The effect on price comparability must be demonstrated by a pattern of consistent price differences between sales at the two relevant levels of trade in the comparison market. However, since POI sales of the merchandise under investigation in the comparison market were at only one LOT, we were unable to determine whether there was a pattern of consistent price differences. For further discussion of this issue, see the Concurrence Memorandum.

We also considered alternative sources of information in accordance with the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act. The SAA provides that, "if information on the same product and company is not available, the LOT adjustment may also be based on sales of other products by

the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling expenses of other producers in the foreign market for the same product or other products." SAA at 830. However, we did not have information on the record that would allow us to examine or apply these alternative methods for calculating a LOT adjustment.

Since we were unable to quantify a LOT adjustment based on a pattern of consistent price differences, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset because all of the comparison sales were at a more advanced level of trade than the sales to the United States.

Constructed Export Price

Roldan reported all of its U.S. sales as EP transactions. These sales were made to unaffiliated U.S. customers prior to importation through Roldan's affiliated U.S. sales entity, Acerinox U.S.A. Roldan noted that this was the customary commercial channel for these sales and that the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer.

We examine several factors to determine whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales. These factors are (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether the sales follow customary commercial channels between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. affiliate is substantially involved in the sales process (*e.g.*, negotiating prices, performing support functions), we treat the transactions as CEP sales.

Based on our review of Acerinox U.S.A.'s selling activities, we preliminarily determine that Roldan's sales to the United States through Acerinox U.S.A. are CEP sales. Although Roldan reported that the customary commercial channel is to sell the merchandise prior to importation and ship it directly to the unaffiliated U.S. customers without having the merchandise enter into the inventory of

Acerinox U.S.A., we preliminarily determined that Acerinox U.S.A. acted as more than a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. customers. Acerinox U.S.A. performed a variety of selling functions in connection with Roldan's SSWR sales in the United States, including negotiating the terms of SSWR sales with U.S. customers, reporting to Roldan concerning market conditions, identifying customers, and coordinating U.S. sales. Accordingly, for purposes of the preliminary determination, we are treating the sales in question as CEP transactions. However, we will examine this issue further at verification. For further discussion of this issue, see the Concurrence Memorandum.

We calculated CEP in accordance with sections 772(b) of the Act. Specifically, we calculated CEP based on packed, delivered prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for discounts. We also made deductions for foreign inland freight, foreign brokerage and handling, other transportation expenses (*i.e.*, insurance, U.S. Customs duty), international freight and U.S. inland freight, pursuant to section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity occurring in the United States, including credit expenses and indirect selling expenses. Because we treated all U.S. sales as CEP sales, we reduced U.S. starting price by actual selling expenses incurred by the U.S. affiliate rather than the commissions that Roldan paid the affiliate (*see* 19 CFR 351.402(e)). Finally, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" section of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Roldan's volume of home market sales

of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Roldan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

2. Affiliated Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market were not made at arm's-length prices and thus were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared, on a model-specific basis, starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355 (preamble to the Department's regulations). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost of Production Analysis

Based on the cost allegation submitted in the petition, the Department found reasonable grounds to believe or suspect that Roldan had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated an investigation to determine whether Roldan made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See Notice of Initiation*. Before making any fair value comparisons, we

conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of Roldan's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses and packing costs in accordance with section 773(b)(3) of the Act. We adjusted Roldan's reported POI costs to eliminate any adjustment for startup costs because we determined preliminarily that Roldan identified the startup period incorrectly. For further discussion of this issue, see the Calculation Memorandum from Howard Smith to Irene Darzenta dated February 25, 1998 and the Concurrence Memorandum.

B. Test of Home Market Prices

We used Roldan's submitted POI weighted-average COPs, as adjusted (see above). We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. On a product-specific basis, we compared the COP (net of selling expenses and packing) to the home market prices, less any applicable movement charges, rebates, discounts, direct and indirect selling expenses, and packing.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Roldan's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Roldan's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below

the COP, we disregarded all sales of that product.

We found that, for certain models of SSWR, more than 20 percent of Roldan's home market sales within an extended period of time were sold at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSWR for which there were no comparable (above-cost) home market sales in the ordinary course of trade, we compared CEPs to CV in accordance with section 773(a)(4) of the Act.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for inland freight and direct selling expenses, pursuant to sections 773(a)(6)(B) and 773(a)(6)(C)(iii) of the Act, respectively. We made adjustments, where appropriate, for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Also, as explained in the "Level of Trade" section of this notice above, because we determined that NV is at a different LOT than CEP and we were unable to quantify a LOT adjustment, we granted a CEP offset because all of the comparison sales were at a more advanced level of trade than the sales to the United States, pursuant to section 773(a)(7)(B) of the Act. Accordingly, we deducted home market indirect selling expenses up to the amount of U.S. indirect selling expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in

accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Spanish peseta did not undergo a sustained movement during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the constructed export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacture	Weighted-average margin percentage
Roldan, S.A.	11.40
All Others	11.40

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import

Administration no later than May 22, 1998, and rebuttal briefs no later than May 29, 1998. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 2, 1998, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**. This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5603 Filed 3-4-98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-843]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT:

David Genovese, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW,

Washington, D.C. 20230; telephone: (202) 482-0498.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), 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 of Commerce's (the Department's) regulations are references to 19 CFR part 351 (62 FR 27296 (May 19, 1997)).

Preliminary Determination

We preliminarily determine that stainless steel wire rod (SSWR) from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997)), the following events have occurred:

During August and September 1997, the Department obtained information from the U.S. Embassy in Tokyo and the Embassy of Japan in Washington, D.C., identifying potential producers and/or exporters of the subject merchandise to the United States. Based on this information, in September 1997, the Department issued antidumping questionnaires to the following ten companies: Aichi Steel Works Ltd. (Aichi), Daido Steel Co. Ltd. (Daido), Hitachi Metals Ltd. (Hitachi), Kobe Steel Ltd. (Kobe), Nippon Steel Corporation (Nippon), Pacific Metals Co. Ltd. (Pacific), Sanyo Special Steel Co. Ltd. (Sanyo), Sumitomo Electric Industries Ltd. (SEI), Sumitomo Metal Industries Ltd. (SMI), and Toa Steel Co. Ltd. (Toa).

On September 15, 1997, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (see ITC Investigation Nos. 731-TA-769-775).

In October and November 1997, the Department received questionnaire responses from all ten companies. Five of the companies (Nippon, Daido, Hitachi, Sanyo, and SEI) reported that they had made sales of subject merchandise to the United States during the period of investigation (POI) and

five (Aichi, Kobe, Pacific, SMI, and Toa) reported that they had not made sales of subject merchandise to the United States during the POI. Because Daido, Hitachi, Nippon, Sanyo, and SEI made sales of subject merchandise to the United States during the POI, they were selected as mandatory respondents. See Memorandum To Louis Apple From the Team, regarding respondents' selection, dated October 22, 1997. Of these companies, Nippon, Daido, and Hitachi provided complete responses to the Department's questionnaire; Sanyo provided a response to questions 1, 2, 5 and 6, of Section A, and SEI provided a response only to question 1 of Section A, but did not respond to the remaining portion of Section A or Sections B and C of the Department's questionnaire. In its partial response to the Department's questionnaire, Sanyo requested to be excluded from the group of companies investigated in this antidumping investigation, due to its insubstantial exports of SSWR during the POI. The petitioners did not support Sanyo's request (see Memorandum to the File from Jim Maeder, dated December 4, 1997) and, thus, we were unable to grant Sanyo's request, pursuant to 19 CFR 351.204(c)(1). On December 5, 1997, we informed Sanyo that we considered it to be a mandatory respondent in this investigation and that it was required to provide a complete response to the remaining portion of our questionnaire. Sanyo never responded to that request. With regard to SEI, when it failed to respond to the remainder of the questionnaire, we informed it again on October 8, 1997, that it was a mandatory respondent and was required to respond to our questionnaire and we extended the deadline for its response. SEI never responded to that request.

Because Sanyo and SEI failed to respond fully to our questionnaire, we have assigned to these companies a margin based on the facts available. (See the "Facts Available" section below for further discussion.)

In its October 10, 1997, submission, Nippon stated that it was affiliated with a number of SSWR producers. On October 22, 1997, based on this information, the Department determined that Nippon was required to provide a single response which included the information on all of its affiliates. On October 28, 1997, Nippon requested that the Department reconsider its position. On November 20, 1997, we informed Nippon that, because we do not believe that it has a significant potential to manipulate the pricing or production decisions of its affiliates, Nippon would not be required to submit a single response that includes the information

of its affiliates. We also informed Nippon that, should we find evidence of significant potential for price manipulation during verification, we may use facts available for purposes of the final determination. For further discussion of this issue, see Memorandum From the Team to Louis Apple, dated November 20, 1997.

On November 25, 1997, the petitioners submitted a timely allegation pursuant to section 773(b) of the Act that Daido and Nippon had made sales in the home market below the cost of production (COP). Based on our analysis of these allegations, we initiated a COP investigation with respect to Daido and Nippon and informed these companies that they needed to complete Section D of our questionnaire.

On December 11, 1997, pursuant to section 733(c)(1)(A) of the Act, the petitioners made a timely request to postpone the preliminary determination. On December 16, 1997, we granted this request and postponed the preliminary determination until no later than February 25, 1998. See 62 FR 66849 (December 22, 1997).

In December 1997, we issued to Daido supplemental sales questionnaires and received responses in January 1998. In December 1997, we issued to Hitachi supplemental sales questionnaires and received responses in the same month. In January 1998, we received responses from Daido and Nippon to section D of the Department's questionnaire. In addition, in January 1998, we issued a supplemental cost questionnaire to Hitachi and received Hitachi's response in the same month.

In February 1998, we issued additional supplemental sales questionnaires to Daido, Hitachi, and Nippon, and supplemental cost questionnaires to Daido and Nippon. Also in February 1998, Nippon submitted revised home market and U.S. sales listings, which identified prime and non-prime merchandise and corrected the inventory carrying cost calculation. This information, except for Nippon's recalculation of the inventory carrying cost adjustment which was a minor correction, was received too late to be considered for purposes of this preliminary determination. We will consider it, however, for purposes of the final determination.

Postponement of Final Determination and Extension of Provisional Measures

On February 13, 1998, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until no later than 135

days after the publication of this notice in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. The respondents also requested that the Department extend provisional measures pursuant to section 733(d) of the Act from four months to not more than six months. In accordance with 19 CFR 351.210(e), because: (1) Our preliminary determination is affirmative; (2) the respondents account for a significant proportion of exports of the subject merchandise; (3) no compelling reasons for denial exist; and (4) respondents have requested an extension of provisional measures, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Facts Available

As noted above, Sanyo only provided a response to questions 1, 2, 5, and 6 of Section A of the Department's questionnaire and SEI only provided a response to question 1 of Section A of the Department's questionnaire. They failed to respond to the remainder of the questionnaire. Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e), use facts otherwise available in reaching the applicable determination. Because Sanyo and SEI failed to respond to the Department's questionnaire and because that failure is not overcome by the application of subsections (c)(1) and (e) of section 782, we must use facts otherwise available to calculate the dumping margins for these companies.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994) (SAA). Sanyo's and SEI's decision not to reply to the Department's antidumping questionnaire demonstrates that they have failed to act to the best of their ability to comply with a request for information under section 776 of the Act. Thus, the Department has determined that, in selecting among the

facts otherwise available, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to Sanyo and SEI the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. In this case, this margin is 31.38 percent, which is the highest margin calculated for a respondent in this investigation.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. See also SAA at 829-831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, it is not necessary to question the reliability of that calculated margin. With respect to relevance, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available (see, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

For both Sanyo and SEI, the rate specified above is reliable and relevant because it is a calculated rate for another respondent in this investigation and there is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate. Thus, for Sanyo and SEI, the Department considers the rate calculated for Daido, 31.38, to be appropriate adverse facts available.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-

rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-

rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents

the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T			
Carbon	0.05 max	Chromium	19.00/21.00.
Manganese	2.00 max	Molybdenum	1.50/2.50.
Phosphorous	0.05 max	Lead	added (0.10/0.30).
Sulfur	0.15 max	Tellurium	added (0.03 min).
Silicon	1.00 max		
K-M35FL			
Carbon	0.015 max	Nickel	0.30 max.
Silicon	0.70/1.00	Chromium	12.50/14.00.
Manganese	0.40 max	Lead	0.10/0.30.
Phosphorous	0.04 max	Aluminum	0.20/0.35.
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Japan to the United States were made at less than fair value, we compared the Export Price (EP) or Constructed Export Price (CEP) to the Normal Value (NV), as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice, below. As discussed in the "Export Price/Constructed Export Price" section of this notice, Daido and Nippon made only EP sales to the United States and Hitachi made only CEP sales to the United States. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs. For Hitachi, because its home market was not viable and because it did not have sales to third countries, we made no price-to-price comparisons. Instead, we based normal value on constructed value (CV). See the "Normal Value" section of this notice, below, for further discussion.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the "ordinary course of trade." Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade for purposes of

determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In instances where a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grades reported by respondents for purposes of our analysis. However, in instances where the chemical content ranges of reported non-AISI (or an internal grade code) grades are outside the parameters of an AISI grade, we have preliminarily used the grade code reported by respondents for analysis purposes. We intend to examine this issue further for the final determination.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive

selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 23761 (November 19, 1997).

Neither Daido nor Nippon claimed a level-of-trade adjustment. Nevertheless, we evaluated whether such an adjustment was necessary by examining Daido's and Nippon's distribution systems, including selling functions, classes of customers, and selling expenses. We found that there was no substantive difference in the selling functions performed by Daido or Nippon at either of its claimed marketing stages in the home market and in the U.S. market. For a detailed explanation of the Department's level-of-trade analysis, see Memorandum from the Team to James Maeder, dated February 25, 1998. Consequently, we determine that only one level of trade exists with respect to sales made by Daido and Nippon to all customers and, therefore, a level-of-trade adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

Hitachi reported that its home market was not viable because the quantity of sales in the home market was less than five percent of the quantity of U.S. sales. In addition, Hitachi reported that it did not have sales to third countries. Consequently, we have not made a level-of-trade adjustment or granted a CEP-offset adjustment to the CVs reported by Hitachi. For a detailed

explanation of the Department's level-of-trade analysis, see Memorandum from the Team to James Maeder, dated February 25, 1998.

U.S. Sample Sales

Hitachi has requested that the Department exclude from its analysis all of Hitachi's U.S. sales that it claims are sales of samples. The Department does not automatically exclude from its analysis of U.S. sales any transaction to which a respondent applies the label "sample." See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043, 54068 (Oct. 17, 1997). Pursuant to the recent Court of Appeals for the Federal Circuit decision in *NSK v. United States*, 115 F.3d 965, 975 (1997), the Department's policy is to exclude those sample transactions from the antidumping calculations for which a respondent has established that there is either no transfer of ownership or no consideration (i.e., payment). The Department makes its determinations regarding sample sales by examining the relevant facts of each individual case, and the burden of proof in demonstrating that (1) ownership of the merchandise has not changed hands, or (2) the sample was returned to the respondent or destroyed in the testing process rests with the respondent. See *Granular Polytetrafluoroethylene Resin from Japan*, 58 FR 50343, 50345 (September 27, 1993).

In this case, Hitachi reported that it received payment (i.e., consideration) for its U.S. sales of the SSWR proprietary grade. Thus, it appears that the ownership of the merchandise has changed hands. Further, Hitachi has neither claimed, nor provided evidence, that the alleged samples were either returned to it or destroyed by the customer during testing. Accordingly, consistent with our practice and the Court's decision in *NSK*, we have included these sample sales in our margin calculations.

Services Performed by Affiliated Parties

Daido, Hitachi, and Nippon reported that affiliated companies provided various services for home market and U.S. sales. Hitachi reported that an affiliated party in the home market provided brokerage and handling and packing services. Daido reported that affiliated parties performed transportation, warehousing and packing services for home market and U.S. sales. Nippon reported that

affiliated parties provided transportation services for home market and U.S. sales. In their questionnaire responses, Daido, Hitachi, and Nippon reported the amounts charged to them by their affiliated service providers rather than the actual costs incurred by these providers, claiming that the prices charged for the services were at arm's length. The petitioners contend that the respondents should be required to demonstrate that the services provided by their affiliates were offered at arm's-length prices. Alternatively, in the absence of such a demonstration, petitioners assert that the respondents must show that the costs of the affiliated service providers were fully absorbed.

It is the Department's practice to accept the payment made by a respondent for a service as the basis for reported adjustments, as long as it can be demonstrated that it was performed at arm's-length prices. If this cannot be demonstrated, we require the respondent to provide the affiliate's cost of performing the service. See, e.g., *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18427 (April 15, 1997), and *Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). In February 1998, we issued supplemental questionnaires to the respondents, asking them to either demonstrate that the services provided by their affiliated companies were at arm's-length prices or provide the cost incurred by the affiliated companies for providing these services. Because we will not receive this information in time for purposes of the preliminary determination, we will use the amounts charged for these services by the affiliated companies as reported by respondents. However, the supplemental information provided by respondents will be subject to verification and taken into consideration for purposes of the final determination.

Export Price/Constructed Export Price

For Daido and Nippon, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

For Hitachi, since sales to the first unaffiliated purchaser took place after importation into the United States, we

used CEP methodology, in accordance with section 772(b) of the Act.

We made company-specific adjustments as follows:

A. Daido

We calculated EP based on packed, FOB port-of-export prices, to unaffiliated purchasers in the United States. We made deductions to the starting price, where appropriate, for foreign inland freight and foreign inland insurance expense, pre-sale warehousing expense, and foreign brokerage and handling fees, pursuant to section 772(c)(2)(A) of the Act.

B. Hitachi

We calculated CEP based on packed, ex-factory prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight and foreign inland insurance expense, foreign brokerage and handling, international freight, U.S. Customs merchandise processing fees, U.S. brokerage and handling fees, and U.S. inland freight and U.S. inland insurance expense, pursuant to section 772(c)(2)(A) of the Act.

We made additional deductions from the starting price, in accordance with sections 772(d)(1) and (2) of the Act, for credit expenses, indirect selling expenses, inventory carrying costs, U.S. repacking expenses, and U.S. further-manufacturing costs. In calculating U.S. further-manufacturing costs, we adjusted the further-manufacturing general and administrative expense ratio to reflect the company-wide general and administrative expenses of HMA. See Memorandum from Taija Slaughter to Chris Marsh, dated February 25, 1998. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP. In accordance with section 772(f)(2)(C)(ii) and 772(f)(2)(D) of the Act, the CEP profit rate was calculated using the internal financial statements of Yasugi Works, the division that produces the subject merchandise for sale in the home market and for export to the United States and the company-level financial statements of HMA. For further explanation, see Concurrence Issues Memorandum from the Team to Louis Apple dated February 25, 1998.

C. Nippon

We calculated EP based on packed sales prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for discounts. We also made deductions from the starting price for foreign inland freight and foreign

inland insurance expense, foreign brokerage and handling fees, and international freight, where appropriate, pursuant to section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Daido's and Nippon's aggregate volume of each company's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for Daido and Nippon. Because Hitachi's volume of home market sales of the foreign like product was not greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that its home market was not viable. In addition, Hitachi reported that it did not have sales of subject merchandise to third countries. Accordingly, for Hitachi, we have based NV on the CV of the subject merchandise sold in the United States.

Because Nippon and Daido reported home market sales during the POI to affiliated parties, as defined by section 771(33) of the Act, we tested these sales to ensure that they were made at arm's-length prices, in accordance with our practice. To conduct this test, we compared the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, movement charges, discounts, and packing, where appropriate. Based on the results of our test, we excluded sales from Nippon and Daido to their affiliated parties when weighted-average prices to an affiliated party were on average less than 99.5 percent of weighted-average prices to unaffiliated parties. We also excluded sales to affiliated parties when there were no sales to unaffiliated parties to serve as a benchmark by which to determine whether the sales to affiliated parties were made at arm's-length prices.

Based on the information contained in cost allegations submitted by the petitioners, the Department found reasonable grounds to believe or suspect that Daido and Nippon made sales in the home market at prices below the cost of producing the subject merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated investigations

to determine whether Daido or Nippon made home market sales during the POI at prices below their respective cost of production (COP) during the POI, within the meaning of section 773(b) of the Act. See Memorandum to Louis Apple from the Team, regarding the Analysis of Petitioners' Allegation of Sales Below the Cost of Production, dated December 10, 1997. Before making any fair value comparisons, we conducted the COP analysis described below.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses and packing costs, in accordance with section 773(b)(3) of the Act. We adjusted the numerator used in Daido's G&A expense ratio calculation to exclude certain income and expense items, and we adjusted the denominator to use unconsolidated cost of sales. See Memorandum to Chris Marsh from Taija Slaughter, regarding the COP calculation, dated February 25, 1998.

We compared Daido's and Nippon's weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs. On a product-specific basis, we compared the COP to home market price, less any applicable movement charges, discounts, direct selling expenses and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with

section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product. For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared the EP or CEP to CV in accordance with section 773(a)(4) of the Act.

We found that, for certain models of SSWR, more than 20 percent of the respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. As noted above, for Daido we adjusted the numerator used in the G&A expense ratio calculation to exclude certain income and expense items, and the denominator to use unconsolidated cost of sales. For Daido and Nippon, in accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

For Hitachi, we based SG&A expenses and profit on the weighted-average of the SG&A and profit data computed for those respondents with home market sales of the foreign like product in the ordinary course of trade, in accordance with section 773(e)(2)(B)(ii) of the Act because Hitachi had no viable home or third-country market.

A. Daido

We based NV on packed, delivered prices to home market customers. We made deductions for foreign inland freight and foreign inland insurance expenses, and pre- and post-sale warehousing expenses, where appropriate, pursuant to section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses.

We added export packing costs incurred for U.S. export shipments of SSWR, in accordance with section

773(a)(6) of the Act. We made no adjustment for home market packing costs because Daido included these expenses in the cost of manufacture and did not report them separately. Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

B. Hitachi

As noted above, for Hitachi, we based NV on CV because Hitachi's home market was not viable and because Hitachi did not have sales of subject merchandise to third countries. We did not make any adjustments to the CV amounts reported by Hitachi. In addition, because Hitachi's home market was not viable, we based SG&A and profit expenses on the weighted-average SG&A and profit data computed for Daido's and Nippon's home market sales of the foreign like product in the ordinary course of trade, in accordance with section 773(e)(2)(B)(ii) of the Act.

C. Nippon

We based NV on packed, ex-factory or delivered prices to home market customers. Where appropriate, we made deductions for discounts. We also made deductions for foreign inland freight and foreign inland insurance expense, where appropriate, pursuant to section 773(a)(6)(B) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for differences in credit and warranty expenses.

Because Nippon paid commissions on U.S. sales, in calculating NV we offset these commissions using the weighted-average amount of indirect selling expenses, including inventory carrying costs, incurred on the home market sales of the comparison product, up to the amount of U.S. commissions, in accordance with 19 CFR 351.410(e).

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

For purposes of the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61971 (November 19, 1997). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. For an explanation of this method, *see Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434 (March 8, 1996). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Japanese Yen did not undergo a sustained movement nor were there currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Daido Steel Co. Ltd	31.38
Nippon Steel Corporation	24.41
Hitachi Metals Ltd	27.81
Sanyo Special Steel Co., Ltd	31.38
Sumitomo Electric Industries, Ltd	31.38
All Others	26.69

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the "All Others Rate."

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 22, 1998, and rebuttal briefs no later than May 29, 1998. A list of authorities used and an executive summary of issues must accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on June 2, 1998, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our

final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 777(i) of the Act.

Dated: February 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-5604 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Business Development Trade Mission to the People's Republic of China

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Under Secretary for International Trade will lead a Business Development trade mission to The People's Republic of China and the special administrative region of Hong Kong to promote expanded trade opportunities and advocate for U.S. business interests in priority sectors throughout China. These sectors include: infrastructure in the transportation and engineering, design and construction fields; construction machinery; air traffic control equipment; information technologies, machine tools; insurance and project finance. The mission, which will occur April 13-22, 1998, will be supported by the U.S. Embassy in Beijing.

DATES: Interested U.S. firms should apply to participate in the mission as soon as possible. All application requirements must be completed by March 21, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be made to Damon C. Greer, (202) 482-5023 at the Commerce Department's Office of Energy, Infrastructure and Machinery.

SUPPLEMENTARY INFORMATION: The criteria for selection of mission participants are:

- Relevance of a company's business line to mission goals
- Timeliness of completed application by company (including participation fee)
- Potential of business in China for the company

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

China represents one of the most dynamic markets in the world and after Japan has the potential of being the largest single market in Asia for U.S. exports. The United States has made progress toward opening China's market to U.S. goods and services. At the World Economic Forum in Davos, Switzerland, Vice Premier Li Lanqing recently announced China's plans to invest more than \$750 billion in infrastructure over the next three years. This development represents a tremendous potential for U.S. capital goods manufacturers and infrastructure development firms. The Under Secretary will meet with senior decision makers in the Chinese government to advocate on behalf of U.S. companies, address market access issues, and work to strengthen Commerce's public/private partnership in China. Business participants will meet with potential clients and business partners, industry groups, and relevant Chinese government agencies. Additionally, meetings will be held with regional and local authorities to discuss opportunities for the sectors represented on the mission.

Dated: February 27, 1998.

Damon C. Greer,

Acting Director, Office of Energy, Infrastructure and Machinery.

[FR Doc. 98-5805 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-DR-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Northeast Region Logbook Family of Forms; 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 May 4, 1998.

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 Kelley McGrath, One Blackburn Drive, Gloucester, MA 01930, (978)281-9307.

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants of certain Federally-regulated fisheries in the northeast must submit logbooks containing catch and effort information about their fishing trip.

II. Method of Collection

Logbook forms are provided.

III. Data

OMB Number: 0648-0212.

Form Number: NOAA Forms 88-30 and 88-140.

Type of Review: Regular Submission.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 5,875.

Estimated Time Per Response: 5 minutes for vessel logbooks and 12.5 minutes for shellfish logbooks. These estimates do not include the time for entries that respondents would make to their own logbooks as normal business practice.

Estimated Total Annual Burden Hours: 6,387.

Estimated Total Annual Cost to Public: \$28,536.

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: February 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-5660 Filed 3-4-98; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Proposed Merger of the Coffee, Sugar & Cocoa Exchange, Inc. and the New York Cotton Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed merger of the Coffee, Sugar & Cocoa Exchange, Inc. and the New York Cotton Exchange and of proposed rule amendments to implement the merger.

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE") and New York Cotton Exchange ("NYCE") (CSCE and NYCE are referred to collectively as the "Exchanges") have submitted proposed rule amendments, incident to a plan of merger, to the Commission pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"). Acting pursuant to authority delegated by Commission Regulation 140.96, the Division of Trading and Markets ("Division") has determined to publish the proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments on the proposed merger must be received by April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Telephone: (202) 418-5495; or electronic mail: tsmith@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Description of Merger Agreement

By letter dated February 5, 1998, the Exchanges submitted to the Commission, pursuant to Section 5a(a)(12)(A) of the Act, proposed rule amendments to implement a plan of merger.¹ The proposed merger would be effected in two stages: the first stage ("Initial Merger") and the second stage ("Secondary Merger").

The Initial Merger, which the Exchanges plan to implement by June 30, 1998, would involve the Exchanges' reorganizing under the control of a common parent corporation, the Board of Trade of the City of New York, Inc.

¹ The proposed merger and rule amendments were unanimously adopted, respectively, by the CSCE Board of Managers and the NYCE Board of Managers at separate meetings held on December 4, 1997. The Exchanges' respective memberships approved the merger on December 22, 1997.

("NYBT").² Following the Initial Merger, CSCE and NYCE would continue to exist as separate corporate entities, and all contract designations and self-regulatory functions would remain intact at the respective exchange. The members of CSCE and NYCE would retain their respective trading rights in CSCE and NYCE as provided by the Exchanges' rules until the time of the Secondary Merger. The Secondary Merger would not occur until notes being issued in the Initial Merger, as described below, were paid in full. At the time of the Secondary Merger, CSCE and NYCE would merge with NYBT, and CSCE and NYCE would no longer exist as separate corporate entities.

II. Terms of the Merger Proposal

Pursuant to the Initial Merger, full members of the Exchanges would relinquish their "member" rights as that term is defined in the NPCL (i.e., voting, participation in governance or distribution rights), and NYBT would become the sole member of CSCE and NYCE. In return, full CSCE members would receive: (1) a Class A Full Membership in NYBT; (2) a cash payment of \$14,300; (3) a fully transferable, non-interest bearing note for \$85,700 issued by NYBT and payable in six annual installments of \$14,283.33; and (4) a non-voting membership (to be denoted a "Class B Membership") in CFFE Regulatory Services, LLC ("CFFE Regulatory").³

Full NYCE members would receive: (1) a Class B Full Membership in NYBT; (2) a cash payment of \$3,600; (3) a fully-transferable, non-interest bearing note for \$21,400 issued by NYBT and payable in six annual installments of

² The NYBT is a corporation organized under the New York Not-for-Profit Corporation Law ("NPCL") and was formed to act as a holding company for the Exchanges.

³ CFFE Regulatory will be the sole member of Cantor Financial Futures Exchange, Inc. ("CFFE")—an exchange that recently submitted to the Commission an application for designation as a contract market in US Treasury bond, ten-year note, five-year note and two-year note futures contracts. See 63 FR 5505 (February 3, 1998). CFFE was formed pursuant to an agreement between NYCE and a subsidiary of Cantor Fitzgerald, LP, an interdealer broker in the US Treasury securities market, whereby Cantor Fitzgerald would provide the use of its electronic trading system for the trading of the various proposed US Treasury futures contracts.

Pursuant to the Initial Merger, each NYBT Full Member would receive, in exchange for \$100, a Class B Membership in CFFE Regulatory. In aggregate, the CFFE Regulatory Class B Memberships, which would be distributed solely to Full Members of NYBT, would represent 90 percent of the economic interest of CFFE Regulatory. The remaining 10 percent of the economic interest in CFFE Regulatory would be held by NYCE in the form of a Class A Membership. NYCE will be the sole voting member of CFFE Regulatory.

\$3,566.67; and (4) a Class B Membership in CFFE Regulatory.

In addition to the above, holders of NYBT Class A Full Memberships would have the right to trade CSCE futures and option contracts. Owners of NYBT Class B Full Memberships would have the right to trade NYCE futures and option contracts.⁴ NYBT Class A and NYBT Class B Full Members, however, would have equal trading rights in any new contracts that were submitted by NYBT, or either of the Exchanges or any of their affiliates, and approved by the Commission for trading subsequent to the Initial Merger, with certain limited exceptions.

The proposal also provides that CSCE associate memberships would be converted to NYBT Class C Associate Memberships, NYCE FINEX licenses would be converted to NYBT Class D Associate Memberships, and NYCE FINEX-Europe permits would be converted to NYBT Class E Associate Memberships. Each NYBT Associate Membership would maintain the right to trade the same futures and option contracts that it currently is permitted to trade under the Exchanges' rules.

The Secondary Merger would take effect promptly after the full payment of the NYBT notes. Pursuant to the merger plan, CSCE and NYCE would merge with NYBT in accordance with the provisions of the NPCL, and CSCE and NYCE would no longer exist as separate corporate entities. The NYBT Class A and NYBT Class B Memberships would be merged into one class of full NYBT memberships which would have the

trading rights previously held by both Class A and Class B Memberships and identical governance rights. The trading privileges of NYBT Associate Members would not be affected by the Secondary Merger.

III. Request for Comments

The Commission requests comments from interested persons concerning any aspect of the proposed merger of CSCE and NYCE that commenters believe raise issues under the Act or Commission regulations, including any antitrust implications under Section 15 of the Act.

Copies of the proposed rule amendments, and related materials, are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington D.C. 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418-5100.

Any person interested in submitting written data, views, or arguments on the proposed merger or proposed rule amendments should send such comments, by the specified date, to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington D.C. 20581; transmitted by facsimile to (202) 418-5521; or transmit them electronically to secretary@cftc.gov.

Issued in Washington, D.C., on February 27, 1998.

Alan L. Seifert,

Deputy Director.

[FR Doc. 98-5631 Filed 3-4-98; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ United States Air Force Academy.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by May 4, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Air Force, HQ USAFA/RRED, Attn: Patricia Marinski, Academy, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address.

Title, Associated Form, and OMB Number: United States Air Force Academy Application, USAFA Form 149, OMB Number 0701-0087.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's high school academic background for use in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4,400.

Number of Respondents: 11,000.

Responses per Respondent: 1.

Average Burden per Response: 24 minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's high school academic performance is reviewed to determine eligibility. If the information on this form is not collected the individual cannot be considered for admittance to the Air Force Academy.

Barbara A. Carmichael,
Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98-5702 Filed 3-4-98; 8:45 am]

BILLING CODE 3910-01-P

⁴ Furthermore, NYBT Class B Full Members also would retain their trading privileges in the Citrus Associates of the New York Cotton Exchange, Inc. ("Citrus"), now an affiliate of NYCE. Pursuant to a reorganization plan approved by NYCE and Citrus, members of Citrus will relinquish their "member" rights as that term is defined in the NPCL, and NYCE will become the sole member of Citrus. Citrus Class A members, all of which are NYCE members, will retain their Citrus trading privileges, and Citrus associate members will retain those rights set forth in the By-Laws and Rules of Citrus. Citrus memberships will not be exchanged for NYBT memberships. It is anticipated that the reorganization will become effective prior to the Initial Merger. Citrus and NYCE have not yet submitted proposed rule amendments implementing the NYCE-Citrus reorganization to the Commission for review and approval.

NYBT Class B Full Members also would retain their associate memberships (Class A Memberships) in New York Futures Exchange, Inc. ("NYFE"), a wholly-owned subsidiary of NYCE. Memberships in NYFE will not be converted or exchanged for memberships in NYBT. Pursuant to the By-Laws and Rules of NYCE and NYFE, full NYCE members are authorized to apply for Class A Memberships in NYFE, and NYFE members are authorized to apply for Cotton Associate Memberships in NYCE. These rights of associate memberships will be unaffected by the merger.

DEPARTMENT OF DEFENSE**Department of the Air Force****Air University Board of Visitors; Meeting**

The Air University Board of Visitors will hold an open meeting on April 19–22, 1998, with the first business session beginning at 8:00 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama (5 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, (334) 953–5159.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–5645 Filed 3–4–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION**Notice of Proposed Information Collection Requests**

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 30, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 4, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New

Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance 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, D.C. 20202–4651, or should be electronically mailed to the internet address Pat_Sherrill@ed.gov, or should be faxed to 202–708–9346.

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 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 at the beginning of the Departmental review of the information collection. 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. ED 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: March 2, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Grants to States for Training Incarcerated Youth Offenders—State Plan, Data Collection.

Abstract: To receive an award under the Youth Offenders Program, a State Correctional Education Agency must submit a State Plan describing how the program will operate. The data requested from the State is necessary to run the allocation formula.

Additional Information: The Department of Education's Fiscal Year 1998 appropriation included \$12 million to fund Grants to States for Workplace and Community Transition Training for Incarcerated Youth Offenders (Title X, Part E, Section 1091 of the Higher Education Act). This is the first appropriation for this Program. As a result, the Department needs State Correctional Education Agencies to submit an application of operation. In addition, States need to submit data concerning the number of "eligible students" under the Program, so that the Department can run the State allocation formula. The statute also requires State Correctional Education Agencies to conduct an evaluation and to annually report to the Secretary and the Attorney General on the results of the evaluation.

Frequency: Three-year plan.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 56.

Burden Hours: 9,520.

[FR Doc. 98–5706 Filed 3–4–98; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 6, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: March 2, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Follow-up Study to the National Evaluation of Homeless Children and Youth Program.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 193.

Burden Hours: 209.

Abstract: This study will follow-up on a previous evaluation of state and local efforts to serve the educational needs of homeless children and youth that was conducted during the first few months of 1994 and released in 1995. This follow-up study will gather data on the activities being conducted under the McKinney Act by state and local educational agencies to serve the educational and related needs of homeless children and youth, and on changes that have occurred since the program was reauthorized by the Improving America's Schools Act in 1994. Respondents to the survey are State Coordinators of Education for Homeless Children and Youth. School district administrators, school staff, human services providers, McKinney subgrant coordinators, and homelessness liaisons will be interviewed during site visits to LEAs.

[FR Doc. 98-5707 Filed 3-4-98; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, January 22, 1998 from 9:00 a.m. to 4:30 p.m. and Friday, January 23, 1998 from 9:00 a.m. to 12:00 noon.

ADDRESSES: Columbia Room of the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, S.W., Room 3080, Switzer Building, Washington, DC 20202-2644. Telephone: (202) 205-8428 or (202) 205-5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of program and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services of infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to review and adopt a strategic plan that will guide the FICC work for the next three years, and will help implement changes to the FICC dictated by the 1997 amendments to the Individuals with Disabilities Education Act.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205-8428 ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C

Street, S.W., Room 3080, Switzer Building, Washington, DC 20202-2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98-5729 Filed 3-4-98; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Select Area Fisheries Evaluation Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain or floodway involvement.

SUMMARY: This notice announces BPA's proposal to place fish net pens, pilings, and floating docks in floodplains or floodways located in various bays, sloughs, channels, and tributaries of the lower Columbia River. The goal of this program is to determine the feasibility of creating or expanding select area, known stock fisheries in the Columbia River basin to allow harvest of strong anadromous salmonid stocks while providing greater protection of depressed fish stocks. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain or floodways. The assessment will be included with the revised Finding of No Significant Impact (FONSI) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the revised FONSI.

DATES: Comments are due to the address below no later than March 20, 1998.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—ACS-7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Colleen Spiering—ECP-4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208-3621, phone number 503-230-5756, fax number 503-230-4089.

SUPPLEMENTARY INFORMATION: An Environmental Assessment (EA) and Finding of No Significant Impact were issued in May 1995. BPA proposes to issue a revised FONSI supporting the 1995 EA and including additional net pen locations. Net pens may be placed in various bays, sloughs, channels, and tributaries of the Columbia River including areas in Clatsop County in the State of Oregon and Columbia and Wahkiakum Counties in the State of Washington.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on February 25, 1998.

Nancy H. Weintraub,

Acting NEPA Compliance Officer.

[FR Doc. 98-5723 Filed 3-4-98; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98-1842-000; et al.]

California Independent System Operator Corporation; Notice of Filing

February 27, 1998.

Take notice that on February 12, 13, 18, and 19, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Meter Service Agreements for Scheduling Coordinators executed by the ISO and the following parties for acceptance by the Commission:

ER98-1842-000	QST Energy Trading, Inc.
ER98-1843-000	City of Vernon, Department of Light and Power
ER98-1844-000	Citizens Power Sales
ER98-1845-000	Southern Company Energy and Marketing L.P.
ER98-1846-000	Electric Clearinghouse, Inc.
ER98-1847-000	Enova Energy, Inc.
ER98-1848-000	San Diego Gas & Electric Company
ER98-1849-000	Northern California Power Agency
ER98-1850-000	Automated Power Exchange, Inc.
ER98-1851-000	Enron Power Marketing, Inc.
ER98-1852-000	Symmetry Device Research, Inc.
ER98-1853-000	NorAm Energy Services, Inc.
ER98-1854-000	LG&E Marketing, Inc.
ER98-1855-000	Illinova Marketing, Inc.
ER98-1856-000	Duke Energy Trading & Marketing, L.L.C.
ER98-1857-000	Salt River Project Agricultural Improvement and Power District
ER98-1859-000	Vitol Gas & Electric, L.L.C.

ER98-1860-000	Portland General Electric Company
ER98-1861-000	AIG Trading Corporation
ER98-1862-000	Arizona Public Service Company
ER98-1863-000	Power Resource Managers, L.L.C.
ER98-1864-000	California Polar Brokers
ER98-1865-000	AIG Trading Corporation
ER98-1866-000	Edison Source
ER98-1867-000	PacifiCorp
ER98-1868-000	Montana Power Trading & Marketing Company
ER98-1869-000	Southern California Edison Company
ER98-1888-000	Avista Energy, Inc.
ER98-1889-000	City of Seattle, City Light Department
ER98-1891-000	City of Riverside, California
ER98-1924-000	Western Area Power Administration
ER98-1925-000	Long Beach Generating, LLC
ER98-1926-000	El Segundo Power
ER98-1929-000	Department of Water and Power, City of Los Angeles

The ISO states that these filings have been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Any person desiring to be heard to protest said filings 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 12, 1998. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-5686 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98-1870-000 et al.]

California Independent System Operator Corporation; Notice of Filing

February 27, 1998.

Take notice that on February 12, 12, 17 and 18, 1998, the California Independent System Operator

Corporation (ISO), tendered for filing Scheduling Coordinator Agreements executed by the ISO and the following parties for acceptance by the Commission:

ER98-1870-000 Citizens Power Sales
 ER98-1883-000 Avista Energy, Inc.
 ER98-1884-000 Symmetry Device Research, Inc.
 ER98-1887-000 City of Riverside
 ER98-1919-000 City of Anaheim, Public Utilities Department
 ER98-1928-000 Western Area Power Administration, Sierra Nevada Region
 ER98-1834-000 City of Los Angeles, Department of Water & Power

The ISO states that these filings have been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Any person desiring to be heard to protest said filings 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5687 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-1967-000]

California Independent System Operator Corporation; Notice of Filing

February 27, 1998.

Take notice that on February 19, 1998, the California Independent System Operator Corporation (ISO), tendered for filing Meter Service Agreements for ISO Metered Entities executed by the ISO and the Department of Water and Power and the City of Los Angeles for acceptance by the Commission:

The ISO states that these filings have been served on all parties listed on the official service list in the above

referenced dockets, including the California Public Utilities Commission.

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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 12, 1998. 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.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5688 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98-1971-000]

California Independent System Operator Corporation; Notice of Filing

February 27, 1998.

Take notice that on February 20, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an amended Transmission Control Agreement. The ISO states that initially, the Transmission Control Agreement will be with Southern California Edison Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company. Only the ISO has executed the Agreement. The ISO states that it will submit the signature pages containing the authorized signatures as soon as they are available.

The ISO states that the filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Any person desiring to be heard 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 12, 1998. Protests will be considered by the Commission in

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5689 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97-24-002]

Central Power & Light Company; Notice of Filing

February 27, 1998.

Take notice that on February 17, 1998, Central Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard to protest said filings 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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 9, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5649 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-64-001, et al.]

Metropolitan Edison Company, et al.; Electric Rate and Corporate Regulation Filings

February 25, 1998.

Take notice that the following filings have been made with the Commission:

1. Metropolitan Edison Company

[Docket No. ER98-64-001]

Take notice that on December 11, 1997, Metropolitan Edison Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Minnesota Power & Light Company

[Docket No. ER98-912-000]

Take notice that on February 13, 1998, Minnesota Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Kamps Propane, Inc.

[Docket No. ER98-1148-000]

Take notice that on February 11, 1998, Kamps Propane, Inc., filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to Kamps Business Activities.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Micah Tech Industries, Inc.

[Docket No. ER98-1221-000]

Take notice that on February 12, 1998, Micah Tech Industries, Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER98-1871-000]

Take notice that on February 13, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an unexecuted electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with AYP Energy, Inc. (AYP), and PacifiCorp Power Marketing (PPM). Wisconsin Electric respectfully requests an effective date of sixty days from the date of filing. A refund report was also submitted for previous transactions. Refunds were calculated and paid for the time value of the money collected for service without having a service agreement in place.

Copies of the filing have been served on AYP, PPM, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER98-1872-000]

Take notice that on February 13, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Ohio Valley Electric Corporation (OVEC).

Cinergy and OVEC are requesting an effective date of January 19, 1998.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98-1873-000]

Take notice that on February 13, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and FirstEnergy Corp. (FirstEnergy).

Cinergy and FirstEnergy are requesting an effective date of January 31, 1998.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98-1874-000]

Take notice that on February 13, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Cinergy Services, Inc. (Cinergy, the Customer).

Cinergy and Cinergy, the Customer are requesting an effective date of February 1, 1998.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER98-1875-000]

Take notice that on February 13, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Colorado Springs Utilities for service under its Non-Firm Point-to-Point open access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER98-1876-000]

Take notice that on February 13, 1998, UtiliCorp United Inc. (UtiliCorp), filed a service agreement with Colorado Springs Utilities for service under its Short-Term Firm Point-to-Point open

access service tariff for its operating division, WestPlains Energy-Colorado.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Idaho Power Company

[Docket No. ER98-1877-000]

Take notice that on February 13, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and NP Energy.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket No. ER98-1878-000]

Take notice that on February 13, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Griffin Energy Marketing, L.L.C., Tenaska Power Services Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon Griffin Energy Marketing, L.L.C., Tenaska Power Services Company and the Public Utilities Commission of Ohio.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Indiana Gas and Electric Company

[Docket No. ER98-1879-000]

Take notice that on February 13, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing three (3) service agreements for firm transmission service under Part II of its Transmission Services Tariff with:

1. Amoco Energy Trading Corporation
2. Columbia Power Marketing Corporation

and two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with:

1. Amoco Energy Trading Corporation
2. Columbia Power Marketing Corporation

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER98-1880-000]

Take notice that on February 11, 1998, Puget Sound Energy, Inc., tendered for filing Procedure Number 1, to the 1997 Agreement for Hourly Coordination of Projects on the Mid-Columbia River which establishes notification guidelines and procedures. A copy of the filing was served upon all parties to the 1997 Agreement for Hourly Coordination of Projects on the Mid-Columbia River.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER98-1881-000]

Take notice that on February 13, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Griffin Energy Marketing, L.L.C., Tenaska Power Services Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon Griffin Energy Marketing, L.L.C., Tenaska Power Services Company and the Public Utilities Commission of Ohio.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER98-1882-000]

Take notice that on February 13, 1998, Commonwealth Electric Company (Commonwealth), and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Cinergy Capital & Trading, Inc.
The Cincinnati Gas & Electric Company,
PSI Energy, Inc., and Cinergy
Services, Inc.
PacifiCorp Power Marketing, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and

conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Indiana Gas and Electric Company

[Docket No. ER98-1885-000]

Take notice that on February 13, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing a Consent to Assignment under which a long term power sales agreement with Ohio Edison Company and Pennsylvania Power Company (collectively Ohio Edison System) would be assigned to Ohio Edison System's newly formed corporate parent, FirstEnergy Corporation. SIGECO has requested waiver of notice to allow the assignment of the service agreements to become effective as of January 1, 1998.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER98-1886-000]

Take notice that on February 13, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and each of the following: Salt River Project; Powerex; City of Burbank; Rainbow Energy; PacifiCorp.

Comment date: March 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company QST Energy Trading, Inc., Cinergy Corp., Cincinnati Gas & Electric Company, PSI Energy, Inc., New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, The Narragansett Electric Company, Granite State Electric Company, Orange & Rockland Utilities Inc., Public Service Company of Colorado Cheyenne Light, Fuel & Power Company, UGI Utilities, Inc., Vermont Electric Power Company, Inc.

[Docket Nos. OA97-451-001, OA97-596-001, OA97-419-001, OA97-127-001, OA97-121-001, OA97-291-001, OA97-485-001, and OA97-444-001]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct¹ under Order No. 889 *et seq.*² The revised standards were submitted in response to the Commission's January 15, 1998, order on standards of conduct.³

Comment date: March 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5684 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-P

¹ The revised standards were submitted between February 13 and February 17, 1998.

² Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulation Preambles January 1991-June 1996 ¶ 31,035 (April 24, 1996); Order No. 889-A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889-B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

³ Atlantic City Electric Company, *et al.*, 82 FERC ¶ 61,028 (1998).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 8825-007]

Neshkoro Power Associates; Notice of Availability of Environmental Assessment

February 27, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an exemption surrender application for the Morley Dam Project, No. 8825-007. The Morley Dam Project is located on the Little Muskegon River in Mescosta County, Michigan. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Please affix Project No. 8825-007 to all comments. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219-0038.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5685 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Surrender of License**

February 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Surrender of License.
- b. *Project No.:* 4316-027.
- c. *Date filed:* October 24, 1997.

- d. *Applicant:* Galloway, Inc.
- e. *Name of Project:* Blue Valley Ranch.
- f. *Location:* On the Blue River in Grand County, Colorado.
- g. *File Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Mr. Michael F. Browning, Porzak, Browning & Johnson, 929 Pearl Street, Suite 300, Boulder, CO 80302, (303) 443-6800.

- i. *FERC Contact:* Thomas F. Papsidero, (202) 219-2715.
- j. *Comment Date:* April 13, 1998.
- k. *Description of Filing:* The licensee requests to surrender the license for the Blue Valley Ranch Project AKA Blue Valley Ranch No. 1 Project.

l. This notice also consists of the following standard paragraphs: B, C2 & D2.

B. Comments, protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time

specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Acting Secretary.

[FR Doc. 98-5638 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Notice of Surrender of License**

February 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Surrender of License.
- b. *Project No.:* 4444-016.
- c. *Date filed:* October 24, 1997.
- d. *Applicant:* Galloway, Inc.
- e. *Name of Project:* Blue Valley Ranch No. 2.

- f. *Location:* On the Blue River in Grand County, Colorado.
- g. *File Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).
- h. *Applicant Contact:* Mr. Michael F. Browning, Porzak, Browning & Johnson, 929 Pearl Street, Suite 300, Boulder, CO 80302, (303) 443-6800.

- i. *FERC Contact:* Thomas F. Papsidero (202) 219-2715.

- j. *Comment Date:* April 13, 1998.
- k. *Description of Filing:* The licensee requests to surrender the license for the Blue Valley Ranch No. 2 Project.

l. This notice also consists of the following standard paragraphs: B, C2 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone many submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS

AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION" "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98-5639 Filed 3-4-98; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5973-9]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance. People interested in getting copies of these ICRs should direct inquiries or comments to the Office of Compliance, Mail Code 2224A, 401 M Street S.W., Washington, D.C. 20460.

Information may also be acquired electronically through the EnviroSense Bulletin Board, (703) 908-2092 or the EnviroSense WWW/Internet Address, <http://wastenot.inel.gov/envirosense/>. All responses and comments will be collected regularly for EnviroSense.

FOR FURTHER INFORMATION CONTACT:

Stephen Howie, (202) 564-4146, facsimile number (202) 564-0085, e-mail: (howie.stephen@epamail.epa.gov.), for Producers of Pesticides; Scott Throwe, (202) 564-7013, Facsimile number (202) 564-0050, e-mail:

(throwe.scott@epamail.epa.gov.), for NSPS Subpart F, Portland Cement; Dan Chadwick, (202) 564-7054, Facsimile number (202) 564-0050, e-mail (chadwick.dan@epamail.gov), for NSPS Subpart Y, Coal Preparation; Stephen Howie, (202) 564-4146, Facsimile number (202) 564-0085, e-mail: (howie.stephen@epamail.epa.gov), for NSPS Subpart NN, Phosphate Rock; Maria Malave, (202) 564-7027, Facsimile number (202) 564-0050, e-mail (MALAVE.MARIA@EPAMAIL.EPA.GOV.), for NSPS Subpart VVV, Polymeric Coating of Supporting; and Virginia Lathrop, (202) 564-7057, Facsimile number (202) 564-0050, e-mail: (lathrop.virginia@epamail.epa.gov.), for NESHP Subpart Y, Marine Vessel Loading.

SUPPLEMENTARY INFORMATION:

Producers of Pesticides, Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA)

Affected entities: Entities potentially affected by this action are those which produce pesticides.

Title: Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA). OMB Control Number 2070-0028, expires 8/31/98.

Abstract: Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that the Administrator of the Environmental Protection Agency may prescribe regulations requiring producers, registrants and applicants for registration to maintain such records with respect to their operations and the effective enforcement of this Act as the Administrator determines are necessary for the effective enforcement of FIFRA and to make such records available for inspection and copying as specified in the statute. The regulations at 40 CFR Part 169 (Books and Records of Pesticide Production and Distribution)

specify the following records that producers must keep and the disposition of those records: production data for pesticides, devices, or active ingredients (including pesticides produced pursuant to an experimental use permit); receipt by the producer of pesticides, devices, or active ingredients used in producing pesticides; delivery, moving, or holding of pesticides; inventory; domestic advertising for restricted use pesticides; guarantees; exports; disposal; human testing; and tolerance petitions. Additionally, section 8 gives the Agency inspectional authority to monitor the validity of research data (including raw data), including data developed in accordance with Good Laboratory Practice Standards, and used to support pesticide registration. The EPA or States/Indian Tribes operating under Cooperative Enforcement Agreements make use of the records required by section 8 through periodically inspecting them to help determine FIFRA compliance of those subject to the provisions of the Act. In addition, producers themselves make use of such records in order to comply with reporting requirements under FIFRA section 7 and 40 CFR Part 167.85. (Those reporting requirements, concerning the types and amounts of pesticides produced annually at each producing site, are addressed in the ICR entitled "Pesticide Report for Pesticide-Producing Establishments," OMB Docket Number 2000-0029.)

Since most of the records required to be maintained are likely to be collected and maintained in the course of good business practice, the records are generally stored on site at either the establishment producing the pesticide or at the place of business of the person holding the registration. However, the registrant may decide to transfer records relating to disposal of pesticides and human testing to EPA for storage because of a twenty year retention requirement for the records. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to industry for this collection of information is estimated to be 2 hours per response, including time for reviewing instructions, planning activities, gathering and reviewing for accuracy, and storing or maintaining the information. An estimated 12,336 producing establishments must respond annually to this burden, for a total burden of 24,672 hours. The estimated number of establishments for this ICR is based on the fact that there are 12,336 pesticide producing establishments currently registered with EPA. This is not significantly different from the 12,683 establishments that were registered at the time of the last ICR renewal three years ago. EPA does not expect any significant changes in the regulatory program or in the industry that would change the number of producers during the next three years. Therefore, EPA believes that the current tally of registered establishments is a reliable estimate of the average number of respondents for the next three years. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart F, Portland Cement

Affected entities: Entities potentially affected by this action are portland cement plants with the following facilities: kilns, clinker coolers, raw mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems.

Title: NSPS Subpart F, Portland Cement, OMB Control Number 2060-0025, expires 8/31/98.

Abstract: The Administrator has judged that PM emissions from portland cement plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of portland cement plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6750 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 94.

Estimated Number of Respondents:

72.

Frequency of Response: 1.

Estimated Number of Responses: 72.

Estimated Total Annual Hour Burden: 6750 hours.

Estimated Total Annualized Cost Burden: \$342,019.20.

NSPS Subpart Y, Coal Preparation

Affected entities: Entities potentially affected by this action are those coal preparation plants which process more than 200 tons per day for which construction is or was commenced after October 24, 1974.

Title: New Source Performance Standards (NSPS) for Subpart Y, Standards of performance for Coal Preparation plants—Reporting and Recordkeeping, OMB Control Number 2060-0122, expires 8/31/98. This is a request for extension of a currently approved information collection.

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7—60.8 and the specific NSPS regulating emissions from coal preparation plants at 40 CFR 60.253. The information will be used by EPA to direct monitoring, inspection and enforcement efforts, thereby ensuring facility compliance with the NSPS.

Owners and operators of all new facilities subject to this NSPS, estimated at 18 facilities per year, must provide EPA with:

(1) Notification of the date of construction or reconstruction,

(2) Notification of the anticipated and actual dates of the start up, and

(3) Notification of the date for continuous monitoring system (CMS) demonstration. The EPA estimates the respondent universe to expand at an annual rate of 18 new facilities over the next 3 years.

Owners and operators of all affected facilities must report to EPA: (1) Any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. An estimated 18 existing facilities will submit reports of physical or operational changes each year, over the next three years. All facilities must maintain records on the facility operation that document: (1) The

occurrence and duration of any startups, shutdowns, and malfunctions; (2) measurements of particulate matter (PM) emissions; (3) pressure drops across any scrubber system; and (4) the initial performance test results of the CMS demonstration. All subject facilities must maintain records related to compliance for two years.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1993 Information Collection Request (ICR). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act.

Public reporting burden for facilities subject to this collection of information is estimated to average 86.5 hours per response for new facilities and 12 hours per response for existing facilities including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 26 hours per recordkeeper annually. The estimated number of respondents for this NSPS is 18 new facilities and 18 existing facilities. The frequency of response is one time for new facilities and occasionally for existing facilities.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart NN, Phosphate Rock

Affected entities: Entities potentially affected by this action are owners and operators of phosphate rock plants.

Title: NSPS Subpart NN Phosphate Rock Plants. OMB Number 2060-0111, expires 08/31/98.

Abstract: Particulate matter emissions from phosphate rock plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

The control of emissions of particulate matter from phosphate rock plants requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of particulate matter from phosphate rock plants are the result of operation of the calciners, dryers, grinders, and ground rock handling and storage facilities. These standards rely on the capture of particulate emissions by a baghouse or wet scrubber.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years is estimated to be 2069 person hours. This is based on a total of 22 plants and an estimated per-plant burden of approximately 94 hours. This estimate assumes that all plants estimated to be in existence during the last ICR will operate throughout the next three years, and that no new plants will be constructed during the next three years. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart VVV, Polymeric Coating of Supporting

Affected entities: Entities potentially affected by this action are facilities of each coating operation and any on-site coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates for which construction, modification or reconstruction after, April 30, 1987, the date of proposal.

Title: New Source Performance Standards (NSPS) for the Polymeric Coating of Supporting Substrates Facilities, Part 60, Subpart VVV; OMB Control Number 2060-0181, expires 8/31/98.

Abstract: In addition to the monitoring, recordkeeping and notification requirements specified in the General Provisions in § 60.7(a), (b), (d) and (f), and § 60.8(a) and (d), owners or operators are to comply with the requirements specified in NSPS Subpart VVV, as follows:

- Install and calibrate all monitoring devices required under the provisions of

§ 60.744 according to the manufacturer's specifications, prior to the initial performance test in location such that representatives' values of the monitored parameters will be obtained. The parameters to be monitored shall be continuously measured and recorded during each performance test.

- Maintain records of all measurements of performance test and results including estimates of projected and actual VOC use and monitored operating parameters use in demonstrating compliance, as required by § 60.747. Records must be retained for at least 2 years.

- Reporting requirements include: (1) report on the initial compliance report that includes initial performance test results, the monthly schedule to be used in making compliance determinations, design and equipment specifications and compliance method; (2) semiannual reports of compliance and of statement of no exceedances; (3) semiannual reports of monitoring exceedance; and, (4) quarterly reports of periods of noncompliance recorded under § 60.744(b) and (c).

- Any affected facility for which the amount of VOC used is less than 95 Mg per 12-month period is subject only to the requirements of §§ 60.744(b), 60.747(b) and 60.747(c).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

- (i) 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;

- (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- (iii) Enhance the quality, utility, and clarity of the information to be collected; and

- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry

for the currently approved 1995 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. A burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be 7 new affected facilities over the three years of the existing ICR and that there were approximately 31.2 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart VVV are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Monthly complying test (90 person-hours), Report of monitoring exceedances and periods of noncompliance (16 person-hours), Report of no excess emissions (8 person-hours), and Report of physical/operational changes (4 person-hours). We assume to estimate the reporting requirement burden that: 1) 20 percent of sources report monitoring exceedances or periods of noncompliance quarterly, 2) 80 percent of lines report no excess emissions semiannually, 3) operating parameters recorded 350 days per year, and 4) one occurrence per week of shutdown or malfunction. Records must be kept for a

period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 5,957.57 person-hours.

NESHAP Subpart Y, Marine Vessel Loading

Affected entities: Entities potentially affected by this action are those which are in the standard industrial code 4491, for Marine Cargo Handling.

Title: Federal Standards for Marine Tank Vessel Loading and Unloading Operations, and National Emission Standards for Hazardous Air pollutants for Marine Tank Vessels Loading and unloading operations. OMB control number 2060-0289, expires 9/30/98. [40 CFR 63.560 et seq.]

Abstract: The respondents are owners or operators of new and existing marine tank vessel loading facilities that are in operation after promulgation of the federal standards and NESHAP in 1995. There are an estimated 1,500 marine tank vessels loading facilities nationwide. Of these approximately 20 have annual gasoline throughput greater than 10 million barrels (bbl) or annual crude oil throughput greater than 200 million bbl and are required to control emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) under section 183(f) for the Clean Air Act (the ACT). These facilities would require the application of reasonably available control technology (RACT). Excluding the 20 facilities subject the RACT, approximately 85 facilities have annual HAP emissions of greater than 15 tons and would be required to control emissions of HAP under Section 112(d) of the Act. These facilities would be subject to NESHAP and would require the application of maximum available control technology (MACT). The number of new marine tank vessel loading facilities is expected to be low because no net growth is predicted for this industry.

Facilities, required to install controls under these standards or that have to fulfill the applicable reporting and record keeping requirements of the general provisions of 40 CFR Part 63, submit the following reports: (1) initial notification of applicability report; (2) notification of intent to do performance testing and monitoring system performance evaluation; (3) initial notification of compliance status; (4) operation and Maintenance records (including inspection schedule); (5) monitoring records; and (6) annual reports of exceedances of the emission limits (ongoing compliance status reports). Annual reports of any

exceedences of monitored values and description and timing of steps taken to address the cause of the exceedences would also be required. These facilities must also maintain documentation that the vessels loaded at the facilities are vapor tight. Consistent with the general provisions of 40 CFR 63, all information will be made readily available to the Administrator or delegated state authority upon request for a minimum of 5 years.

All reports are submitted to the respondent's state or Local agency whichever has been delegated enforcement authority by EPA. The information is used to determine that sources subject to RACT and MACT are achieving the standards.

The EPA is required under Section 183(f) of the Act to regulate emissions of VOC and HAP. The EPA is also required under section 112(d) of the Act to regulate emissions of HAP listed in section 112(b). The predominant HAP emitted during vessel loading operations include hexane, benzene, toluene, and methanol. Other less frequently emitted HAP include xylenes and ethyl benzene.

Certain records and reports are necessary to enable the Administrator to: (1) identify new, modified, reconstructed, and existing resources subject to the standards and (2) ensure that the standards, which are based on RACT and MACT, are being achieved. These records and reports are required under the general provisions of 40 CFR 63 Subpart A (authorized under sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended by public 101-549 [42 U.S.C. 7401, 7412, 7414, 7416, 7601]).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, Chapter 1, part 2, Subpart B, confidentiality of business information (see 40 CFR part 2; 41 CFR 36902, Sept. 1, 1997, amended by 43 FR 39999, Sept. 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979.).

The primary industry Standard Industrial Classification code for this industry and respondents is 4491, for Marine Cargo Handling. The information collected by the Agency is used by Agency personnel to (1) identify new, modified, reconstructed, and

existing sources subject to the standards; (2) ensure that RACT and MACT are being properly applied; and (3) ensure that emission control systems used by owner or operator to meet the standards are properly operated and maintained on a continual basis. In addition, records and reports are necessary to enable the Agency to identify facilities that may not be in compliance with the standards. Based on reported information, the Agency can decide which facilities should be inspected and what records or processes should be inspected at facilities. The records that facilities maintain would indicate to the Agency where the owners or operators are in compliance with the standards, and operating and maintaining control equipment properly. In order to minimize the burden, much of the information the Agency would need to determine compliance, is to be kept as records and would not need to be routinely reported to the Agency. EPA can determine compliance through inspections and review of the records.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For respondents, the annual burden is for record keeping and reporting and is derived from estimates based on Agency experience with other standards. The labor rates and associated costs are based on estimated hourly rates of technical at \$35, management at \$51, and clerical at \$16. The total recurring annual hours are approximately 28,100 and there are an additional approximately 44,000 hours that will be incurred on a one time basis only. The estimated first year burden is 72,111 annual burden hours for reporting and record keeping. In the second and third years the estimates are 28,132 hours for reporting and record

keeping. The yearly average for the first 3 years is 42,792 hours. The average early burden per respondent is $42,792 / 105 = 408$ hours. The total recurring annual costs are approximately \$958,000 and there is an additional cost of approximately \$1,500,000 that will be incurred on a one time only basis in the first year. The first year entails burden for existing resources which have one time activities, such as performing emission testing, submitting compliance status information reports, developing record keeping and implementation plans. The second and third years will not require these reports, but only burden hours for ongoing record keeping. So for each of these years the total recurring annual cost is estimated at \$958,000.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The only cost for the Agency in this analysis is the user costs associated with analysis of the information reported annually by the sources. About 11,977 hours would be used annually to review reports or attend performance tests. This amounts to about \$446,584 each year.

Dated: February 24, 1998.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 98-5719 Filed 3-4-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5974-2]

Proposed Settlement Agreement; Ozone Transport in Eastern United States; Section 126 Petitions Filed by Northeastern States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (Act), as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement

agreement concerning litigation instituted against the Environmental Protection Agency (EPA) by the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (Petitioning States). The lawsuit concerns EPA's alleged failure to perform a nondiscretionary duty with respect to promulgating action on petitions submitted by the Petitioners under Clean Air Act section 126. These section 126 petitions ask EPA to make findings that electric utilities and other stationary sources of oxides of nitrogen (NO_x) emissions in states upwind of the Petitioners contribute significantly to nonattainment (or interfere with maintenance) by areas within the Petitioners of the ozone-smog national ambient air quality standards. The stationary sources that may be affected are located throughout the eastern part of the United States. The proposed settlement establishes a schedule by which EPA will take action on the petitions.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260-7606. Written comments should be sent to Howard J. Hoffman at the above address and must be submitted on or before April 6, 1998.

Dated: February 27, 1998.

Jonathon Z. Cannon,
General Counsel.

[FR Doc. 98-5721 Filed 3-4-98; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-400126; FRL-5776-1]

Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2-day meeting of the Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology. This will be the third meeting of the Toxics Data Reporting (TDR) Committee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on March 19-20, 1998, from 8:30 a.m. to 5 p.m. Written and electronic comments in response to this notice should be received by March 13, 1998.

ADDRESSES: The meeting will be held at: Double Tree National Airport, 300 Army Navy Drive, Arlington, VA, Telephone number: (703) 416-4100.

Each comment must bear the docket control number "OPPTS-400126." All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, telephone: (202) 260-0675, fax number: (202) 401-8142, e-mail: vail.cassandra@epamail.epa.gov. or Michelle Price, telephone: (202) 260-3372, fax number: (202) 410-8142, e-mail: price.michelle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

At the 2-day meeting, the TDR Committee will conclude the discussions begun at the December 9-10, 1997 meeting regarding how the Agency characterizes the TRI data through the annual public data release. In addition, the TDR Committee will revisit the section 8 issues discussed at the January 29-30 meeting. Section 8 of the Form R collects information required by the Pollution Prevention Act concerning waste management and source reduction of toxic chemicals. The TDR Committee will then revisit issues raised at all the previous TDR meetings regarding sections 5, 6, 7, and 8 of the Form R. The goal will be to try to synthesize the TDR Committee's ideas with regard to revisions to the Form R.

Meeting summaries, transcripts, agendas, and issue papers from previous TDR Committee meetings can be found on the TRI Home Page. The address of the TRI Home Page is <http://www.epa.gov/opptintr/tri>. This information can be found under the heading "TRI Stakeholder Dialogue." In addition, an agenda for the March 19-20 meeting will be available at this same site prior to the meeting. Oral presentations or statements by interested parties will be limited to 5 minutes. Interested parties are requested to contact Cassandra Vail, to schedule presentations before the Committee.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPPTS-400126" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by

the docket control number "OPPTS-400126." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: February 26, 1998.

Cassandra Vail,

Designated Federal Official.

[FR Doc. 98-5724 Filed 3-4-98; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96-45; DA 98-413]

Second Quarter 1998 Universal Service Contribution Factors

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Common Carrier Bureau announces proposed universal service contribution factors for the second quarter of 1998. If the Commission takes no action regarding these proposed factors by March 19, 1998, the projections shall be deemed approved by the Commission and shall be used to calculate second quarter universal service contributions.

DATES: The proposed second quarter factors will be effective March 19, 1998.

ADDRESSES: One original and five copies of all comments responsive to this Public Notice must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies also should be sent to Sheryl Todd, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, 2100 M Street,

N.W., 8th Floor, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Sheryl Todd, Universal Service Branch, Accounting and Audits Division, Common Carriers Bureau at (202) 418-7400 or Valerie Yates, Common Carrier Bureau at (202) 418-1500.

SUPPLEMENTARY INFORMATION: By the Common Carrier Bureau:

As required by 47 CFR 54.709, on January 30, 1998, the Universal Service Administrative Corporation (USAC), the Schools and Libraries Corporation (SLC), and the Rural Health Care Corporation (RHCC) submitted the following projections of second quarter 1998 demand and administrative expenses:

[\$ millions]

Program	Program demand	Administrative expenses	Interest income	Total program costs
Schools and Libraries	322.4	4.4	(1.8)	325.0
Rural Health Care	23.2	1.9	(0.1)	25.0
Subtotal	345.6	6.3	(1.9)	350.0
High Cost	431.1	0.9	(0.9)	431.1
Low Income	122.3	0.4	(0.3)	122.4
Subtotal	553.4	1.3	(1.2)	553.5
Total	899.0	7.6	(3.1)	903.5

Based on information contained in the Universal Service Worksheets, FCC Form 457, USAC submitted end-user telecommunications revenues for the first half of 1997 on January 30, 1998. On February 24, 1998, USAC revised these revenue estimates to reflect newly-filed or revised Form 457 submissions and to exclude revenues from contributors that the Commission determined are exempt in its Fourth Order on Reconsideration, FCC 97-420, 63 FR 2094, Jan. 13, 1998. The revised amounts are as follows:

Total Interstate, Intrastate, and International End-User Telecommunications Revenues from January 1, 1997—June 30, 1997: \$92.1856 billion.

Total Interstate and International End-User Telecommunications Revenues from January 1, 1997—June 30, 1997: \$35.3033 billion.

We estimate quarterly revenues by dividing the six-month revenue estimates listed above by two.

Based on the figures submitted by USAC, SLC, and RHCC, the proposed contribution factors for the second quarter of 1998 are as follows:

Contribution factor for the schools and libraries and rural health care support mechanisms:

Total Program Costs/Contribution Base (Interstate, International, and Intrastate) = \$0.350 billion/(\$92.1856 billion/2) = 0.0076.

Contribution factor for the high cost and low income support mechanisms:

Total Program Costs/Contribution Base (Interstate and International) = \$0.554 billion/(\$35.3033 billion/2) = 0.0314.

These factors are the proposed second quarter 1998 universal service contribution factors. If the Commission takes no action regarding these proposed factors by March 19, 1998, the projections shall be deemed approved by the Commission, 47 CFR 54.709(a)(3), and shall be used by USAC to calculate second quarter universal service contributions.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98-5758 Filed 3-4-98; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION

[DA 98-390]

En Banc Hearing in Connection With Report to Congress on Universal Service

February 26, 1998.

The Federal Communications Commission will hold an En Banc on Friday, March 6, 1998, from 9:00 a.m. to 11:00 a.m., in Room 856 at 1919 M Street, N.W., Washington, D.C. The En Banc is in connection with the Report to Congress on Universal Service required by statute.

The 1998 appropriations legislation for the Departments of Commerce, Justice, and State, Public Law 105-119,

directs the Commission to undertake a review of the implementation of the provisions of the Telecommunications Act of 1996 (1996 Act) relating to universal service, and to submit a report to Congress no later than April 10, 1998.

At the En Banc, the Commission will hear from panels of experts addressing issues regarding the percentage of universal service support provided by Federal mechanisms and the revenue base from which such support is derived.

The En Banc is open to the public, and seating will be available on a first come, first served basis. A transcript of the En Banc will be available 10 days after the event on the FCC's Internet site. The URL address for the FCC's Internet Home Page is <<http://www.fcc.gov>>.

The En Banc will also be carried live on the Internet. Internet users may listen to the real-time audio feed of the En Banc by accessing the FCC Internet Audio Broadcast Home Page. Step-by-step instructions on how to listen to the audio broadcast, as well as information regarding the equipment and software needed, are available on the FCC Internet Audio Broadcast Home Page. The URL address for this home page is <http://www.fcc.gov/realaudio/>.

News Media Contact: Rochelle Cohen (202) 418-0253.

Report Working Group Contact: Jonathan Radin (202) 418-7240.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98-5759 Filed 3-4-98; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, March 10, 1998 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters, affecting a particular employee.

DATE & TIME: Thursday, March 12, 1998 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1997-24: The

Corporation for the Advancement of Psychiatry and CAP Political Action Committee, by the CAPPAC treasurer, Gerald H. Flamm, M.D.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 219-4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98-5827 Filed 3-3-98; 12:08 pm]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

The National Board Fiscal Year 1998 Plan for Carrying Out the Emergency Food and Shelter Program (EFSP)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice sets out the plan by which the Emergency Food and Shelter Program National Board (National Board) is conducting a program during FY 1998 to distribute \$100,000,000 to private voluntary organizations and local governments for delivering emergency food and shelter to needy individuals. The distribution formula for selecting organizations and localities, and the award amount for each, follow the Plan text.

DATES: The award to the National Board was made October 28, 1997.

FOR FURTHER INFORMATION CONTACT:

Carol Coleman, Preparedness, Training and Exercise Directorate, Federal Emergency Management Agency, (202) 646-3107, or Kay C. Goss, Chair, EFSP National Board, (202) 646-3487.

SUPPLEMENTARY INFORMATION: Title III of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11301 et seq., authorizes use of funds appropriated by the Congress to supplement and expand ongoing efforts to provide shelter, food, and supportive services to homeless, needy individuals.

As in past phases, grant awards from this program are provided to address emergency needs. This program is not intended to address or correct structural poverty or long-standing problems. Rather, this appropriation is intended for the purchase of food and shelter to supplement and expand current

available resources and not to substitute or reimburse ongoing programs and services.

This funding should be used to target special emergency needs. And when we discuss emergency needs we are referring to economic, not disaster-related, emergencies. The funding should supplement feeding and sheltering efforts in ways that make a difference. What that means is: EFSP is not intended to make up for budget shortfalls or to be considered just a line in an annual budget; it is not intended that the funds must go to the same agencies for the exact same purposes every year; and, the funding is open to all organizations helping hungry and homeless people and it is not intended that the funds should go only to Local Board member agencies or local government agencies.

Having stated what it is not, what does the National Board want this program to be? As we read the law, EFSP should: create inclusive local coalitions that meet regularly to determine the best use of funds and to monitor their use in their respective communities; treat every program year as a fresh opportunity to reassess what particular community needs (e.g., on-site feeding or utility assistance, mass shelter or homelessness prevention, etc.) should be addressed; encourage agencies to work together to emphasize their respective strengths, work out common problems, and prevent duplication of effort; and, examine whether the program is helping to meet the needs of special populations such as minorities, Native Americans, veterans, families with children, the elderly, and the handicapped.

It is our intention to re-emphasize that this program has a commitment to emergency services. We continue to view it as an opportunity for building a cohesive emergency structure which can, for example, coordinate the assistance provided, across agencies, to families and individuals applying for rental, mortgage, or utility assistance; enhance a food banking network that is economical in its cost and broad in its coverage; reinforce creative cooperation among feeding and sheltering sites to ensure help for street populations most in need; and, establish or maintain a system that complements rather than supplants existing private and governmental efforts to provide rent, mortgage, or utility assistance.

The National Board is aware that much is asked of our voluntary Local Boards and LROs, and very little administrative funding is provided. But the cooperative model that EFSP has helped to create can be a useful vehicle

for many governmental and community-based programs. As a group, local providers can accomplish much: initiating a dialogue with local offices of Federal entities such as the U.S. Department of Agriculture to take full advantage of excess commodities and its other programs or with the U.S. Department of Labor's Job Training Partnership Act (JTPA); working with Federal programs that require the input of local providers such as the Department of Housing and Urban Development's Community Development Block Grant or Emergency Shelter Grant and the Department of Health and Human Services' Health Care for the Homeless; pooling agency efforts to gain Federal (for example, HUD's Transitional Housing Program) and private foundation grants; leveraging EFSP funds within the community by encouraging matches of local EFSP allocations from State and local governments and private resources; and, exchanging ideas on administrative and accounting methods that can improve delivery of services and focus on the collaborative rather than the competitive aspects of agency relations.

Fourteen years ago this program began as a one-time effort to help address urgent needs. The survival of this public-private partnership is not only a testament to needs, but also to the effectiveness of EFSP as an example of local decision-making and community responsibility in attempting to meet those needs.

EFSP is a reminder of this nation's willingness to confront difficult problems within the society in new ways. But most importantly, EFSP has fed and sheltered homeless and hungry people, it has maintained homes and the families in those homes, and it has created useful public-private partnerships within communities.

Table of Contents

- 1.0 Background and introduction.
- 1.1 Purpose.
- 2.0 FEMA's role and responsibilities.
- 3.0 National Board's role and responsibilities.
- 3.1 Client Eligibility.
- 4.0 State Set-Aside Committee's role and responsibilities.
- 5.0 Local Boards' role and responsibilities.
- 5.1 Variances and Waivers.
- 6.0 Local Recipient Organizations' role and responsibilities.
- 6.1 Independent Annual Audit Requirements.
- 6.2 Fiscal Agents/Conduit Relationship.
- 6.3 Financial terms and conditions.
- 6.4 Grant Payment Process.
- 6.5 Eligibility of Costs.
- 6.6 Required Documentation.
- 7.0 Local appeals process.

- 8.0 Allocations formula.
- 9.0 Amendments to plan.

1.0 Background and Introduction

The Emergency Food and Shelter Program was established on March 24, 1983, with the signing of the "Jobs Stimulus Bill," Public Law 98-8. That legislation created a National Board, chaired by FEMA, which consisted of representatives of the American Red Cross; Catholic Charities, USA; the Salvation Army; Council of Jewish Federations, Inc.; United Way of America; and the National Council of Churches of Christ in the U.S.A.

Since that first piece of legislation in 1983, through its authorization under the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77—signed into law on July 24, 1987, subsequently reauthorized under Pub. L. 100-628, signed into law on November 7, 1988), the Emergency Food and Shelter Program has distributed \$1.5 billion to over 11,000 social service agencies in more than 2,500 communities across the country.

From its inception, the unique features of this program have been the partnerships it has established. At the national level, the Federal government and board member organizations have the legal responsibility to work together to set allocations criteria and establish program guidelines. Such coalitions, as set forth in the law, are even more vital on the local level. In each community Local Boards make the most significant decisions on their own make-up and operation, the types of services most in need of supplemental help, what organizations should be funded and for what purpose and amount. These portions of the law have remained unchanged and are the core of this unique public-private partnership.

1.1 Purpose

This publication is developed by the National Board to outline the roles, responsibilities, and implementation procedures that shall be followed by the National Board, FEMA Local Boards, LROs, SSA Committees, in the distribution and use of these funds.

National in scope, EFSP will provide food and shelter assistance to individuals in need through local private voluntary organizations and local governments in areas designated by the National Board as being in highest need. The intent of EFSP is to meet emergency needs by supplementing and expanding food and shelter assistance individuals might currently be receiving, as well as to help those who are receiving no assistance. Individuals who received assistance

under previous programs may again be recipients, providing they meet local eligibility requirements.

2.0 FEMA's Role and Responsibilities

(a) FEMA will perform the following EFSP activities:

(1) Constitute a National Board consisting of individuals affiliated with United Way of America; The Salvation Army; the National Council of Churches of Christ in the USA; Catholic Charities, USA; the Council of Jewish Federations, Inc.; the American Red Cross; and FEMA.

(2) Chair the National Board, using parliamentary procedures and consensus by the National Board as the mode of operation.

(3) Provide policy guidance, management oversight, Federal coordination, and staff assistance to the National Board.

(4) Award the grant to the National Board.

(5) Assist the Secretariat in implementing the National Board Program.

(6) Report to Congress on the year's program activities through the Interagency Council on the Homeless Annual Report.

(7) Conduct audits of the program.

(8) Initiate Federal collection procedures to collect funds or documentation due when the efforts of the National Board have not been successful.

3.0 National Board's Role and Responsibilities

(a) The National Board will perform the following EFSP activities:

(1) Select jurisdictions of highest need for food and shelter assistance and determine amount to be distributed to each.

(2) Notify national organizations interested in emergency food and shelter to publicize the availability of funds.

(3) Develop the operational manual for distributing funds and establish criteria for expenditure of funds.

(4) In jurisdictions that received previous awards, notify the former Local Board chair that new funds are available. In areas newly selected for funding, notify the local United Way, American Red Cross, Salvation Army, or local government official. The National Board will notify qualifying jurisdictions of award eligibility within 60 days following allocation by FEMA.

(5) Provide copies of award notification materials to National Board member affiliates and other interested parties.

(6) Secure board plan, certification forms and board rosters from Local

Boards. Ensure Local Board compliance with established guidelines.

(7) Distribute funds to selected LROs.

(8) Hear appeals and grant waivers.

(9) Establish an equitable system to accomplish the reallocation of unclaimed or unused funds. Unused or recaptured funds will be reallocated by the National Board, except in the case of State Set-Aside counties whose funds may be reallocated by the respective State Set-Aside Committees.

(10) Ensure that funds are properly accounted for, and that funds due are collected.

(11) Provide consultation and technical assistance to local jurisdictions as necessary to monitor program compliance.

(12) Compile the reports it receives from the Local Boards and submit a detailed accounting of use of all program monies in the form of a report to FEMA.

(13) Conduct a compliance review of food and shelter expenditures made under this program for specified LROs. The National Board, FEMA, the independent accounting firm selected by the National Board or the Inspector General's office may also conduct an audit of these funds.

(14) Monitor LRO compliance with OMB Circular A-133.

The United Way of America will act as the National Board's Secretariat and fiscal agent and perform necessary administrative duties for the Board. An administrative allowance of one percent of the total award may be used for National Board administration.

3.1 Client Eligibility

The National Board does not set client eligibility criteria. Local Boards may choose to set such criteria. If the Local Board does not set eligibility criteria, the LRO may use its existing criteria or set criteria for assistance under this award. However, the LROs criteria must provide for assistance to needy individuals without discrimination (age, race, sex, religion, national origin, or handicap).

Funds allocated to a jurisdiction are intended for use within that jurisdiction. Residents of or transients in a specific jurisdiction should seek service within that jurisdiction.

Citizenship is not an eligibility requirement to receive assistance from EFSP. The National Board does not mandate nor recommend the use of any particular existing criteria (i.e., food stamp guidelines, welfare guidelines, or income guidelines).

4.0 State Set-Aside (SSA) Committee Role and Responsibilities

(a) *SSA Committee's role.*

(1) The SSA process has been adopted to allow greater flexibility in selection of jurisdictions and is intended to target pockets of homelessness or poverty in non-qualifying jurisdictions (refer to Supplementary Information, above, on qualifying criteria), areas experiencing drastic economic changes such as plant closings, areas with high levels of unemployment or poverty which do not meet the minimum level of unemployment, or jurisdictions that have documented measures of need which are not adequately reflected in unemployment and poverty data.

(2) The distribution of funds to SSA Committees will be based on a ratio calculated as follows: the State's average number of unemployed in non-funded jurisdictions divided by the average number of unemployed in non-funded jurisdictions nationwide equals the State's percentage of the total amount available for SSA awards.

(b) *SSA responsibilities.*

(1) A SSA Committee in each State will recommend high-need jurisdictions and award amounts to the National Board. Priority consideration is to be given to jurisdictions otherwise not meeting criteria for funding, although funded jurisdictions may receive additional funding. SSA Committees should also consider the special circumstances of jurisdictions that qualified in previous funding phases but are not eligible in the current phase. The State Committees may wish to provide these jurisdictions with an allocation so that the abrupt change in funding status is not disruptive to local providers. SSA Committees are encouraged to consider current and significant State or local data in their deliberations. Although the National Board staff provides national data to the SSA Committees, it does not mandate any particular formula. These committees are free to act independently in choosing eligible jurisdictions.

In each State, the chair of the previous phase's SSA Committee will be notified of the award amount available to the SSA Committee. In a State where there are affiliates of the voluntary organizations represented on the National Board, they must be invited to serve on the State Committee. If no single State affiliate exists, an appropriate representative should be invited. The Governor or his/her representative will replace the FEMA member. State Committees are encouraged to expand participation by inviting or notifying other private non-profit organizations on the State level. The National Board encourages the inclusion of Native Americans,

minorities, and other appropriate representatives on the State Committee.

(2) Members of the SSA Committee shall elect a person to chair the committee.

(3) The SSA Committees are responsible for the following:

(i) recommending high-need jurisdictions and award amounts within the State. When selecting jurisdictions with demonstrated need, the National Board encourages the consideration of counties incorporating or adjoining Indian reservations. The SSA Committee has 25 working days to notify the National Board in writing of its selections and the appropriate contact person for each area. Note: The minimum award amount for a single jurisdiction is \$1,000 and only whole-dollar amounts can be allocated.

(ii) Notifying the National Board of selection criteria that were used to determine which jurisdictions within the State were selected to receive funds. The National Board will then notify these jurisdictions directly. In the event funds are not claimed by the SSA jurisdictions, SSA Committees may recommend other jurisdictions to receive the unclaimed funds.

(4) An administrative allowance of one-half of one percent (5) of the total SSA award to each State may be used for SSA administration.

5.0 Local Boards' Role and Responsibilities

(a) *Local Boards' role and responsibilities.*

(1) Each area designated by the National Board to receive funds shall constitute a Local Board. In a local community where there are affiliates of the United Way of America; The Salvation Army; the National Council of Churches of Christ in the U.S.A.; Catholic Charities, U.S.A.; Council of Jewish Federations; and the American Red Cross; which are represented on the National Board, they must be invited to serve on the Local Board. An agency's own governing board may not serve as a Local Board. The National Board mandates that if a jurisdiction is located within or encompasses a federally recognized Indian reservation, a Native American representative must be invited to serve on the Local Board. All Local Boards are required to include in their membership a homeless or formerly homeless person. Local Boards should seek recommendations from LROs for an appropriate representative. Local Boards that are unable to have homeless or formerly homeless representation must still consult with homeless or formerly homeless individuals, or former or current clients

of food or housing services for their input. The County Executive/Mayor, appropriate head of local government or his or her designee will replace the FEMA member. Local Boards are encouraged to expand participation and membership by inviting or notifying minority populations, other private non-profit organizations and government organizations; the jurisdiction should be geographically represented as well.

(2) The members of each Local Board will elect a chair.

(3) Local Board membership is not honorary; there are specific duties the board must perform. If a member cannot regularly attend meetings, the member should be replaced by another representative of the member's designated agency. If a member must be absent from a meeting, the member's organization may designate an alternate.

(4) If a locality has not previously received funding and is now designated as being in high need, the National Board has designated the local United Way to constitute and convene a Local Board as described above. If there is no local United Way, or it does not convene the board, the local American Red Cross, the local Salvation Army, or a local government official will be responsible for convening the initial meeting of the Local Board.

(5) If a locality has previously received National Board funding, the former chairman of the Local Board will be contacted regarding any new funding the locality is designated to receive.

(6) Each award phase is new; therefore, the Local Board is a new entity in every phase. The convener of the Local Board must ask each agency to designate or redesignate a representative every program year.

(7) The National Board requires Local Boards to select one of the following options for meetings:

(i) Quarterly Meetings: Local Boards are encouraged to meet quarterly to ensure LROs are implementing the program according to guidelines. Meetings may be conducted via conference calls.

(ii) Semiannual Meetings: Local Boards meeting twice a year must also ensure that LROs are implementing the program according to guidelines. Ongoing monitoring activities must take place. Local Boards electing to hold meetings semiannually will be required to submit copies of their meeting minutes with the jurisdiction's final report.

(8) A majority of members must be present for the meeting to be official. Attendance and decision-making minutes must be kept. Meeting minutes must be approved by the Local Board at

the next meeting. They must also be available to the National Board, Federal authorities, and the public on request.

(9) The Local Board will have 25 working days after the notification of the award selection by the National Board in which to advertise and promote the program to give any organization capable of providing emergency services an opportunity to apply for funds. Advertising must take place prior to the Local Board's allocation of funds. Failure to advertise properly will delay processing of the jurisdiction's board plan and subsequent payment of funds. Local Boards should allow at least one week for interested organizations to apply for funding. (Local Boards are not required to re-advertise fund availability for supplemental allocations within the same spending period.)

(10) The Local Board recommends which local organizations should receive grants and the amounts of the grants. Local Boards must have a written application process and consider all private voluntary and public organization applicants. In selecting LROs to receive funds, the Local Board must consider the demonstrated ability of an organization to provide food and/or shelter assistance. Local Board members should strive to use consistent criteria, sound judgment and fairness in their approach. Local Board membership must have no relationship to funding. Local Board members must abstain from voting on their own grant awards. LROs should be selected to receive funds to supplement and extend eligible on-going services, not be funded in anticipation of a needed service (i.e., fire victims, floods, tornadoes, etc.); neither should agencies be selected for funding due to budget shortfalls nor for cuts in other funding sources.

LROs that received awards from previous legislation may again be eligible provided that the LRO still meets eligibility requirements. Agencies on Indian reservations are eligible to receive EFSP monies, if they meet LRO requirements.

The minimum grant per LRO is \$300 and only whole-dollar amounts may be allocated. The Local Board should be prepared to justify an allocation of one-third (1/3) or more of its total award to a single LRO.

(11) Local Boards are responsible for monitoring LROs that receive over \$100,000 in Federal funds and ensuring that they comply with OMB Circular A-133.

(12) Local Boards must complete and return all required forms to the National Board. (Local Board Plan, Local Board

Certification Form, and Local Board Roster).

(13) Local Boards shall secure and retain signed forms from each LRO certifying that program guidelines have been read and understood, and that the LROs will comply with cost eligibility and reporting requirements.

(14) Local Boards must establish a system to ensure that no duplication of service occurs within the expenditure categories of rent, mortgage or utility assistance (RMU). Local Boards are free to establish any system as long as no duplication of rent/mortgage or utility assistance can take place under reasonable circumstances.

(15) Establish client eligibility, at Local Board's discretion. Local Boards may determine client eligibility for EFSP or utilize established LRO eligibility. A separate needs test for assistance under EFSP may be developed and used by LROs, but should first be approved by the Local Board. The Local Board should communicate eligibility criteria for assistance under EFSP to LROs.

(16) Local Boards must notify the National Board of changes in the Local Board chair, staff contact, or LRO contacts, including complete addresses and phone numbers.

(17) Local Boards that determine they can better utilize their resources by merging with neighboring boards may do so. The head of government or his or her designee for each jurisdiction must sit on the merged board, along with agency representatives from each jurisdiction. The merged Local Board must ensure that the award amount designated for each civil jurisdiction is used to provide assistance to individuals within that jurisdiction.

(18) Local Boards are required to be familiar with current guidelines and to provide technical assistance to service providers. Advice and counsel can be provided by National Board staff.

(19) An appeals process must be established to address participation or funding, to hear and resolve appeals made by funded or non-funded organizations, and to investigate complaints made by individuals or organizations. Appeals should be handled promptly. Cases that cannot be handled locally should be referred in writing to the National Board and include details on action that has been taken. Only when there is significant question of misapplication of guidelines, fraud, or other abuse on the part of the Local Board will the National Board consider action. Cases involving fraud or other misuse of Federal funds should be reported to the Office of the

Inspector General, FEMA, in writing or by telephone at 1-800-323-8603.

(20) The chair of the Local Board or his or her designated staff will be the central coordination point of contact between the National Board and the LRO selected to receive assistance from EFSP.

(21) If requested by the National Board, the Local Board should nominate an appropriate feeding organization to receive surplus food from Department of Defense commissaries.

(22) Boards will be responsible for monitoring programs carried out by the LROs they have selected to receive funds. Local Boards should work with LROs to ensure that funds are being used to meet immediate food and shelter needs on an ongoing basis. Local Boards may not alter or change National Board cost eligibility or approve expenditures outside the National Board's criteria without National Board permission. An interim report of expenditures is due to the National Board with each LRO's second check request. A final report (accompanied by financial documentation for specified LROs) is due 45 days after the end of each jurisdiction's program. The National Board will provide forms for all required reports. Local Boards may request other reports from their LROs at an appropriate time (e.g., monthly or quarterly updates).

(23) The Local Board should reallocate funds whenever it determines that the original allocation plan does not reflect the actual need for services or if an LRO is unable to use its full award effectively. Funds must be recovered and may be reallocated if an LRO makes ineligible expenditures or uses funds for items that have clearly not been approved by the Local Board. Funds held in escrow for LROs which have unresolved compliance problems can be reallocated or may be reclaimed by the National Board. The deadline to reallocate any funds held in escrow is July 31, 1998.

The Local Board may approve reallocation of funds between LROs that are already participating in the program. However, the National Board must be notified in writing. The Local Board may also return funds to the National Board for reissuance to another LRO or request reallocation of remaining funds before they are released by the National Board (e.g., second/third payments).

If the Local Board wishes to reallocate funds to an agency that was not approved on the original board plan, a written request for approval must be made to the National Board. An LRO must be approved by the National Board prior to receipt of funds.

Local Boards can reallocate funds from one service to another (e.g., from food to shelter) without National Board approval if the transfer is within an individual LRO.

If a Local Board is unable to satisfy the National Board that it can utilize funds in accordance with this plan, the National Board may reallocate the funds to other jurisdictions.

(24) Should anyone have reason to suspect that EFSP funds are being used for purposes contrary to the law and guidelines governing the program, the National Board recommends taking action to assist in bringing such practices to a halt.

The National Board requires that the Office of the Inspector General, FEMA, be contacted immediately when fraud, theft, or other criminal activity is suspected in connection with the use of EFSP funds, or the operation of a facility receiving EFSP funds. This notification can be made by calling the Inspector General's Hotline at 1-800-323-8603, or in writing to: Office of the Inspector General, FEMA, 500 C Street S.W., Washington, DC 20472. The complainant should include as much information as possible to support the allegation and preferably furnish his/her name and telephone number so that the special agent assigned to that office may make a follow-up contact. The confidentiality of any communication made with the Office of Inspector General is protected by Federal law.

A complainant desiring to remain totally anonymous should make a follow-up phone call to the Office of the Inspector General within 30 days from the date of the original complaint so that any follow-up questions may be asked. Follow-up calls should be made to 1-202-646-3894 during normal business hours, Eastern Standard Time (charges may be reversed). The caller should advise that he/she is making a follow-up call regarding a prior anonymous complaint. The Office of the Inspector General, FEMA, will appropriately notify both local law enforcement authorities and the National Board concerning the substance of the allegations and the results of the investigation.

(25) Reports to the National Board on LROs' expenditures shall be submitted as of the date each LROs second/third check is requested and a final report should be submitted within 45 days after the jurisdiction's end-of-program date.

(26) After the close of the program, the accuracy of all LROs' reports and documentation shall be reviewed. Documentation for specified LROs should be forwarded to the National

Board as requested. In the event expenditures violate the eligible costs under this award, the Local Board must require reimbursement to the National Board.

Local Boards are required to remain in operation until all program and compliance requirements of the National Board have been satisfied. All records related to the program must be retained for three (3) years from the end-of-program date.

(27) Each jurisdiction will be granted the option to extend its spending period by 30, 60, or 90 days. This option will be offered during the summer of each phase. The extension applies to the entire jurisdiction. Should the jurisdiction receive a grant in the next phase, that phase's spending period will begin the day after the chosen end-date.

5.1 Variances and Waivers

(a) *Variances.* Local Boards may receive requests for variances in the budgets they have approved for LROs. Local Boards may allow such changes provided that the requested items are eligible under this program. If there is any doubt on the part of the Local Board as to eligibility, it should contact the National Board for clarification.

If an expenditure requested by an LRO falls outside the program guidelines, the Local Board, if in accord, should request in writing a waiver from the National Board in advance of the expenditure.

(b) *Waivers.* Waivers requested because of a compliance exception must be submitted to the Local and then National Board for review. National Board staff will evaluate waiver requests and use discretion to approve or deny requests. In general, the National Board considers waiver requests that are not within the guidelines, but address the program's intent.

The waiver request from the Local Board should clearly state the need for this exception, approximate costs, timelines or any other pertinent information it deems necessary for the National Board to make their decision.

6.0 Local Recipient Organizations' Roles and Responsibilities

(a) *Local Recipient Organizations' roles and responsibilities.*

(1) In selecting LROs to receive funds, the Local Board must consider the demonstrated ability of an organization to provide food and shelter assistance. LROs should be selected to receive funds to supplement and extend eligible ongoing services, not to be funded in anticipation of a needed service (i.e., fire, flood, or tornado victims); neither should agencies be selected for funding

due to budget shortfalls nor for cuts in other funding sources. Local participation in the program is not limited to organizations that are part of any State or national organization. Agencies on Indian reservations are eligible to receive EFSP funds if they meet LRO requirements as set forth in the program manual. Organizations that received awards from previous legislation may again be eligible provided that the organization still meets eligibility requirements.

(2) For a local organization to be eligible for funding it must:

- (i) be nonprofit or an agency of government;
- (ii) have an accounting system or an approved fiscal agent;
- (iii) have a Federal employer identification number (FEIN), or be in the process of securing FEIN (Note: contact local IRS office for more information on securing FEIN and the necessary form [SS-4];
- (iv) conduct an independent annual audit if receiving \$25,000 or more from EFSP;
- (v) practice nondiscrimination (those agencies with a religious affiliation wishing to participate in the program must agree not to refuse services to an applicant based on religion or require attendance at religious services as a condition of assistance, nor will such groups engage in any religious proselytizing in any program receiving EFSP funds); and,
- (vi) for private voluntary organizations, have a voluntary board.

Each LRO will be responsible for certifying in writing to the Local Board that it has read and agrees to abide by the cost eligibility and reporting standards of this publication and any other requirements made by the Local Board.

An LRO may not operate as a vendor for itself or other LROs except for the shared maintenance fee for food banks.

(3) LROs selected for funding must:

(i) Maintain records according to the guidelines set forth in the manual. Consult the Local Board chair/staff on matters requiring interpretation or clarification prior to incurring an expense or entering into a contract. It is important to have a thorough understanding of these guidelines to avoid ineligible expenditures and consequent repayment of funds. LROs' questions can be answered by National Board staff at (703) 706-9660.

(ii) Provide services within the intent of the program. Funds are to be used to supplement and extend food and shelter services, not as a substitute for other program funds. LROs should take the most cost-effective approach in buying

or leasing eligible items/services, and should limit purchases to essential items within the \$300 limit for equipment, unless prior approval has been granted by the National Board.

(iii) Deposit funds for this program in a federally insured bank account. Proper documentation must be maintained for all expenditures under this program according to the guidelines. Agencies should ensure that selected banks will return canceled checks. LROs' expenditures and documentation will be subject to review for program compliance by the Local Board, National Board or Federal authorities. Records must be maintained for three years and any interest income must be put back into program expenditures.

6.1 Independent Annual Audit Requirements

(a) *LROs receiving \$25,000 or less in EFSP funding.* No independent annual audit will be required for these LROs.

(b) *LROs receiving \$25,000 or more in EFSP funding.* An independent annual audit in accordance with Government Auditing Standards will be required for these LROs.

The National Board will accept an LROs national/regional annual audit if the following conditions are met:

(1) The LRO is truly a subsidiary of the national organization (i.e., shares a single Federal tax exemption).

(2) The LRO is audited by the national/regional office internal auditors or other person designated by the national/regional office AND the national/regional office is audited by an independent certified public accountant or public accounting firm, which includes the parent organization's review of the LRO in a larger audit review.

(3) A copy of the local audit review by the parent organization along with a copy of the independent audit of the national/regional office will be made available to the National Board upon request.

In addition to the above requirements, any LRO receiving \$100,000 or more in combined federal funds must have an audit made in accordance with OMB Circulars A-128 or A-133, as applicable.

Audits of units of government shall be made annually unless State or local government had, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments' biennial audits, covering both years are permitted.

6.2 Fiscal Agent/Fiscal Conduit Relationship

(a) For National Board purposes, a fiscal agent is an agency that maintains all EFSP financial records for another agency. A fiscal conduit is an EFSP-funded agency that maintains all EFSP financial records on behalf of one or more agencies under a single grant. If any one agency in a jurisdiction is making bulk purchases for other agencies not funded directly, it must serve as a fiscal conduit and follow all rules, thereof.

(b) The fiscal agent/fiscal conduit is the organization responsible for the receipt of funds, disbursement of funds to vendors, and documentation of funds received. The fiscal agent/fiscal conduit must meet all of the requirements of an LRO.

(c) Local Boards may wish to use a fiscal agent/fiscal conduit when they desire to fund an agency that does not have an adequate accounting system nor conducts an annual audit, but nevertheless meets all other criteria. The Local Board may authorize funds to be channeled through another agency which has been designated as the fiscal agent/conduit. Fiscal agents/conduits will be held accountable for compliance with program requirements.

(d) Any agency benefitting from funds received by a fiscal agent/fiscal conduit must meet all of the criteria to be an LRO except the accounting system and annual audit requirements and sign the Fiscal Agent/Fiscal Conduit Relationship Certification Form. For tracking purposes, all agencies funded through fiscal agents or fiscal conduits must secure a Federal Employer's Identification Number.

(e) Fiscal agents/fiscal conduits may cut checks to vendors only. They may not cut checks to the agencies on whose behalf they are acting or to agencies/sites under their "umbrella." The exception to this is when an agency is using the per diem allowance for mass shelters or the per meal allowance for served meals.

(f) Fiscal agents will be required to submit individual interim and final reports for each agency. Fiscal conduits will file a single interim report on their awards along with a breakdown of agencies and spending with the final report.

(g) Any LRO with an outstanding compliance exception may not be funded under a fiscal agent/fiscal conduit. If a fiscal agent has an unresolved compliance exception, any other funds awarded to the fiscal agent (either as a grant for its own program or as fiscal agent for another agency) will

be held in escrow until all compliance exceptions are resolved. Fiscal conduits will be audited as a single award, and will be handled as any other LRO.

6.3 Financial Terms and Conditions

(a) Definitions.

"Local Recipient Organization" refers to the local private or public organizations that will receive any award of funds from the National Board.

"Award" refers to the award of funds made by the National Board to a local private or public organization on the recommendation of a Local Board.

"End-of-program date" refers to the date, as agreed upon by Local and National Board, by which all monies in a given jurisdiction must be spent or returned.

(b) Amendments.

An award may be amended at any time by a written modification. Amendments that reflect the rights and obligations of either party shall be executed by both the National Board and the LRO. Administrative amendments such as changes in accounting data may be issued unilaterally by the National Board.

(c) Local Board Authority Related to LROs.

(1) The Local Board is responsible for monitoring expenditures of LROs providing food and/or shelter services, authorizing the adjustment of funds between food and shelter programs, and reallocating funds from one LRO to another.

(2) Local Boards *may not* alter or change National Board cost eligibility or approve expenditures outside the National Board's criteria without National Board permission. (Refer to Section 3.1 on Variances and Waivers.)

(3) A Local Board can call back funds from an LRO and reallocate to another LRO in the case of gross negligence, inadequate use of funds, failure to use funds, failure to use funds for purposes intended, or for any other violation of the National Board guidelines, or in cases of critical need in the community. The Local Board must advise, in writing, all concerned LROs of any reallocation of their original award.

(4) In the event the Local Board discovers ineligible expenditures by an LRO, the Local Board must send to the organization a written request for reimbursement of the amount. The National Board must also be notified. If the LRO is unwilling or unable to reimburse the National Board for the ineligible expenditures, the Local Board must refer the matter to the National Board. The National Board may ask the Local Board to take further action to see that reimbursement of ineligible

expenditures is made to the National Board, or the National Board may refer the matter to FEMA.

If the Local Board suspects that fraud has been committed by an LRO, the Local Board must contact the Office of the Inspector General, FEMA, in writing or by telephone at 1-800-323-8603 with details of suspected fraud or misuse of Federal funds.

(5) If an LRO received an award under previous phases, it must not include those funds in any reporting for the present awards. Reports should be confined to the amount granted by the National Board under the new appropriations legislation.

(d) Cash Depositories.

(1) Any money advanced to the LRO under the terms of this award must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) or Federal Savings & Loan Insurance Corporation (FSLIC) insurance coverage (whose responsibility has been taken over by FDIC), and the balance exceeding the FDIC or FSLIC coverage must be collaterally secured. Interest income earned on these monies must be put back into program costs.

(2) LROs are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). This is consistent with the national goal of expanding the opportunities for minority business enterprises. A list of minority-owned banks can be obtained from the Office of Minority Business Enterprises, Department of Commerce, Washington, DC 20203.

(e) Retention and Custodial Requirements for Records.

(1) Financial records, supporting documentation, statistical records, and all other records pertinent to the award shall be retained for a period of three years, with the following exceptions:

(i) If any litigation, claim or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(ii) Records for nonexpendable property, if any, acquired in part with Federal funds shall be retained for three years after submission of a final report. Nonexpendable property is defined as tangible property having a useful life of more than one year and an acquisition cost of more than \$300 per unit.

(2) The retention period starts from the date of the submission by the LRO of the final expenditure report.

(3) The National Board may request transfer of certain records to its custody from the LRO when it determines that the records possess long-term retention

value. The LRO shall make such transfers as requested.

(4) The Director of FEMA, the Comptroller General of the United States, and the National Board, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient organization, and its subgrantees to make audits, examinations, excerpts and transcripts.

(f) Financial management systems.

(1) The LRO/fiscal agent or fiscal conduit shall maintain a financial management system that provides for the following:

(i) Accurate, current and complete disclosures of the financial results of this program.

(ii) Records that identify adequately the source and application of funds for federally supported activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and incomes.

(iii) Effective control over and accountability for all funds, property, and other assets.

(iv) Procedures for determining eligibility of costs in accordance with the provisions of the EFSP manual.

(v) Accounting records that are supported by source documentation. The LRO must maintain and retain a register of cash receipts and disbursements and original supporting documentation such as purchase orders, invoices, canceled checks, and whatever other documentation is necessary to support its costs under the program.

(vi) A systematic method to ensure timely and appropriate resolution of audit findings and recommendations.

(vii) In cases where more than one civil jurisdiction (e.g., a city and a balance of county, or several counties) recommends awards to the same LRO, the organization can combine these funds in a single account. However, separate program records for each civil jurisdiction award must be kept.

(h) Payment.

A first payment shall be made to the LRO by the Secretariat upon recommendation of the Local Board and approval by the National Board. Second check requests include an interim report to be completed by each LRO. The request is signed by the Local Board Chair, and mailed to the National Board. Second/third installments will be held until the jurisdiction's final Local Board report and documentation for the previous year has been reviewed and found to be clear.

(i) Financial reporting requirements.

LROs shall submit a financial status report to the Local Board which will be

forwarded to the National Board 45 days after the jurisdiction's program ending date.

The National Board shall provide the LRO, through the Local Board, with the necessary report forms well in advance of report deadlines.

(j) *Closeout procedures.*

(1) The following definitions shall apply to closeout procedures:

"Close-out" is the process by which the National Board determines that all applicable administrative actions and all required work of the award have been completed.

"Disallowed costs" are those charges that the National Board determined to be unallowable in accordance with the legislation, National Board requirements, applicable Federal cost principles, or other conditions contained in the award. The applicable cost principles for Private Voluntary Organizations are contained in OMB Circular A-122, "Cost Principles Applicable for Non-Profit Agencies," and OMB Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The applicable cost principles for Public Organizations are contained in OMB Circular A-87, "Cost Principles for State Agencies and Units of Local Governments." If you are unsure of where to find these circulars, check with your local Congressional Representative.

(k) *Suspension and Termination Procedures.*

(1) The following definitions shall apply:

(i) "Termination" of the award means the cancellation of Federal assistance, in whole or in part, under the award at any time prior to the date of completion.

(ii) "Suspension" of the award is an action by the Local Board or National Board that temporarily suspends Federal assistance under the award pending corrective action by the LRO or pending a decision by the National Board to terminate the award.

(iii) "Local Board Authority" is authority to suspend/reallocate all or a portion of an LRO's award at its discretion for any cause (i.e., inability to deliver services, suspected fraud, violation of eligible costs, changing need in the community, etc.).

(l) *Lobbying.*

(1) Public Law 101-121, Section 319, states that an LRO shall not use Federally appropriated grant funds for lobbying activities. This condition bars the use of Federal money for political activities, but does not in any way restrict lobbying or political activities

paid for with non-Federal funds. This condition prohibits the use of Federal grant funds for the following activities:

(i) Federal, State or local electioneering and support of such entities as campaign organizations and political action committees;

(ii) Direct lobbying of the Congress and State legislatures to influence legislation;

(iii) Grassroots lobbying concerning either Federal or State legislation;

(iv) Lobbying of the Executive branch in connection with decisions to sign or veto enrolled legislation; and,

(v) Efforts to utilize State or local officials to lobby the Congressional or State Legislatures.

(2) Any LRO that will receive more than \$100,000 in EFSP funds is required to submit the following prior to grant payment:

(i) a certification form that EFSP funds will not be used for lobbying activities; and,

(ii) a disclosure of lobbying activities (if applicable). This certification and disclosure must be submitted prior to grant payment.

6.4 *Grant Payment Process*

United Way of America has been designated as the fiscal agent for the National Board and as such will process all Local Board plans. Payments will be made to organizations recommended by Local Boards for funding.

The National Board offers two methods of payment to LROs: direct deposit (electronic funds transfer) or checks. The National Board encourages LROs to take advantage of direct deposit where possible.

All awards totaling less than \$100,000 will be paid in two equal installments. Awards totaling \$100,000 or more will be paid in two equal installments upon submission of lobbying certification and disclosure.

The National Board will distribute second payments once the jurisdiction's compliance review is completed for the previous program period. Second payments will be held in escrow until all compliance exceptions are satisfied by the LRO. The deadline to request all second payments under Phase XVI is July 31, 1998. Therefore, for those LROs ineligible to receive their second checks due to unresolved compliance exceptions, Local Boards must reallocate their escrowed awards by July 31, 1998.

All payments will be mailed directly to the LRO. Second payments will be mailed to the LRO only upon the written request of the Local Board Chair along with the LRO's interim report. The Local Board will authorize second

payments once they are assured that the organization is implementing the current program as intended and according to these guidelines.

6.5 *Eligibility of Costs*

The intent of this appropriation is for the purchase of food and shelter to supplement and extend current available resources and not to substitute or reimburse ongoing programs and services. Questions regarding interpretation of the program's guidelines should be cleared by the LRO with the Local Board prior to action. Local Boards unsure of the meaning of these guidelines should contact the National Board at (703) 706-9660 for clarification prior to advising the LRO. If an expenditure requested by an LRO is not listed below as eligible, the Local Board has the option of requesting a waiver from the National Board for consideration.

No individual or family may be charged a fee for service with relation to assistance under EFSP.

(a) *Eligible Program Costs.*

Eligible program costs include, but are not limited to:

For food banks/pantries, eligible costs include:

(1) Groceries, food vouchers, vegetable seeds, gift certificates for food. Documentation required: receipts/invoices for food purchased and canceled checks.

(2) An allowance for maintenance fees charged by food banks can be granted by a Local Board at the prevailing rate. EFSP funds cannot be used to pay such a maintenance fee twice: by a food bank and by the food pantry/agency it is serving. Food banks may operate as both a vendor and LRO. Documentation required: receipts/invoices for food purchased and canceled checks.

(3) Transportation expenses related to the delivery of purchased and donated food; limited to actual fuel costs. Documentation required: (1) mileage log at the current Federal rate (30 cents per mile), with departure, destination and trip purpose; or, (2) receipts/invoices from contracted services or public transportation, receipts for actual fuel costs; and canceled checks.

(4) Purchase of small equipment not exceeding \$300 per item and essential to operation of food bank or pantry (e.g., shelving, storage containers). Documentation required: receipts/invoices for equipment purchased and canceled checks.

(5) Purchase of consumable supplies essential to distribution of food (e.g., bags, boxes). Documentation required: receipts/invoices for supplies purchased and canceled checks.

For mass shelters (five or more beds) or mass feeding sites, eligible expenditures include:

(6) Food (hot meals, groceries, food vouchers). Limited amounts of dessert items (i.e., cookies, ice cream, candy, etc.) used as a part of a daily diet plan may be purchased. Also allowable are vegetable seeds and vegetable plants cultivated in an agency's garden on-site and canning supplies. Documentation required: receipts/invoices for food purchased and canceled checks or served meals per diem schedule).

(7) Local transportation expenses for picking up/delivery of food; transporting clients to mass shelter or feeding site. Limited to actual fuel costs, a mileage log at the current Federal rate (30 cents per mile), contracted services or public transportation. Documentation required: (1) mileage log, or (2) receipts/invoices from contracted services or public transportation, receipts for actual fuel costs, and canceled checks.

(8) Purchase of consumable supplies essential to mass feeding (i.e., plastic cups, utensils, detergent, etc.) or mass shelters of five or more beds (i.e., soap, toothbrushes, toothpaste, cleaning supplies, etc.) Documentation required: receipts/invoices for supplies purchased and canceled checks.

(9) Purchase of small equipment not exceeding \$300 per item and essential to mass feeding (i.e., pots, pans, toasters, blenders, etc.) or mass shelters (i.e., cots, blankets, linens, etc.). Documentation required: receipts/invoices for equipment purchased and canceled checks.

(10) Leasing, only for the program period, of capital equipment associated with mass feeding or mass shelter (e.g., stoves, freezers, or vans with costs over \$300 per item) only if approved in advance by the Local Board. Documentation required: written Local Board approval, copy of lease agreement, and canceled checks.

(11) With prior Local Board approval, minor emergency repair of small equipment essential to mass feeding or sheltering not exceeding \$300 in repair costs per item. Equipment eligible for repairs are any that if not repaired would force the LRO to terminate or curtail services (e.g. stove, refrigerator, hot water heater). Routine maintenance and service contracts are not eligible expenses. Documentation required: receipts or bills for equipment repair and canceled checks.

(12) Limited amounts of basic first-aid supplies (e.g., aspirin, band-aids, cough syrup) for mass shelter providers and mass feeding sites only. Documentation required: receipts/invoices for first-aid supplies and canceled checks.

(13) Emergency repairs/building code of a mass feeding facility or mass shelter, provided:

(i) The facility is owned by a not-for-profit organization (profit-making facilities, leased facilities, government facilities, and individual residences are not eligible); and,

(ii) The emergency repair/building code plan and the contract detailing work to be done and material and equipment to be used or purchased is approved by the Local Board prior to the start of the emergency repair/building code project; and,

(iii) The emergency repair/building code is limited to:

(A) Bring facility into compliance with local building codes; or,

(B) An emergency repair that is required to keep the facility open for the current program phase.

(C) Maximum expenditure: \$2,500.

(D) No award funds are used for decorative or non-essential purposes or routine maintenance/repairs.

(E) All emergency repair work is completed and paid for by the end of the jurisdiction's award phase.

(Expenses which occur after that date will not be accepted as eligible costs.) Documentation required: letter from Local Board indicating approval and amount approved, copy of contract including cost or invoices for supplies and contract labor, document citing building code violation requiring the repair (for building code repairs) and canceled checks.

(14) Expenses incurred from accessibility improvements for the disabled are eligible for mass feeding or mass shelter facilities up to a limit of \$2,500. These improvements may include those required by the Americans with Disabilities Act of 1990. A building code citation is not necessary for accessibility improvements.

Note: All social service providers are mandated to comply with the Americans with Disabilities Act of 1990. Documentation required: copy of contract describing work to be done including cost, letter from Local Board indicating approval and amount approved, and canceled checks.

For mass shelter providers, there are two options for eligible costs. One option must be selected at the beginning of the program year and continued throughout the entire year. Note the documentation requirements for each option.

(15) Reimbursement of actual direct eligible costs; in which case canceled checks and vendor invoices for supplies/equipment essential to the operation of the mass shelter (e.g., cots, mattresses, soap, linens, blankets,

cleaning supplies, etc.) must be maintained. Documentation required: receipts/invoices from vendor relating to operation of facility and canceled checks.

(16) Per diem allowance of exactly \$5 per person or exactly \$10 per person per night for mass shelter (five beds or more) providers, only if:

(i) Approved in advance by the Local Board; and,

(ii) LRO's total mass shelter award is expended in this manner.

Note: It is the decision of the Local Board to choose between the \$5/\$10 rate. This rate may vary from agency to agency. The \$5/\$10 per diem, if elected, may be expended by the LRO for any cost related to the operation of the mass shelter; it is not limited to otherwise eligible items. The per diem allowance does not include the additional costs associated with food. Documentation required: schedule showing daily rate of \$5 or \$10 and number of persons sheltered by date with totals. Supporting documentation must be retained on-site, e.g., checks, invoices and service records.

For mass feeding programs, there are two options for eligible costs. One option must be selected at the beginning of the program year and continued throughout the entire year. Note the documentation requirements for each option.

(17) Reimbursement of actual direct eligible costs; in which case canceled checks and vendor invoices for supplies/equipment essential to the operation of the mass feeding programs (e.g., food, paper products, cleaning products, pots and pans, etc.) must be maintained. Documentation required: receipts/invoices from vendor relating to operation of facility and canceled checks.

(18) Per meal allowance of \$1.50 per meal served only if:

(i) Approved in advance by the Local Board; and,

(ii) LRO's total mass feeding award is expended in this manner.

The \$1.50 per meal allowance, if elected, may be expended by the LRO for any related cost; it is not limited to otherwise eligible items. The per meal allowance does not include the additional costs associated with shelter. Documentation required: schedule showing meal rate of \$1.50 and number of meals served by date with totals. Supporting documentation must be retained on-site, e.g., checks/invoices and service records.

(19) For all agencies, eligible costs include the purchase of diapers for distribution to individuals/families. Vouchers to grocery stores may include diapers. Note: Local Boards should use discretion in selecting LROs to provide

this service, taking into consideration the cost effectiveness of bulk purchasing. Documentation required: receipts/invoices for diapers purchased and canceled checks.

For rent/mortgage assistance, eligible program costs include:

(20) Limited emergency rent or mortgage assistance for individuals or families, provided that:

(i) Payment is in arrears or due within 5 days; and,

(ii) All other resources have been exhausted; and,

(iii) The client is primary resident of the home in which rent/mortgage is being paid and responsible for the rent/mortgage on the home or apartment where the rent/mortgage assistance is to be paid;

(iv) Payment is limited to one month's cost for each individual or family. Assistance can be provided for a full month's rent/mortgage all at one time, or in separate payments over a period of up to 90 consecutive days so long as the total amount paid does not exceed one month's costs;

(v) Assistance is provided only once in each award phase for each individual or family; and,

(vi) Payment must guarantee an additional 30 days service.

Note: Late fees, legal fees, and deposits are ineligible. Payments for trailers and lots are eligible and can be paid to a mortgage company or to a private landlord. Documentation required: letters from landlords (must include amount of one month's rent and statement that rent is past due), mortgage letters and/or copy of loan coupon showing mortgage amount and date due and canceled checks.

(21) First month's rent may be paid when an individual or family:

(i) Is transient and plans to stay in the area for an extended period of time; or,

(ii) Is moving from a temporary shelter to a more permanent living arrangement; or,

(iii) Is being evicted because one month payment will not forestall eviction.

The first month's rent cannot be provided in addition to emergency rent/mortgage payment under Item 20 above. It can be provided in addition to assistance provided for off-site and mass shelter. Documentation required: letters from landlords [must include amount of first month's rent] and canceled checks.

For utility assistance, eligible program costs include:

(22) Limited utility assistance (includes gas, coal, electricity, oil, water, firewood) for individuals or families, provided that:

(i) Payment is in arrears; and,

(ii) All other resources have been exhausted (e.g., State's Low Income Home Energy Assistance Program); and,

(iii) Payment is limited to one month's cost for each utility for each individual or family; and,

(iv) Month paid is part of the arrearage and from current phase or for continuous service; and,

(v) Each utility can be paid only once in each award phase for any individual or family.

(vi) Payment must guarantee an additional 30 days service.

Note: Reconnect are eligible. Late fees and deposits are ineligible. Utility assistance can be provided in addition to eligible rent/mortgage assistance. The National Board encourages the use of the metered utility verification form (along with a copy of the past due utility bill) as the preferred method for verifying eligible utility assistance. Documentation required: (1) nonmetered utilities [e.g., propane, firewood], receipts/invoices for fuel including due date and canceled checks; (2) metered utilities [e.g., electricity, water], copy of past due utility bill showing one month's charges including due date and canceled checks.

Note: Utility disconnect and termination notices often do not show amount owed by month. This information must be verified with the utility company and written onto the notice or metered utility verification form if not included.

For other shelter assistance, eligible program costs include:

(23) Off-site emergency lodging in a hotel or motel, or other off-site shelter facility provided:

(i) No appropriate on-site shelter is available; and,

(ii) It is limited to 30-days' assistance per individual or family during the program period.

Note: Assistance may be extended in extreme cases with prior Local Board written approval. A copy of this approval should accompany LRO's documentation.

Note: An LRO may not operate as a vendor for itself or other LROs, except for shared maintenance fee for food banks.

Documentation required: receipts/invoices from off-site shelter (hotel/motel) and canceled checks.

(b) *Ineligible Program Costs.*

Purposes for which funds CANNOT BE USED include, but are not limited to:

(1) Cash payments of any kind including checks made out to cash or reimbursements to staff, volunteers or clients for program purchases.

(2) Deposits of any kind.

(3) Payment of more than one month's rent amount.

(4) Payment of more than one month's mortgage, first month's mortgage, or down payment on mortgage.

(5) Transportation of people not related to the direct provision of food or

shelter (e.g. to another agency, another city, relative's home, transportation to jobs, health care, etc.).

(6) Payment of more than one month's portion of an accumulated utility bill.

(7) Payments made directly to a client.

(8) Rental security; deposits; revolving loan accounts.

(9) Real property (land or buildings) costing more than \$300.

(10) Property taxes of any kind.

(11) Equipment costing more than \$300 per item (e.g., vehicles, freezers, washers).

(12) Emergency repairs/building code or rehabilitation to government-owned or profit-making facilities or leased facilities.

(13) Routine maintenance of agency facilities; routine maintenance or service contracts on equipment.

(14) Rehabilitation for expansion of service.

(15) Repairs of any kind to an individual's house or apartment.

(16) Purchase of supplies or equipment for an individual's home or private use.

(17) Lease-purchase agreements.

(18) Administrative cost reimbursement to State or regional offices of governmental or voluntary organizations.

(18) Lobbying efforts.

(19) Expenditures made prior to beginning of jurisdiction's program.

(20) Expenditures made after end of jurisdiction's program.

(21) Gas or repairs for client-owned transportation.

(22) Repairs to LRO-owned vehicles.

(23) Prescription medication or medical supplies.

(24) Clothing (except underwear/diapers for clients of mass shelters, if necessary).

(25) Payments for expenses not incurred (i.e., where no goods or services have been provided during new program period).

(26) Emergency assistance for natural disaster victims.

(i) Supplies bought for and in anticipation of a natural disaster.

(27) Telephone costs, except as administrative allowance and limited to the total allowance (2 percent).

(28) Salaries, except as administrative allowance and limited to the total allowance (2 percent).

(29) Office equipment, except as administrative allowance and limited to the total allowance (2 percent).

(30) LRO may not operate as a vendor for itself or other LROs, except for shared maintenance fee for food banks.

(31) Direct expenses associated with new or expanded services or to prevent closing.

(32) Increased utility costs due to expansion of service.

(33) Encumbrance of funds for shelter, emergency repairs, utilities, that is, payments for goods or services that are purchased and are to be delivered at a later date. Also, withholding assistance in anticipation of a future need (e.g., holiday events, special programs).

(34) Supplementing foster care costs, where an LRO has already received payment for basic boarding of a client. Comprehensive foster care costs beyond food and shelter are not allowed.

(35) No fee for service may be charged to individuals or families in order to receive service.

(c) *Administrative allowance.*

(1) There is an administrative allowance limitation of two percent (2%) of total funds received by the Local Board, excluding any interest earned. This allowance is a part of the total award, not in addition to the award. The local administrative allowance is intended for use by LROs or Local Boards and not for reimbursement of the program or administrative costs that a recipient's parent organization (its State or regional offices) might incur as a result of this additional funding.

(2) The Local Board may elect to use, for its own administrative costs, all or any portion of the 2 percent allowance. The decision on distribution of the allowance among LROs rests with the Local Board. No LRO may receive an allowance greater than 2 percent of that LRO's award amount unless the LRO is providing the administrative support for the Local Board and it is approved by the National Board.

(3) The SSA Committee, when in operation, may utilize a maximum of one-half of one percent (0.5%) for its administrative costs in allocating the SSA grant. As with Local Board awards, this administrative allowance is part of the total award, not in addition to the award.

(4) Any of the administrative allowance not used must be put back into program funds for additional services. Note: The administrative allowance may only be allocated in whole-dollar amounts.

Required Documentation: None with the final report; LROs receiving funds for administration must retain documentation that the funds were spent on the direct administration of EFSP.

6.6 Required Documentation

(a) *Documentation.*

LRO Documentation of EFSP expenditures requires copies of canceled checks (both sides) and itemized vendor invoices. An acceptable

invoice has the following characteristics:

- (1) It must be vendor originated;
- (2) It must have name of vendor;
- (3) It must have name of purchaser;
- (4) It must have date of purchase;
- (5) It must be itemized; and,
- (6) It must have total cost of purchase.

Documentation may also include: per diem schedule, per meal allowance schedule, and mileage logs.

All LROs will be required to periodically submit documentation to the National Board to ensure continued program compliance. Any LRO receiving over \$100,000 in Federal funds must comply with OMB Circular A-133.

(b) *Reports.*

In addition to the aforementioned documentation, reports to the Local Board must be submitted by their due date. Interim report/second and third check request forms will be enclosed in the LROs' first check package. When the LRO is ready to request its second/third check it must complete and sign the interim report and forward it to the Local Board for its review and approval. The reverse side (second/third check request) should be completed by the Local Board chair and mailed to the National Board. LROs must complete all portions of the final report form, return two copies to the Local Board, including one copy of documentation if requested, and retain a copy for their records.

The LRO must work with the Local Board to quickly clear up any problems related to compliance exception(s) at the end of the program.

7.0 Local Appeals Process

(a) *Fairness and openness.* An appeals process is a statement to eligible agencies and to the community at large that the Local Board is interested in fairness and openness.

A good appeals process begins with prevention. If the Local Board includes both representatives of affiliates of the National Board and representatives of other groups involved with assisting hungry and homeless people, it is less likely to experience an appeal. Similarly, if the Local Board's decision-making process is open, thorough, and even-handed, appeals are less likely.

It is the responsibility of the Local Board to establish a written appeals process. That process may be simple or elaborate, depending on the needs of the community.

(b) *Appeals guidelines.* The appeal process should meet the following guidelines:

- (1) It should be available to agencies and to the public upon request;
- (2) It should be timely, without undue delay;

(3) It should include the basis for appeal (e.g., Provision of information not previously available to the group making the appeal or to the Local Board; correction of erroneous information; violation of Federal or National Board guidelines; or allegation of bias, fraud, or misuse of Federal funds on the part of the Local Board may be cause for appeal);

(4) The decision should be communicated to the organization making the appeal in a timely manner. In the case of an appeal on the basis of fraud or other abuse of Federal funds, the agency making the appeal must be informed of the right of referral to the National Board;

(c) *Primary decision maker.* Except for cost and LRO eligibility, the Local Board is the primary decision maker. Only when there is significant question of misapplication of guidelines, fraud, or other abuse on the part of the Local Board will the National Board consider action.

(d) *Common appeals practices.* The National Board does not mandate any particular appeals process. However, some Local Boards have developed processes which work well for them and may offer some help to other communities. Common practices include the following:

(1) Set a time period of not more than 30 days for agencies or organizations to appeal a funding decision;

(2) Require written notice of appeal, signed by the Chief Volunteer Officer of the organization making the appeal;

(3) The first level of appeal is usually to the Local Board, or to an executive committee of the board;

(e) *Appeals boards; delegations.* Some boards appoint one or more members to act as a liaison with the organization making the appeal:

(1) In the case of an appeal for the purpose of providing previously unavailable information or correction of erroneous information, the process usually ends with prompt notification of decision (within ten working days of appeal).

(2) In the case of appeals for the purpose of contesting alleged prejudice, violation of law or National Board guidelines, fraud, or misuse of Federal funds, some boards have allowed appeals to a group other than the board itself. This practice is not mandated but is permitted by the National Board. Such groups may simply be composed of different individuals representing the same organizations that make up the Local Board. They may also include an entirely different group of persons who have knowledge of the program and are deemed by the board to be both

responsible and unbiased, and to hold the trust of the community at large.

(3) If the board chooses to delegate authority to any third party in an appeals process, the power and authority of that body should be clear. Is it simply advisory to the Local Board? Will the board abide by the decisions of this body as long as they are consistent with the law and the National Board guidelines?

(4) The disposition of appeals is often communicated by telephone to the chief professional and volunteer officers of the organization appealing immediately after a decision is made. In such cases, a written communication is sent as soon as possible confirming the action taken. The written communication is, of course, the official notification.

(f) *National Board role.* It is important to reaffirm that no single appeals process is mandated or advised by the National Board.

8.0 Allocations Formula

(a) *Designation of Target Areas.*

Local jurisdictions will be selected to receive funds from the National Board

based on average unemployment statistics from the U.S. Department of Labor for the most current 12-month period (August 1, 1996–July 31, 1997) available. Also used are poverty statistics from the 1990 Census. The Board adopted this combined approach in order to target funds for high-need areas more effectively. Funds designated for a particular jurisdiction must be used to provide services within that jurisdiction.

The National Board based its determination of high-need jurisdictions on four factors:

- (1) Most current twelve-month national unemployment rates;
- (2) Total number of unemployed within a civil jurisdiction;
- (3) Total number of individuals below the poverty level within a civil jurisdiction; and,
- (4) The total population of the civil jurisdiction.

In addition to unemployment, poverty was used to qualify a jurisdiction for receipt of an award.

(b) *Fiscal Year 1998 Formula.*

Jurisdictions were selected under Phase XVI (PL 104–204) according to the following criteria:

(1) Jurisdictions, including balance of counties, with 18,000+ unemployed and a 4.5% rate of unemployment.

(2) Jurisdictions, including balance of counties, with 400 to 17,999 unemployed and a 6.8% rate of unemployment.

(3) Jurisdictions, including balance of counties, with 400 or more unemployed and an 11.7% rate of poverty.

Jurisdictions with a minimum of 400 unemployed may qualify for an award based upon their rate of unemployment or their rate of poverty. Once a jurisdiction's eligibility is established, the National Board will determine its fund distribution based on a ratio calculated as follows: the average number of unemployed within an eligible area divided by the average number of unemployed covered by the national program equals the area's portion of the award (less National Board administrative costs, and less that portion of program funds required to fulfill designated awards).

$$\frac{\text{Area's avg. no. unemployed}}{\text{Avg. no. unemployed in all eligible areas}} = \text{Area's percent of the award (less National Board's administrative costs and designated awards)}$$

Puerto Rico and U.S. territories will receive a designated percentage of the total award based on the decision of the National Board.

9.0 Amendments to Plan

The National Board reserves the right to amend this Plan at any time.

Kay C. Goss,

Associate Director for Preparedness, Training and Exercises.

The following is a list of Phase XVI (fiscal year 1998) allocations. These

jurisdictions were notified in October, 1997, regarding this award.

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS

Alabama		
16-0030-00	Autauga County	\$10,988.00
16-0032-00	Baldwin County	32,165.00
16-0034-00	Barbour County	14,801.00
16-0036-00	Bibb County	7,371.00
16-0038-00	Blount County	8,802.00
16-0040-00	Bullock County	7,808.00
16-0042-00	Butler County	14,214.00
16-0044-00	Calhoun County	40,289.00
16-0046-00	Chambers County	10,671.00
16-0050-00	Chilton County	11,696.00
16-0052-00	Choctaw County	12,691.00
16-0054-00	Clarke County	17,469.00
16-0060-00	Coffee County	12,345.00
16-0062-00	Colbert County	26,061.00
16-0064-00	Conecuh County	10,581.00
16-0068-00	Covington County	17,499.00
16-0070-00	Crenshaw County	7,250.00
16-0072-00	Cullman County	23,302.00
16-0074-00	Dale County	14,364.00
16-0076-00	Dallas County	33,446.00
16-0078-00	De Kalb County	24,237.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-0080-00	Elmore County	14,455.00
16-0082-00	Escambia County	14,003.00
16-0084-00	Etowah County	34,697.00
16-0088-00	Franklin County	17,891.00
16-0090-00	Geneva County	11,922.00
16-0092-00	Greene County	9,737.00
16-0094-00	Hale County	7,762.00
16-0098-00	Houston County	27,372.00
16-0102-00	Jackson County	33,009.00
16-0104-00	Jefferson County	159,882.00
16-0108-00	Lamar County	7,943.00
16-0110-00	Lauderdale County	33,838.00
16-0112-00	Lawrence County	14,334.00
16-0114-00	Lee County	19,881.00
16-0116-00	Limestone County	15,811.00
16-0118-00	Lowndes County	9,179.00
16-0120-00	Macon County	8,184.00
16-0126-00	Marengo County	15,269.00
16-0128-00	Marion County	16,580.00
16-0130-00	Marshall County	31,653.00
16-0132-00	Mobile County	149,491.00
16-0136-00	Monroe County	21,132.00
16-0138-00	Montgomery County	65,084.00
16-0142-00	Morgan County	34,516.00
16-0144-00	Perry County	6,858.00
16-0146-00	Pickens County	11,139.00
16-0148-00	Pike County	12,631.00
16-0150-00	Randolph County	6,843.00
16-0152-00	Russell County	14,153.00
16-0154-00	St. Clair County	12,887.00
16-0158-00	Sumter County	10,973.00
16-0160-00	Talladega County	36,521.00
16-0162-00	Tallapoosa County	16,535.00
16-0164-00	Tuscaloosa County	37,290.00
16-0168-00	Walker County	30,025.00
16-0170-00	Washington County	10,069.00
16-0172-00	Wilcox County	7,099.00
16-0174-00	Winston County	12,767.00
16-0176-00	State Set-Aside Committee, AL	58,003.00
	Alabama Total	1,415,462.00
Alaska		
16-0190-00	Bethel Census Area	7,431.00
16-0196-00	Fairbanks North Star Boro	50,237.00
16-0200-00	Juneau Borough	16,414.00
16-0202-00	Kenai Peninsula Borough	47,162.00
16-0204-00	Ketchikan Gateway Borough	10,521.00
16-0208-00	Kodiak Island Borough	11,048.00
16-0210-00	Matanuska-Susitna Census	44,645.00
16-0216-00	Prince of Wales-Outer Ketchikan	7,521.00
16-0224-00	Valdez-Cordova Census Area	8,908.00
16-0232-00	State Set-Aside Committee, AK	91,379.00
	Alaska Total	295,266.00
Arizona		
16-0242-00	Apache County	\$60,080.00
16-0244-00	Cochise County	58,000.00
16-0246-00	Coconino County	73,675.00
16-0248-00	Gila County	24,207.00
16-0250-00	Graham County	15,992.00
16-0254-00	La Paz County	11,229.00
16-0256-00	Maricopa County	728,778.00
16-0268-00	Mohave County	61,662.00
16-0270-00	Navajo County	77,504.00
16-0272-00	Pima County	204,265.00
16-0276-00	Pinal County	47,419.00
16-0278-00	Santa Cruz County	56,010.00
16-0280-00	Yavapai County	43,922.00
16-0282-00	Yuma County	316,285.00
16-0284-00	State Set-Aside Committee, AZ	3,133.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

	Arizona Total	1,782,161.00
Arkansas		
16-0304-00	Arkansas County	\$9,511.00
16-0306-00	Ashley County	12,164.00
16-0308-00	Baxter County	9,481.00
16-0312-00	Boone County	12,209.00
16-0314-00	Bradley County	9,013.00
16-0318-00	Carroll County	10,370.00
16-0320-00	Chicot County	8,742.00
16-0324-00	Clay County	7,793.00
16-0326-00	Cleburne County	6,843.00
16-0330-00	Columbia County	12,616.00
16-0332-00	Conway County	7,762.00
16-0334-00	Craighead County	25,819.00
16-0336-00	Crawford County	16,821.00
16-0338-00	Crittenden County	17,077.00
16-0340-00	Cross County	7,325.00
16-0344-00	Desha County	10,702.00
16-0346-00	Drew County	12,254.00
16-0348-00	Faulkner County	30,386.00
16-0354-00	Garland County	26,106.00
16-0358-00	Greene County	16,580.00
16-0360-00	Hempstead County	14,229.00
16-0362-00	Hot Spring County	9,722.00
16-0364-00	Howard County	6,346.00
16-0366-00	Independence County	15,917.00
16-0370-00	Jackson County	14,485.00
16-0372-00	Jefferson County	43,967.00
16-0376-00	Johnson County	6,557.00
16-0380-00	Lawrence County	9,420.00
16-0382-00	Lee County	8,486.00
16-0384-00	Lincoln County	6,074.00
16-0386-00	Little River County	7,190.00
16-0388-00	Logan County	7,838.00
16-0390-00	Lonoke County	13,987.00
16-0396-00	Miller County	16,595.00
16-0398-00	Mississippi County	37,712.00
16-0408-00	Ouachita County	17,921.00
16-0412-00	Phillips County	15,600.00
16-0416-00	Poinsett County	10,943.00
16-0418-00	Polk County	6,722.00
16-0420-00	Pope County	16,927.00
16-0424-00	Pulaski County	112,804.00
16-0430-00	Randolph County	14,862.00
16-0432-00	St. Francis County	20,393.00
16-0440-00	Sebastian County	39,053.00
16-0444-00	Sevier County	7,129.00
16-0450-00	Union County	22,880.00
16-0452-00	Van Buren County	7,069.00
16-0454-00	Washington County	36,868.00
16-0456-00	White County	26,890.00
16-0462-00	State Set-Aside Committee, AR	84,245.00
	Arkansas Total	928,405.00
California		
16-0634-00	Alameda County	\$284,662.00
16-0646-00	Oakland City	201,672.00
16-0652-00	Amador County	12,571.00
16-0654-00	Butte County	109,789.00
16-0656-00	Calaveras County	19,082.00
16-0658-00	Colusa County	25,081.00
16-0660-00	Contra Costa County	312,607.00
16-0668-00	Del Norte County	15,495.00
16-0464-00	Fresno City/County	736,842.00
16-0676-00	Glenn County	23,890.00
16-0678-00	Humboldt County	66,470.00
16-0680-00	Imperial County	240,198.00
16-0682-00	Inyo County	9,134.00
16-0684-00	Kern County	525,508.00
16-0688-00	Kings County	82,915.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-0690-00	Lake County	39,370.00
16-0692-00	Lassen County	17,590.00
16-0694-00	Los Angeles City/County	5,122,911.00
16-0760-00	Madera County	107,950.00
16-0766-00	Mariposa County	10,671.00
16-0768-00	Mendocino County	53,176.00
16-0770-00	Merced County	198,115.00
16-0772-00	Modoc County	6,903.00
16-0774-00	Mono County	9,466.00
16-0776-00	Monterey County	296,117.00
16-0780-00	Napa County	49,740.00
16-0784-00	Nevada County	39,204.00
16-0786-00	Orange County	742,735.00
16-0818-00	Plumas County	16,143.00
16-0820-00	Riverside County	741,108.00
16-0824-00	Sacramento County	471,880.00
16-0828-00	San Benito County	43,786.00
16-0830-00	San Bernardino County	705,385.00
16-0840-00	San Diego County	892,482.00
16-0858-00	San Francisco City/County	257,125.00
16-0860-00	San Joaquin County	395,823.00
16-0864-00	San Luis Obispo County	80,096.00
16-0866-00	San Mateo County	170,999.00
16-0876-00	Santa Barbara County	156,680.00
16-0880-00	Santa Clara County	460,078.00
16-0892-00	Santa Cruz County	171,105.00
16-0896-00	Shasta County	101,725.00
16-0900-00	Siskiyou County	35,074.00
16-0902-00	Solano County	186,268.00
16-0912-00	Stanislaus County	402,772.00
16-0916-00	Sutter County	80,232.00
16-0918-00	Tehama County	34,004.00
16-0920-00	Trinity County	10,852.00
16-0922-00	Tulare County	374,073.00
16-0926-00	Tuolumne County	27,070.00
16-0928-00	Ventura County	391,980.00
16-0938-00	Yolo County	78,242.00
16-0940-00	Yuba County	42,098.00
16-0942-00	State Set-Aside Committee, CA	194,145.00
	California Total	15,881,089.00

Colorado

16-0968-00	Adams County	\$92,682.00
16-0978-00	Alamosa County	6,572.00
16-0990-00	Boulder County	82,236.00
16-1010-00	Delta County	8,501.00
16-1012-00	Denver City/County	179,410.00
16-1026-00	Fremont County	11,139.00
16-1034-00	Gunnison County	6,300.00
16-1056-00	La Plata County	16,912.00
16-1058-00	Larimer County	73,615.00
16-1062-00	Las Animas County	7,973.00
16-1068-00	Mesa County	40,440.00
16-1074-00	Montezuma County	11,772.00
16-1076-00	Montrose County	13,339.00
16-1078-00	Morgan County	6,647.00
16-1080-00	Otero County	7,551.00
16-1092-00	Pueblo County	46,077.00
16-1098-00	Rio Grande County	6,858.00
16-1116-00	Weld County	52,754.00
16-1122-00	State Set-Aside Committee, CO	295,753.00
	Colorado Total	966,531.00

Connecticut

16-1422-01	Fairfield Census/Bridgeport	\$141,886.00
16-1422-02	Fairfield Census/Danbury	43,183.00
16-1422-03	Fairfield Census/Norwalk	52,436.00
16-1422-04	Fairfield Census/Stamford	70,943.00
16-1438-00	Hartford Census County	382,152.00
16-1456-00	Middlesex Census County	64,903.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-1458-00	New Haven Census County	368,014.00
16-1472-00	New London Census County	118,562.00
16-1478-00	State Set-Aside Committee, CT	119,207.00
	Connecticut Total	1,361,285.00

Delaware

16-1480-00	Kent County	\$51,865.00
16-1482-00	New Castle County	190,714.00
16-1488-00	State Set-Aside Committee, DE	24,103.00
	Delaware Total	266,682.00

District of Columbia

16-1492-00	District of Columbia	\$318,139.00
	District of Columbia Total	318,139.00

Florida

16-1556-00	Alachua County	\$43,741.00
16-1560-00	Baker County	6,104.00
16-1562-00	Bay County	60,652.00
16-1566-00	Brevard County	148,134.00
16-1570-00	Broward County	562,346.00
16-1586-00	Citrus County	31,668.00
16-1592-00	Columbia County	17,379.00
16-1594-00	Dade County	1,149,366.00
16-1604-00	De Soto County	10,611.00
16-1608-00	Duval County	218,900.00
16-1612-00	Escambia County	74,203.00
16-1620-00	Gadsden County	13,791.00
16-1626-00	Gulf County	8,064.00
16-1630-00	Hardee County	22,473.00
16-1632-00	Hendry County	33,748.00
16-1636-00	Highlands County	34,667.00
16-1638-00	Hillsborough County	272,092.00
16-1642-00	Holmes County	6,783.00
16-1644-00	Indian River County	56,628.00
16-1646-00	Jackson County	11,983.00
16-1654-00	Lee County	90,511.00
16-1656-00	Leon County	53,523.00
16-1660-00	Levy County	8,546.00
16-1666-00	Manatee County	54,201.00
16-1668-00	Marion County	68,550.00
16-1670-00	Martin County	51,051.00
16-1674-00	Nassau County	15,962.00
16-1678-00	Okeechobee County	23,800.00
16-1680-00	Orange County	234,305.00
16-1684-00	Osceola County	40,576.00
16-1686-00	Palm Beach County	469,544.00
16-1694-00	Pinellas County	239,143.00
16-1702-00	Polk County	197,904.00
16-1706-00	Putnam County	23,619.00
16-1710-00	St Lucie County	135,624.00
16-1712-00	Santa Rosa County	26,196.00
16-1714-00	Sarasota County	58,648.00
16-1718-00	Seminole County	101,273.00
16-1720-00	Sumter County	9,405.00
16-1722-00	Suwannee County	8,697.00
16-1724-00	Taylor County	11,093.00
16-1728-00	Volusia County	106,579.00
16-1734-00	Walton County	9,481.00
16-1736-00	Washington County	7,687.00
16-1738-00	State Set-Aside Committee, FL	236,803.00
	Florida Total	5,066,054.00

Georgia

16-1741-00	Atlanta & College Pk/Clayton, Dekalb, Fulton Cos.	\$598,324.00
16-1742-00	Macon/Bibb, Jones Counties	62,687.00
16-1772-00	Appling County	11,516.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-1780-00	Baldwin County	13,249.00
16-1784-00	Barrow County	10,687.00
16-1788-00	Ben Hill County	8,848.00
16-1798-00	Brantley County	6,120.00
16-1804-00	Bulloch County	10,596.00
16-1806-00	Burke County	21,222.00
16-1808-00	Butts County	6,948.00
16-1816-00	Carroll County	28,668.00
16-1818-00	Catoosa County	15,465.00
16-1822-00	Chatham County	83,427.00
16-1828-00	Chattooga County	7,702.00
16-1832-00	Clarke County	21,418.00
16-1840-00	Cobb County	148,360.00
16-1842-00	Coffee County	15,223.00
16-1844-00	Colquitt County	14,440.00
16-1854-00	Crisp County	10,430.00
16-1860-00	Decatur County	8,260.00
16-1866-00	Dodge County	11,169.00
16-1870-00	Dougherty County	45,580.00
16-1880-00	Effingham County	9,375.00
16-1882-00	Elbert County	11,003.00
16-1884-00	Emanuel County	14,726.00
16-1888-00	Fannin County	7,898.00
16-1892-00	Floyd County	33,054.00
16-1896-00	Franklin County	8,471.00
16-1902-00	Gilmer County	7,160.00
16-1906-00	Glynn County	17,710.00
16-1910-00	Grady County	10,581.00
16-1920-00	Hancock County	8,380.00
16-1922-00	Haralson County	9,722.00
16-1926-00	Hart County	7,989.00
16-1932-00	Houston County	29,241.00
16-1936-00	Jackson County	11,500.00
16-1940-00	Jeff Davis County	6,270.00
16-1942-00	Jefferson County	18,027.00
16-1956-00	Laurens County	14,771.00
16-1958-00	Lee County	6,421.00
16-1960-00	Liberty County	19,218.00
16-1966-00	Lowndes County	23,242.00
16-1970-00	Mc Duffie County	15,254.00
16-1974-00	Macon County	11,093.00
16-1976-00	Madison County	6,948.00
16-1980-00	Meriwether County	7,747.00
16-1984-00	Mitchell County	13,897.00
16-1986-00	Monroe County	6,120.00
16-1994-00	Muskogee County	63,426.00
16-1998-00	Newton County	17,846.00
16-2006-00	Peach County	9,631.00
16-2010-00	Pierce County	6,044.00
16-2014-00	Polk County	17,484.00
16-2018-00	Putnam County	6,436.00
16-2026-00	Richmond County	88,296.00
16-2032-00	Screven County	12,149.00
16-2036-00	Spalding County	21,991.00
16-2038-00	Stephens County	11,335.00
16-2042-00	Sumter County	18,404.00
16-2052-00	Telfair County	8,064.00
16-2054-00	Terrell County	6,542.00
16-2056-00	Thomas County	14,470.00
16-2058-00	Tift County	17,530.00
16-2060-00	Toombs County	17,936.00
16-2066-00	Troup County	22,639.00
16-2072-00	Union County	6,888.00
16-2074-00	Upson County	9,466.00
16-2076-00	Walker County	23,227.00
16-2078-00	Walton County	18,147.00
16-2080-00	Ware County	12,239.00
16-2084-00	Washington County	9,074.00
16-2086-00	Wayne County	12,179.00
16-2102-00	Worth County	10,611.00
16-2104-00	State Set-Aside Committee, GA	372,406.00
	Georgia Total	2,330,617.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

Hawaii		
16-2106-00	Honolulu City/County	\$327,243.00
16-2108-00	Hawaii County	98,364.00
16-2112-00	Kauai County	49,182.00
16-2114-00	Maui County	74,474.00
	Hawaii Total	549,263.00
Idaho		
16-2134-00	Bannock County	\$29,934.00
16-2138-00	Benewah County	7,431.00
16-2140-00	Bingham County	15,012.00
16-2146-00	Bonner County	24,192.00
16-2150-00	Boundary County	6,120.00
16-2156-00	Canyon County	46,002.00
16-2160-00	Cassia County	9,360.00
16-2164-00	Clearwater County	7,823.00
16-2168-00	Elmore County	7,928.00
16-2174-00	Gem County	6,361.00
16-2178-00	Idaho County	10,596.00
16-2180-00	Jefferson County	6,210.00
16-2184-00	Kootenai County	64,918.00
16-2186-00	Latah County	7,597.00
16-2196-00	Minidoka County	11,184.00
16-2198-00	Nez Perce County	11,727.00
16-2204-00	Payette County	10,717.00
16-2208-00	Shoshone County	10,506.00
16-2212-00	Twin Falls County	22,202.00
16-2214-00	Valley County	6,135.00
16-2218-00	State Set-Aside Committee, ID	92,787.00
	Idaho Total	414,742.00
Illinois		
16-2342-00	Adams County	\$21,494.00
16-2346-00	Bond County	6,511.00
16-2356-00	Carroll County	7,958.00
16-2360-00	Champaign County	42,595.00
16-2364-00	Christian County	17,334.00
16-2366-00	Clark County	6,421.00
16-2372-00	Coles County	17,168.00
16-2374-00	Cook County	837,075.00
16-2378-00	Chicago City	1,249,644.00
16-2398-00	Crawford County	10,038.00
16-2402-00	DeKalb County	26,483.00
16-2414-00	Edgar County	7,506.00
16-2420-00	Fayette County	9,451.00
16-2424-00	Franklin County	30,115.00
16-2426-00	Fulton County	18,509.00
16-2430-00	Greene County	6,617.00
16-2432-00	Grundy County	17,379.00
16-2436-00	Hancock County	7,265.00
16-2446-00	Jackson County	22,941.00
16-2450-00	Jefferson County	22,262.00
16-2456-00	Johnson County	6,225.00
16-2458-00	Kane County	138,774.00
16-2464-00	Kankakee County	45,128.00
16-2468-00	Knox County	20,243.00
16-2470-00	Lake County	179,772.00
16-2474-00	La Salle County	62,084.00
16-2476-00	Lawrence County	10,340.00
16-2482-00	Logan County	11,304.00
16-2484-00	McDonough County	6,572.00
16-2488-00	McLean County	33,039.00
16-2490-00	Macon County	71,309.00
16-2494-00	Macoupin County	21,132.00
16-2496-00	Madison County	98,409.00
16-2498-00	Marion County	28,487.00
16-2502-00	Mason County	9,797.00
16-2508-00	Mercer County	7,431.00
16-2512-00	Montgomery County	17,364.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-2520-00	Peoria County	80,744.00
16-2524-00	Perry County	14,440.00
16-2528-00	Pike County	7,431.00
16-2536-00	Randolph County	19,670.00
16-2538-00	Richland County	7,461.00
16-2540-00	Rock Island County	48,444.00
16-2542-00	St. Clair County	101,876.00
16-2546-00	Saline County	14,334.00
16-2548-00	Sangamon County	66,350.00
16-2560-00	Stephenson County	19,112.00
16-2562-00	Tazewell County	52,031.00
16-2564-00	Union County	10,702.00
16-2566-00	Vermilion County	45,429.00
16-2568-00	Wabash County	7,099.00
16-2570-00	Warren County	6,376.00
16-2574-00	Wayne County	7,069.00
16-2576-00	White County	7,702.00
16-2580-00	Will County	162,197.00
16-2586-00	Williamson County	36,551.00
16-2588-00	Winnebago County	103,187.00
16-2594-00	State Set-Aside Committee, IL	359,975.00
Illinois Total		4,330,356.00

Indiana

16-2642-00	Clay County	\$10,129.00
16-2648-00	Daviess County	6,511.00
16-2656-00	Delaware County	37,018.00
16-2662-00	Elkhart County	47,298.00
16-2668-00	Floyd County	17,816.00
16-2678-00	Grant County	25,593.00
16-2680-00	Greene County	15,645.00
16-2690-00	Henry County	17,047.00
16-2692-00	Howard County	20,710.00
16-2704-00	Jennings County	6,135.00
16-2708-00	Knox County	11,968.00
16-2714-00	Lake County	93,270.00
16-2716-00	Gary City	66,018.00
16-2720-00	La Porte County	34,531.00
16-2724-00	Madison County	35,903.00
16-2728-00	Marion County	211,138.00
16-2738-00	Monroe County	21,207.00
16-2752-00	Orange County	10,219.00
16-2754-00	Owen County	6,692.00
16-2758-00	Perry County	10,008.00
16-2770-00	Randolph County	16,188.00
16-2776-00	St. Joseph County	69,560.00
16-2780-00	Scott County	6,979.00
16-2786-00	Starke County	9,029.00
16-2790-00	Sullivan County	10,280.00
16-2794-00	Tippecanoe County	24,071.00
16-2800-00	Vanderburgh County	52,166.00
16-2804-00	Vermillion County	7,793.00
16-2806-00	Vigo County	43,816.00
16-2816-00	Washington County	9,827.00
16-2818-00	Wayne County	22,594.00
16-2822-00	White County	15,344.00
16-2826-00	State Set-Aside Committee, IN	349,352.00
Indiana Total		1,341,855.00

Iowa

16-2858-00	Blackhawk County	\$44,103.00
16-2866-00	Buchanan County	7,401.00
16-2890-00	Clayton County	8,395.00
16-2892-00	Clinton County	17,741.00
16-2902-00	Delaware County	8,230.00
16-2904-00	Des Moines County	16,324.00
16-2914-00	Fayette County	6,391.00
16-2916-00	Floyd County	6,029.00
16-2946-00	Jackson County	9,586.00
16-2952-00	Johnson County	26,965.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-2962-00	Lee County	18,359.00
16-3006-00	Polk County	98,726.00
16-3010-00	Pottawattamie County	25,081.00
16-3020-00	Scott County	47,826.00
16-3028-00	Story County	18,660.00
16-3038-00	Wapello County	17,680.00
16-3046-00	Webster County	11,093.00
16-3050-00	Winneshiek County	7,657.00
16-3052-00	Woodbury County	30,537.00
16-3060-00	State Set-Aside Committee, IA	240,631.00
	Iowa Total	667,415.00

Kansas

16-3061-00	Manhattan/Pottawattamie, Riley Counties	\$26,257.00
16-3080-00	Allen County	6,255.00
16-3084-00	Atchison County	9,405.00
16-3088-00	Barton County	8,411.00
16-3100-00	Cherokee County	10,988.00
16-3116-00	Crawford County	13,987.00
16-3124-00	Douglas County	36,310.00
16-3132-00	Ellis County	6,979.00
16-3138-00	Ford County	8,772.00
16-3140-00	Franklin County	8,893.00
16-3142-00	Geary County	11,274.00
16-3166-00	Jackson County	6,089.00
16-3182-00	Labette County	9,797.00
16-3194-00	Lyon County	12,978.00
16-3208-00	Montgomery County	17,725.00
16-3216-00	Neosho County	6,059.00
16-3222-00	Osage County	9,571.00
16-3238-00	Reno County	19,203.00
16-3252-00	Saline County	17,123.00
16-3256-00	Sedgwick County	134,463.00
16-3260-00	Seward County	6,602.00
16-3262-00	Shawnee County	72,560.00
16-3296-00	Wyandotte County	88,597.00
16-3300-00	State Set-Aside Committee, KS	180,389.00
	Kansas Total	728,687.00

Kentucky

16-3316-00	Adair County	\$16,701.00
16-3318-00	Allen County	10,762.00
16-3324-00	Barren County	16,354.00
16-3328-00	Bell County	12,661.00
16-3334-00	Boyd County	23,317.00
16-3336-00	Boyle County	8,531.00
16-3340-00	Breathitt County	7,009.00
16-3342-00	Breckinridge County	7,883.00
16-3348-00	Caldwell County	7,295.00
16-3350-00	Calloway County	13,641.00
16-3358-00	Carter County	20,016.00
16-3360-00	Casey County	7,943.00
16-3362-00	Christian County	17,936.00
16-3364-00	Clark County	9,903.00
16-3366-00	Clay County	9,330.00
16-3368-00	Clinton County	6,587.00
16-3372-00	Cumberland County	6,662.00
16-3374-00	Daviess County	42,460.00
16-3378-00	Edmonson County	7,084.00
16-3380-00	Elliott County	6,376.00
16-3384-00	Fayette County	50,222.00
16-3388-00	Floyd County	20,001.00
16-3390-00	Franklin County	12,480.00
16-3392-00	Fulton County	8,064.00
16-3398-00	Grant County	8,169.00
16-3400-00	Graves County	21,886.00
16-3402-00	Grayson County	12,239.00
16-3406-00	Greenup County	16,278.00
16-3410-00	Hardin County	29,919.00
16-3412-00	Harlan County	17,379.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-3414-00	Harrison County	6,300.00
16-3416-00	Hart County	7,928.00
16-3418-00	Henderson County	23,152.00
16-3424-00	Hopkins County	20,273.00
16-3428-00	Jefferson County	256,823.00
16-3432-00	Jessamine County	6,421.00
16-3434-00	Johnson County	12,571.00
16-3436-00	Kenton County	46,469.00
16-3440-00	Knott County	7,777.00
16-3442-00	Knox County	22,262.00
16-3446-00	Laurel County	22,428.00
16-3448-00	Lawrence County	9,435.00
16-3454-00	Letcher County	11,636.00
16-3456-00	Lewis County	10,038.00
16-3458-00	Lincoln County	6,783.00
16-3462-00	Logan County	9,511.00
16-3466-00	McCracken County	23,890.00
16-3468-00	McCreary County	9,405.00
16-3472-00	Madison County	16,354.00
16-3474-00	Magoffin County	10,762.00
16-3476-00	Marion County	9,692.00
16-3478-00	Marshall County	15,027.00
16-3480-00	Martin County	6,059.00
16-3482-00	Mason County	6,074.00
16-3484-00	Meade County	7,175.00
16-3488-00	Mercer County	6,391.00
16-3494-00	Montgomery County	8,320.00
16-3496-00	Morgan County	6,662.00
16-3498-00	Muhlenberg County	15,992.00
16-3500-00	Nelson County	17,936.00
16-3504-00	Ohio County	12,902.00
16-3512-00	Pendleton County	6,979.00
16-3514-00	Perry County	13,837.00
16-3516-00	Pike County	37,712.00
16-3518-00	Powell County	7,205.00
16-3520-00	Pulaski County	20,423.00
16-3526-00	Rowan County	6,933.00
16-3528-00	Russell County	12,088.00
16-3530-00	Scott County	6,104.00
16-3532-00	Shelby County	6,466.00
16-3538-00	Taylor County	11,124.00
16-3546-00	Union County	9,013.00
16-3548-00	Warren County	44,449.00
16-3552-00	Wayne County	10,656.00
16-3554-00	Webster County	6,210.00
16-3556-00	Whitley County	18,193.00
16-3562-00	State Set-Aside Committee, KY	133,400.00
	Kentucky Total	1,458,328.00

Louisiana

16-3564-00	Shreveport/Bossier, Caddo Parishes	\$165,242.00
16-3574-00	Acadia Parish	21,705.00
16-3576-00	Allen Parish	10,491.00
16-3578-00	Ascension Parish	28,171.00
16-3580-00	Assumption Parish	8,772.00
16-3582-00	Avoyelles Parish	21,976.00
16-3584-00	Beauregard Parish	14,801.00
16-3586-00	Bienville Parish	14,651.00
16-3598-00	Calcasieu Parish	84,196.00
16-3602-00	Caldwell Parish	7,160.00
16-3606-00	Catahoula Parish	8,290.00
16-3608-00	Claiborne Parish	9,435.00
16-3610-00	Concordia Parish	16,022.00
16-3612-00	De Soto Parish	16,324.00
16-3614-00	East Baton Rouge Parish	158,112.00
16-3618-00	East Carroll Parish	7,612.00
16-3620-00	East Feliciana Parish	7,958.00
16-3622-00	Evangeline Parish	11,244.00
16-3624-00	Franklin Parish	15,811.00
16-3626-00	Grant Parish	9,767.00
16-3628-00	Iberia Parish	25,654.00
16-3630-00	Iberville Parish	16,143.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-3632-00	Jackson Parish	7,280.00
16-3634-00	Jefferson Parish	170,276.00
16-3638-00	Jefferson Davis Parish	12,706.00
16-3640-00	Lafayette Parish	58,030.00
16-3644-00	Lafourche Parish	21,614.00
16-3648-00	Lincoln Parish	10,023.00
16-3650-00	Livingston Parish	39,641.00
16-3652-00	Madison Parish	11,018.00
16-3654-00	Morehouse Parish	26,272.00
16-3656-00	Natchitoches Parish	19,790.00
16-3658-00	New Orleans City/Orleans Parish	211,590.00
16-3660-00	Ouachita Parish	66,501.00
16-3664-00	Plaquemines Parish	8,320.00
16-3666-00	Pointe Coupee Parish	12,164.00
16-3668-00	Rapides Parish	57,578.00
16-3672-00	Red River Parish	9,224.00
16-3674-00	Richland Parish	12,631.00
16-3676-00	Sabine Parish	9,481.00
16-3678-00	St Bernard Parish	29,753.00
16-3680-00	St Charles Parish	20,378.00
16-3684-00	St James Parish	13,008.00
16-3686-00	St John Baptist Parish	25,126.00
16-3688-00	St Landry Parish	38,737.00
16-3690-00	St Martin Parish	18,630.00
16-3692-00	St Mary Parish	26,754.00
16-3694-00	St Tammany Parish	57,321.00
16-3696-00	Tangipahoa Parish	55,498.00
16-3700-00	Terrebonne Parish	28,111.00
16-3702-00	Union Parish	11,139.00
16-3704-00	Vermilion Parish	17,831.00
16-3706-00	Vernon Parish	18,811.00
16-3708-00	Washington Parish	20,845.00
16-3710-00	Webster Parish	27,734.00
16-3712-00	West Baton Rouge Parish	8,757.00
16-3714-00	West Carroll Parish	12,631.00
16-3718-00	Winn Parish	6,557.00
16-3720-00	State Set-Aside Committee, LA	11,877.00
Louisiana Total		1,893,174.00

Maine

16-3726-00	Androscoggin County	\$47,072.00
16-3728-00	Aroostook County	50,252.00
16-3730-00	Cumberland County	54,699.00
16-3734-00	Franklin County	15,555.00
16-3738-00	Kennebec County	49,077.00
16-3740-00	Knox County	10,747.00
16-3744-00	Oxford County	22,820.00
16-3746-00	Penobscot County	59,386.00
16-3748-00	Piscataquis County	9,496.00
16-3752-00	Somerset County	31,803.00
16-3754-00	Waldo County	16,429.00
16-3756-00	Washington County	23,800.00
16-3758-00	York County	50,780.00
16-3760-00	State Set-Aside Committee, ME	21,953.00
Maine Total		463,869.00

Maryland

16-3774-00	Allegany County	\$44,706.00
16-3776-00	Anne Arundel County	143,733.00
16-3778-00	Baltimore County	298,032.00
16-3782-00	Caroline County	12,194.00
16-3786-00	Cecil County	54,623.00
16-3790-00	Dorchester County	22,971.00
16-3794-00	Garrett County	25,051.00
16-3800-00	Kent County	11,003.00
16-3806-00	Prince Georges County	311,537.00
16-3812-00	Somerset County	15,917.00
16-3816-00	Washington County	47,645.00
16-3820-00	Worcester County	36,295.00
16-3822-00	Baltimore City	386,478.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-3824-00	State Set-Aside Committee, MD	305,757.00
	Maryland Total	1,715,942.00
Massachusetts		
16-4476-00	Barnstable County	\$88,039.00
16-4478-00	Berkshire County	47,660.00
16-4482-00	Bristol County	249,814.00
16-4490-00	Essex County	227,055.00
16-4502-00	Hampden County	147,591.00
16-4510-00	Middlesex County	362,497.00
16-4540-00	Plymouth County	159,589.00
16-4550-00	Suffolk County	213,549.00
16-4554-00	Worcester County	216,609.00
16-4558-00	State Set-Aside Committee, MA	126,426.00
	Massachusetts Total	1,838,829.00
Michigan		
16-4560-00	Lansing/Eaton, Ingham Counties	\$101,243.00
16-4561-00	Holland/Allegan, Ottawa Counties	85,341.00
16-4632-00	Alcona County	6,602.00
16-4638-00	Alpena County	21,132.00
16-4640-00	Antrim County	9,526.00
16-4642-00	Arenac County	9,451.00
16-4648-00	Bay County	41,269.00
16-4650-00	Benzie County	7,793.00
16-4652-00	Berrien County	72,364.00
16-4654-00	Branch County	13,264.00
16-4656-00	Calhoun County	43,831.00
16-4660-00	Cass County	19,790.00
16-4662-00	Charlevoix County	12,314.00
16-4664-00	Cheboygan County	19,730.00
16-4666-00	Chippewa County	22,549.00
16-4668-00	Clare County	12,947.00
16-4672-00	Crawford County	6,120.00
16-4674-00	Delta County	22,579.00
16-4676-00	Dickinson County	13,023.00
16-4682-00	Emmet County	22,217.00
16-4684-00	Genesee County	179,983.00
16-4688-00	Gladwin County	11,078.00
16-4690-00	Gogebic County	13,324.00
16-4694-00	Gratiot County	17,680.00
16-4696-00	Hillsdale County	13,565.00
16-4698-00	Houghton County	16,067.00
16-4700-00	Huron County	15,027.00
16-4710-00	Iosco County	14,319.00
16-4712-00	Iron County	6,768.00
16-4714-00	Isabella County	15,826.00
16-4716-00	Jackson County	54,081.00
16-4718-00	Kalamazoo County	64,933.00
16-4722-00	Kalkaska County	8,230.00
16-4724-00	Kent County	167,909.00
16-4744-00	Mackinac County	11,365.00
16-4758-00	Manistee County	13,776.00
16-4760-00	Marquette County	29,452.00
16-4762-00	Mason County	17,062.00
16-4764-00	Mecosta County	13,430.00
16-4766-00	Menominee County	11,531.00
16-4770-00	Missaukee County	6,255.00
16-4774-00	Montcalm County	33,793.00
16-4776-00	Montmorency County	6,406.00
16-4778-00	Muskegon County	66,139.00
16-4780-00	Newaygo County	28,095.00
16-4782-00	Oakland County	291,550.00
16-4796-00	Oceana County	19,082.00
16-4798-00	Ogemaw County	11,666.00
16-4800-00	Ontonagon County	7,838.00
16-4802-00	Osceola County	10,687.00
16-4810-00	Presque Isle County	12,058.00
16-4812-00	Roscommon County	11,063.00
16-4814-00	Saginaw County	72,439.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-4818-00	St. Clair County	59,386.00
16-4822-00	Sanilac County	20,454.00
16-4824-00	Schoolcraft County	7,250.00
16-4828-00	Tuscola County	23,664.00
16-4830-00	Van Buren County	34,260.00
16-4832-00	Washtenaw County	56,568.00
16-4836-00	Wayne County	223,181.00
16-4844-00	Detroit City	496,071.00
16-4854-00	Wexford County	19,308.00
16-4856-00	State Set-Aside Committee, MI	315,911.00
	Michigan Total	3,091,615.00

Minnesota

16-4857-00	St. Cloud City/Benton, Sherburne, Stearns Cos.	\$82,900.00
16-4898-00	Aitkin County	8,305.00
16-4902-00	Becker County	15,841.00
16-4904-00	Beltrami County	19,564.00
16-4910-00	Blue Earth County	15,208.00
16-4914-00	Carlton County	15,721.00
16-4918-00	Cass County	14,409.00
16-4924-00	Clay County	15,027.00
16-4926-00	Clearwater County	8,305.00
16-4932-00	Crow Wing County	25,382.00
16-4938-00	Douglas County	10,340.00
16-4942-00	Fillmore County	6,632.00
16-4950-00	Hennepin County	262,566.00
16-4964-00	Hubbard County	9,209.00
16-4968-00	Itasca County	27,251.00
16-4972-00	Kanabec County	9,662.00
16-4974-00	Kandiyohi County	12,179.00
16-4978-00	Koochiching County	7,325.00
16-4990-00	Lyon County	7,582.00
16-4996-00	Marshall County	8,546.00
16-4998-00	Martin County	6,587.00
16-5002-00	Mille Lacs County	11,757.00
16-5004-00	Morrison County	18,343.00
16-5020-00	Otter Tail County	22,835.00
16-5022-00	Pennington County	7,024.00
16-5024-00	Pine County	13,716.00
16-5028-00	Polk County	13,957.00
16-5032-00	Ramsey County	123,807.00
16-5040-00	Renville County	6,150.00
16-5046-00	Roseau County	8,682.00
16-5048-00	St. Louis County	80,925.00
16-5066-00	Todd County	11,018.00
16-5072-00	Wadena County	6,285.00
16-5082-00	Winona County	15,148.00
16-5088-00	State Set-Aside Committee, MN	283,548.00
	Minnesota Total	1,211,736.00

Mississippi

16-5089-00	Hattiesburg/Forrest, Lamar Counties	\$24,282.00
16-5090-00	Adams County	15,434.00
16-5092-00	Alcorn County	20,785.00
16-5096-00	Attala County	11,425.00
16-5100-00	Bolivar County	24,372.00
16-5106-00	Chickasaw County	11,003.00
16-5112-00	Clarke County	8,968.00
16-5114-00	Clay County	14,123.00
16-5116-00	Coahoma County	18,901.00
16-5118-00	Copiah County	12,616.00
16-5120-00	Covington County	6,873.00
16-5128-00	George County	10,852.00
16-5130-00	Greene County	6,195.00
16-5132-00	Grenada County	9,571.00
16-5134-00	Hancock County	12,676.00
16-5136-00	Harrison County	54,925.00
16-5138-00	Hinds County	73,705.00
16-5142-00	Holmes County	12,118.00
16-5144-00	Humphreys County	7,325.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-5148-00	Itawamba County	10,129.00
16-5150-00	Jackson County	52,001.00
16-5152-00	Jasper County	8,184.00
16-5156-00	Jefferson Davis County	7,084.00
16-5158-00	Jones County	14,816.00
16-5166-00	Lauderdale County	26,091.00
16-5170-00	Leake County	7,114.00
16-5172-00	Lee County	26,498.00
16-5174-00	Leflore County	21,569.00
16-5176-00	Lincoln County	10,069.00
16-5178-00	Lowndes County	28,201.00
16-5180-00	Madison County	17,469.00
16-5182-00	Marion County	8,742.00
16-5184-00	Marshall County	13,957.00
16-5186-00	Monroe County	22,353.00
16-5188-00	Montgomery County	6,059.00
16-5190-00	Neshoba County	8,833.00
16-5196-00	Oktibbeha County	8,004.00
16-5198-00	Panola County	29,678.00
16-5200-00	Pearl River County	12,661.00
16-5204-00	Pike County	12,661.00
16-5206-00	Pontotoc County	9,240.00
16-5208-00	Prentiss County	13,671.00
16-5210-00	Quitman County	7,461.00
16-5214-00	Scott County	12,073.00
16-5216-00	Sharkey County	6,104.00
16-5218-00	Simpson County	9,827.00
16-5224-00	Sunflower County	21,418.00
16-5226-00	Tallahatchie County	9,496.00
16-5228-00	Tate County	8,320.00
16-5230-00	Tippah County	8,787.00
16-5232-00	Tishomingo County	13,324.00
16-5234-00	Tunica County	6,285.00
16-5236-00	Union County	7,958.00
16-5240-00	Warren County	20,454.00
16-5242-00	Washington County	41,133.00
16-5244-00	Wayne County	9,375.00
16-5248-00	Wilkinson County	6,632.00
16-5250-00	Winston County	10,099.00
16-5254-00	Yazoo County	13,942.00
16-5256-00	State Set-Aside Committee, MS	73,440.00
	Mississippi Total	1,017,361.00

Missouri

16-5257-00	Joplin/Jasper, Newton Counties	\$51,353.00
16-5258-00	Kansas City/Clay, Jackson, Platte Cos.	322,902.00
16-5278-00	Audrain County	7,853.00
16-5280-00	Barry County	13,369.00
16-5284-00	Bates County	7,024.00
16-5286-00	Benton County	6,165.00
16-5288-00	Bollinger County	7,009.00
16-5290-00	Boone County	19,323.00
16-5294-00	Buchanan County	38,496.00
16-5298-00	Butler County	17,258.00
16-5304-00	Camden County	15,932.00
16-5306-00	Cape Girardeau County	23,920.00
16-5332-00	Crawford County	11,802.00
16-5336-00	Dallas County	6,059.00
16-5344-00	Douglas County	13,294.00
16-5346-00	Dunklin County	14,892.00
16-5354-00	Greene County	62,325.00
16-5362-00	Henry County	8,079.00
16-5370-00	Howell County	17,394.00
16-5384-00	Johnson County	8,787.00
16-5388-00	Laclede County	15,570.00
16-5390-00	Lafayette County	10,551.00
16-5392-00	Lawrence County	13,716.00
16-5396-00	Lincoln County	11,395.00
16-5398-00	Linn County	10,023.00
16-5402-00	Mc Donald County	6,888.00
16-5404-00	Macon County	6,526.00
16-5406-00	Madison County	6,391.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-5410-00	Marion County	10,340.00
16-5414-00	Miller County	12,284.00
16-5416-00	Mississippi County	7,672.00
16-5424-00	Morgan County	8,139.00
16-5426-00	New Madrid County	9,858.00
16-5438-00	Pemiscot County	12,179.00
16-5442-00	Pettis County	17,017.00
16-5444-00	Phelps County	12,345.00
16-5446-00	Pike County	6,783.00
16-5452-00	Polk County	7,898.00
16-5454-00	Pulaski County	10,852.00
16-5460-00	Randolph County	8,998.00
16-5474-00	St. Francois County	26,106.00
16-5476-00	St. Louis County	277,925.00
16-5480-00	Saline County	8,275.00
16-5486-00	Scott County	19,655.00
16-5492-00	Stoddard County	21,569.00
16-5494-00	Stone County	25,352.00
16-5498-00	Taney County	40,334.00
16-5500-00	Texas County	14,259.00
16-5502-00	Vernon County	6,903.00
16-5506-00	Washington County	13,008.00
16-5508-00	Wayne County	6,858.00
16-5510-00	Webster County	11,531.00
16-5514-00	Wright County	11,862.00
16-5516-00	St. Louis City	188,333.00
16-5518-00	State Set-Aside Committee, MO	212,341.00
	Missouri Total	1,762,972.00

Montana

16-5530-00	Big Horn County	\$7,084.00
16-5540-00	Cascade County	27,131.00
16-5558-00	Flathead County	39,129.00
16-5560-00	Gallatin County	15,148.00
16-5564-00	Glacier County	11,395.00
16-5570-00	Hill County	6,421.00
16-5576-00	Lake County	10,898.00
16-5578-00	Lewis and Clark County	18,283.00
16-5582-00	Lincoln County	11,968.00
16-5592-00	Missoula County	31,426.00
16-5596-00	Park County	7,386.00
16-5610-00	Ravalli County	11,983.00
16-5616-00	Rosebud County	6,481.00
16-5618-00	Sanders County	6,662.00
16-5622-00	Silver Bow County	13,008.00
16-5640-00	Yellowstone County	43,017.00
16-5644-00	State Set-Aside Committee, MT	39,142.00
	Montana Total	306,562.00

Nebraska

16-5686-00	Buffalo County	\$9,240.00
16-5722-00	Douglas County	106,956.00
16-5782-00	Lincoln County	10,038.00
16-5828-00	Scotts Bluff County	12,375.00
16-5858-00	State Set-Aside Committee, NE	124,466.00
	Nebraska Total	263,075.00

Nevada

16-5866-00	Churchill County	\$9,074.00
16-5868-00	Clark County	428,968.00
16-5872-00	Douglas County	16,776.00
16-5886-00	Lyon County	14,575.00
16-5904-00	Carson City	24,644.00
16-5906-00	State Set-Aside Committee, NV	89,405.00
	Nevada Total	583,442.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

New Hampshire		
16-5936-00	Rockingham County	\$94,656.00
16-5942-00	State Set-Aside Committee, NH	131,916.00
	New Hampshire Total	226,572.00
New Jersey		
16-5948-00	Atlantic County	\$154,917.00
16-5950-00	Bergen County	328,162.00
16-5952-00	Burlington County	145,572.00
16-5954-00	Camden County	217,514.00
16-5960-00	Cape May County	81,875.00
16-5962-00	Cumberland County	93,013.00
16-5966-00	Essex County	414,423.00
16-5976-00	Gloucester County	107,031.00
16-5978-00	Hudson County	377,887.00
16-5988-00	Mercer County	133,559.00
16-5994-00	Middlesex County	286,365.00
16-6004-00	Monmouth County	227,959.00
16-6012-00	Ocean County	186,961.00
16-6018-00	Passaic County	272,529.00
16-6028-00	Salem County	33,868.00
16-6034-00	Union County	233,671.00
16-6042-00	State Set-Aside Committee, NJ	184,720.00
	New Jersey Total	3,480,026.00
New Mexico		
16-6044-00	Bernalillo County	\$214,740.00
16-6050-00	Chaves County	33,537.00
16-6052-00	Cibola County	20,845.00
16-6054-00	Colfax County	10,084.00
16-6056-00	Curry County	19,308.00
16-6060-00	Dona Ana County	95,711.00
16-6064-00	Eddy County	25,744.00
16-6066-00	Grant County	14,877.00
16-6074-00	Lea County	20,514.00
16-6076-00	Lincoln County	8,576.00
16-6080-00	Luna County	45,836.00
16-6082-00	McKinley County	38,586.00
16-6086-00	Otero County	26,272.00
16-6090-00	Rio Arriba County	36,189.00
16-6092-00	Roosevelt County	6,240.00
16-6094-00	Sandoval County	30,793.00
16-6096-00	San Juan County	87,497.00
16-6098-00	San Miguel County	23,559.00
16-6100-00	Santa Fe County	47,057.00
16-6106-00	Socorro County	7,762.00
16-6108-00	Taos County	33,491.00
16-6110-00	Torrance County	7,114.00
16-6114-00	Valencia County	19,670.00
16-6116-00	State Set-Aside Committee, NM	15,116.00
	New Mexico Total	889,118.00
New York		
16-6120-00	Albany County	\$79,810.00
16-6126-00	Allegany County	26,859.00
16-6130-00	Broome County	59,854.00
16-6136-00	Cattaraugus County	42,384.00
16-6138-00	Cayuga County	32,919.00
16-6140-00	Chautauqua County	52,513.00
16-6142-00	Chemung County	26,965.00
16-6144-00	Chenango County	21,870.00
16-6146-00	Clinton County	39,189.00
16-6150-00	Cortland County	22,247.00
16-6152-00	Delaware County	16,233.00
16-6154-00	Dutchess County	71,444.00
16-6156-00	Erie County	328,494.00
16-6168-00	Essex County	21,870.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-6170-00	Franklin County	26,784.00
16-6172-00	Fulton County	31,487.00
16-6176-00	Greene County	19,383.00
16-6180-00	Herkimer County	29,301.00
16-6182-00	Jefferson County	54,427.00
16-6186-00	Lewis County	14,003.00
16-6192-00	Monroe County	193,171.00
16-6200-00	Montgomery County	26,106.00
16-6202-00	Nassau County	348,118.00
16-6212-00	Niagara County	100,535.00
16-6216-00	Oneida County	78,438.00
16-6220-00	Onondaga County	132,248.00
16-6228-00	Orange County	93,375.00
16-6232-00	Oswego County	56,025.00
16-6234-00	Otsego County	23,755.00
16-6240-00	Rensselaer County	53,960.00
16-6254-00	St. Lawrence County	58,105.00
16-6258-00	Schenectady County	46,348.00
16-6268-00	Steuben County	43,470.00
16-6270-00	Suffolk County	431,907.00
16-6282-00	Sullivan County	30,010.00
16-6286-00	Tompkins County	21,509.00
16-6290-00	Warren County	32,014.00
16-6296-00	Westchester County	251,035.00
16-6308-00	Wyoming County	19,429.00
16-6310-00	Yates County	7,793.00
16-6314-00	New York City	4,643,163.00
16-6312-00	State Set-Aside Committee, NY	260,272.00
	New York Total	7,968,822.00

North Carolina

16-6314-00	Kannapolis/Cabarrus, Rowan Counties	\$58,904.00
16-6316-00	High Point City/Davidson, Guilford Cos.	168,723.00
16-6317-00	Rocky Mount/Edgecombe, Nash Counties	90,361.00
16-6326-00	Anson County	10,762.00
16-6328-00	Ashe County	18,735.00
16-6332-00	Beaufort County	19,655.00
16-6334-00	Bertie County	8,380.00
16-6336-00	Bladen County	15,449.00
16-6338-00	Brunswick County	28,050.00
16-6340-00	Buncombe County	44,886.00
16-6354-00	Caswell County	6,406.00
16-6360-00	Cherokee County	8,863.00
16-6366-00	Cleveland County	44,283.00
16-6368-00	Columbus County	22,986.00
16-6370-00	Craven County	22,941.00
16-6372-00	Cumberland County	75,891.00
16-6386-00	Duplin County	16,248.00
16-6388-00	Durham County	43,364.00
16-6394-00	Forsyth County	66,470.00
16-6398-00	Franklin County	14,168.00
16-6400-00	Gaston County	65,807.00
16-6406-00	Graham County	6,888.00
16-6408-00	Granville County	10,702.00
16-6418-00	Halifax County	31,366.00
16-6420-00	Harnett County	19,896.00
16-6422-00	Haywood County	15,887.00
16-6426-00	Hertford County	8,395.00
16-6428-00	Hoke County	8,290.00
16-6434-00	Jackson County	13,596.00
16-6436-00	Johnston County	18,419.00
16-6440-00	Lee County	15,585.00
16-6442-00	Lenoir County	24,131.00
16-6448-00	Macon County	8,184.00
16-6452-00	Martin County	21,418.00
16-6460-00	Montgomery County	10,189.00
16-6466-00	New Hanover County	47,087.00
16-6468-00	Northampton County	9,119.00
16-6470-00	Onslow County	26,030.00
16-6472-00	Orange County	14,274.00
16-6476-00	Pasquotank County	10,280.00
16-6478-00	Pender County	11,983.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-6482-00	Person County	12,902.00
16-6484-00	Pitt County	48,670.00
16-6490-00	Richmond County	29,181.00
16-6492-00	Robeson County	69,967.00
16-6494-00	Rockingham County	34,275.00
16-6498-00	Rutherford County	29,060.00
16-6500-00	Sampson County	20,529.00
16-6502-00	Scotland County	17,997.00
16-6510-00	Swain County	15,856.00
16-6518-00	Vance County	21,117.00
16-6520-00	Wake County	87,723.00
16-6524-00	Warren County	7,717.00
16-6528-00	Watauga County	7,702.00
16-6530-00	Wayne County	29,723.00
16-6532-00	Wilkes County	20,092.00
16-6534-00	Wilson County	43,153.00
16-6536-00	Yadkin County	6,843.00
16-6540-00	State Set-Aside Committee, NC	309,892.00
North Carolina Total		1,995,450.00

North Dakota

16-6576-00	Cass County	\$17,062.00
16-6596-00	Grand Forks County	16,399.00
16-6622-00	Morton County	7,566.00
16-6642-00	Rolette County	10,460.00
16-6664-00	Ward County	12,209.00
16-6670-00	State Set-Aside Committee, ND	86,304.00
North Dakota Total		150,000.00

Ohio

16-6672-00	Columbus/Fairfield, Franklin Cos.	\$281,572.00
16-6678-00	Adams County	20,318.00
16-6680-00	Allen County	49,589.00
16-6684-00	Ashtabula County	49,906.00
16-6686-00	Athens County	22,051.00
16-6690-00	Belmont County	35,029.00
16-6692-00	Brown County	16,203.00
16-6694-00	Butler County	97,189.00
16-6698-00	Carroll County	10,023.00
16-6702-00	Clark County	60,200.00
16-6708-00	Clinton County	14,033.00
16-6710-00	Columbiana County	47,087.00
16-6712-00	Coshocton County	15,600.00
16-6714-00	Crawford County	20,680.00
16-6716-00	Cuyahoga County	534,582.00
16-6734-00	Erie County	35,767.00
16-6740-00	Fayette County	11,440.00
16-6748-00	Gallia County	18,554.00
16-6752-00	Greene County	40,154.00
16-6754-00	Guernsey County	23,061.00
16-6756-00	Hamilton County	257,848.00
16-6762-00	Hardin County	13,264.00
16-6764-00	Harrison County	8,260.00
16-6768-00	Highland County	19,474.00
16-6770-00	Hocking County	12,345.00
16-6772-00	Holmes County	9,707.00
16-6774-00	Huron County	41,857.00
16-6776-00	Jackson County	18,072.00
16-6778-00	Jefferson County	49,363.00
16-6780-00	Knox County	20,288.00
16-6784-00	Lawrence County	24,870.00
16-6786-00	Licking County	42,550.00
16-6790-00	Lorain County	139,422.00
16-6796-00	Lucas County	175,461.00
16-6802-00	Mahoning County	113,271.00
16-6806-00	Marion County	29,618.00
16-6810-00	Meigs County	13,942.00
16-6812-00	Mercer County	20,514.00
16-6816-00	Monroe County	9,782.00
16-6818-00	Montgomery County	179,892.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-6824-00	Morgan County	10,144.00
16-6826-00	Morrow County	13,083.00
16-6828-00	Muskingum County	45,926.00
16-6832-00	Ottawa County	23,468.00
16-6836-00	Perry County	19,142.00
16-6838-00	Pickaway County	13,671.00
16-6840-00	Pike County	15,736.00
16-6842-00	Portage County	54,216.00
16-6848-00	Richland County	54,563.00
16-6852-00	Ross County	32,406.00
16-6854-00	Sandusky County	34,426.00
16-6856-00	Scioto County	48,700.00
16-6862-00	Stark County	149,310.00
16-6866-00	Summit County	198,643.00
16-6870-00	Trumbull County	98,002.00
16-6880-00	Vinton County	6,587.00
16-6884-00	Washington County	30,070.00
16-6886-00	Wayne County	37,501.00
16-6890-00	Wood County	36,792.00
16-6894-00	State Set-Aside Committee, OH	360,143.00
	Ohio Total	3,885,367.00

Oklahoma

16-6896-00	Oklahoma City/Canadian, McLain, Oklahoma Cos.	\$173,848.00
16-6902-00	Adair County	8,064.00
16-6914-00	Bryan County	7,476.00
16-6916-00	Caddo County	8,727.00
16-6922-00	Carter County	16,113.00
16-6924-00	Cherokee County	11,696.00
16-6926-00	Choctaw County	9,752.00
16-6930-00	Cleveland County	38,978.00
16-6938-00	Comanche County	28,050.00
16-6946-00	Creek County	17,786.00
16-6948-00	Custer County	7,114.00
16-6950-00	Delaware County	9,827.00
16-6956-00	Garfield County	12,149.00
16-6960-00	Garvin County	7,989.00
16-6962-00	Grady County	12,329.00
16-6972-00	Haskell County	6,451.00
16-6976-00	Jackson County	6,707.00
16-6982-00	Kay County	22,277.00
16-6988-00	Latimer County	6,104.00
16-6990-00	Le Flore County	18,705.00
16-6992-00	Lincoln County	10,280.00
16-7002-00	McCurain County	18,675.00
16-7004-00	McIntosh County	7,099.00
16-7010-00	Mayes County	9,692.00
16-7014-00	Muskogee County	25,111.00
16-7028-00	Okmulgee County	17,741.00
16-7030-00	Osage County	10,777.00
16-7034-00	Ottawa County	12,917.00
16-7036-00	Pawnee County	6,074.00
16-7038-00	Payne County	9,451.00
16-7040-00	Pittsburg County	17,801.00
16-7042-00	Pontotoc County	11,289.00
16-7044-00	Pottawatomie County	17,213.00
16-7054-00	Seminole County	11,470.00
16-7056-00	Sequoyah County	15,495.00
16-7058-00	Stephens County	10,099.00
16-7064-00	Tulsa County	130,047.00
16-7068-00	Wagoner County	11,516.00
16-7078-00	State Set-Aside Committee, OK	65,344.00
	Oklahoma Total	848,233.00

Oregon

16-7080-00	Portland/Clackamas, Multnomah, Washington Cos.	\$518,650.00
16-7082-00	Salem/Marion, Polk Counties	138,156.00
16-7088-00	Baker County	12,043.00
16-7090-00	Benton County	16,098.00
16-7096-00	Clatsop County	17,530.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-7100-00	Coos County	38,526.00
16-7102-00	Crook County	12,571.00
16-7104-00	Curry County	12,269.00
16-7106-00	Deschutes County	66,983.00
16-7108-00	Douglas County	57,261.00
16-7112-00	Grant County	7,958.00
16-7114-00	Harney County	6,135.00
16-7116-00	Hood River County	18,178.00
16-7118-00	Jackson County	102,208.00
16-7120-00	Jefferson County	8,998.00
16-7122-00	Josephine County	40,832.00
16-7124-00	Klamath County	40,440.00
16-7126-00	Lake County	6,511.00
16-7128-00	Lane County	133,936.00
16-7132-00	Lincoln County	26,362.00
16-7134-00	Linn County	52,634.00
16-7136-00	Malheur County	17,786.00
16-7154-00	Tillamook County	10,445.00
16-7156-00	Umatilla County	40,455.00
16-7158-00	Union County	14,816.00
16-7162-00	Wasco County	15,314.00
16-7170-00	Yamhill County	28,879.00
16-7172-00	State Set-Aside Committee, OR	18,325.00
	Oregon Total	1,480,299.00

Pennsylvania

16-7174-00	Bethlehem/Lehigh, Northampton Counties	\$203,255.00
16-7180-00	Allegheny County	420,301.00
16-7184-00	Armstrong County	34,682.00
16-7186-00	Beaver County	61,843.00
16-7188-00	Bedford County	26,664.00
16-7190-00	Berks County	111,417.00
16-7194-00	Blair County	50,946.00
16-7198-00	Bradford County	23,317.00
16-7208-00	Cambria County	82,040.00
16-7212-00	Carbon County	28,246.00
16-7214-00	Centre County	28,306.00
16-7218-00	Clarion County	18,615.00
16-7220-00	Clearfield County	43,982.00
16-7222-00	Clinton County	19,353.00
16-7224-00	Columbia County	34,592.00
16-7226-00	Crawford County	35,285.00
16-7230-00	Dauphin County	67,887.00
16-7234-00	Delaware County	188,740.00
16-7242-00	Erie County	119,782.00
16-7246-00	Fayette County	68,731.00
16-7254-00	Greene County	20,815.00
16-7256-00	Huntingdon County	28,050.00
16-7258-00	Indiana County	44,374.00
16-7260-00	Jefferson County	23,996.00
16-7262-00	Juniata County	11,757.00
16-7264-00	Lackawanna County	109,051.00
16-7268-00	Lancaster County	103,082.00
16-7272-00	Lawrence County	37,184.00
16-7274-00	Lebanon County	33,280.00
16-7282-00	Luzerne County	162,528.00
16-7284-00	Lycoming County	53,749.00
16-7286-00	McKean County	19,730.00
16-7288-00	Mercer County	41,842.00
16-7290-00	Mifflin County	25,578.00
16-7292-00	Monroe County	57,080.00
16-7306-00	Northumberland County	44,525.00
16-7310-00	Philadelphia City/County	658,856.00
16-7314-00	Potter County	9,074.00
16-7316-00	Schuylkill County	77,187.00
16-7320-00	Somerset County	40,998.00
16-7324-00	Susquehanna County	20,167.00
16-7326-00	Tioga County	19,625.00
16-7330-00	Venango County	27,206.00
16-7334-00	Washington County	73,509.00
16-7336-00	Wayne County	22,262.00
16-7340-00	Wyoming County	18,705.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-7342-00	York County	119,240.00
16-7344-00	State Set-Aside Committee, PA	527,501.00
	Pennsylvania Total	4,098,935.00
Rhode Island		
16-7354-00	Providence Census County	\$236,189.00
16-7368-00	State Set-Aside Committee, RI	92,693.00
	Rhode Island Total	328,882.00
South Carolina		
16-7370-00	Abbeville County	\$13,957.00
16-7372-00	Aiken County	62,506.00
16-7376-00	Anderson County	62,506.00
16-7378-00	Bamberg County	11,139.00
16-7380-00	Barnwell County	16,203.00
16-7382-00	Beaufort County	21,463.00
16-7384-00	Berkeley County	45,685.00
16-7386-00	Calhoun County	9,948.00
16-7388-00	Charleston County	117,883.00
16-7394-00	Cherokee County	17,846.00
16-7396-00	Chester County	24,674.00
16-7398-00	Chesterfield County	24,388.00
16-7400-00	Clarendon County	17,861.00
16-7402-00	Colleton County	14,756.00
16-7404-00	Darlington County	39,912.00
16-7406-00	Dillon County	22,006.00
16-7410-00	Edgefield County	7,250.00
16-7412-00	Fairfield County	14,425.00
16-7414-00	Florence County	69,214.00
16-7416-00	Georgetown County	45,595.00
16-7418-00	Greenville County	87,768.00
16-7422-00	Greenwood County	32,451.00
16-7424-00	Hampton County	8,802.00
16-7426-00	Horry County	78,423.00
16-7430-00	Kershaw County	22,292.00
16-7432-00	Lancaster County	25,910.00
16-7434-00	Laurens County	27,960.00
16-7436-00	Lee County	11,576.00
16-7442-00	Marion County	28,940.00
16-7444-00	Marlboro County	25,051.00
16-7446-00	Newberry County	15,449.00
16-7450-00	Orangeburg County	62,461.00
16-7452-00	Pickens County	33,582.00
16-7454-00	Richland County	86,608.00
16-7458-00	Saluda County	6,783.00
16-7460-00	Spartanburg County	87,859.00
16-7462-00	Sumter County	43,620.00
16-7464-00	Union County	16,263.00
16-7466-00	Williamsburg County	43,756.00
16-7468-00	York County	65,310.00
16-7470-00	State Set-Aside Committee, SC	66,615.00
	South Carolina Total	1,536,696.00
South Dakota		
16-7486-00	Brown County	\$6,587.00
16-7554-00	Lawrence County	6,557.00
16-7580-00	Pennington County	21,177.00
16-7592-00	Shannon County	6,542.00
16-7614-00	State Set-Aside Committee, SD	109,137.00
	South Dakota Total	150,000.00
Tennessee		
16-7616-00	Anderson County	\$27,462.00
16-7618-00	Bedford County	15,826.00
16-7620-00	Benton County	11,757.00
16-7624-00	Blount County	33,718.00
16-7626-00	Bradley County	31,231.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-7628-00	Campbell County	19,851.00
16-7632-00	Carroll County	18,374.00
16-7634-00	Carter County	24,508.00
16-7638-00	Chester County	6,602.00
16-7640-00	Claiborne County	9,767.00
16-7642-00	Clay County	12,043.00
16-7644-00	Cocke County	26,754.00
16-7646-00	Coffee County	20,785.00
16-7648-00	Crockett County	7,823.00
16-7650-00	Cumberland County	19,474.00
16-7652-00	Davidson County	143,853.00
16-7656-00	Decatur County	7,913.00
16-7658-00	DeKalb County	8,501.00
16-7660-00	Dickson County	13,068.00
16-7662-00	Dyer County	17,891.00
16-7664-00	Fayette County	10,536.00
16-7666-00	Fentress County	10,295.00
16-7668-00	Franklin County	16,429.00
16-7670-00	Gibson County	28,683.00
16-7672-00	Giles County	14,726.00
16-7674-00	Grainger County	8,079.00
16-7676-00	Greene County	46,605.00
16-7678-00	Grundy County	7,597.00
16-7680-00	Hamblen County	24,177.00
16-7682-00	Hamilton County	97,852.00
16-7688-00	Hardeman County	14,168.00
16-7690-00	Hardin County	17,756.00
16-7692-00	Hawkins County	15,691.00
16-7694-00	Haywood County	15,796.00
16-7696-00	Henderson County	17,982.00
16-7698-00	Henry County	15,359.00
16-7700-00	Hickman County	9,240.00
16-7702-00	Houston County	6,858.00
16-7704-00	Humphreys County	14,530.00
16-7708-00	Jefferson County	21,177.00
16-7710-00	Johnson County	11,651.00
16-7712-00	Knox County	100,248.00
16-7718-00	Lauderdale County	11,561.00
16-7720-00	Lawrence County	38,797.00
16-7722-00	Lewis County	12,556.00
16-7724-00	Lincoln County	21,855.00
16-7726-00	Loudon County	11,953.00
16-7728-00	McMinn County	27,583.00
16-7730-00	McNairy County	14,319.00
16-7732-00	Macon County	14,801.00
16-7734-00	Madison County	32,798.00
16-7738-00	Marion County	12,269.00
16-7740-00	Marshall County	8,064.00
16-7742-00	Maury County	27,508.00
16-7744-00	Meigs County	6,662.00
16-7746-00	Monroe County	27,327.00
16-7748-00	Montgomery County	33,522.00
16-7754-00	Morgan County	6,843.00
16-7756-00	Obion County	18,916.00
16-7758-00	Overton County	12,088.00
16-7764-00	Polk County	7,160.00
16-7766-00	Putnam County	22,684.00
16-7768-00	Rhea County	17,409.00
16-7770-00	Roane County	24,704.00
16-7774-00	Rutherford County	45,128.00
16-7776-00	Scott County	11,440.00
16-7780-00	Sevier County	41,465.00
16-7782-00	Shelby County	281,693.00
16-7786-00	Smith County	7,054.00
16-7788-00	Stewart County	8,245.00
16-7790-00	Sullivan County	41,148.00
16-7794-00	Tipton County	14,500.00
16-7798-00	Unicoi County	7,582.00
16-7804-00	Warren County	18,524.00
16-7806-00	Washington County	28,593.00
16-7808-00	Wayne County	14,259.00
16-7810-00	Weakley County	13,972.00
16-7812-00	White County	13,098.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-7818-00	State Set-Aside Committee, TN	82,863.00
	Tennessee Total	2,043,579.00
Texas		
16-7820-00	Abilene/Jones, Taylor Counties	\$44,721.00
16-7822-00	Amarillo/Potter, Randall Counties	68,098.00
16-7824-00	Austin/Travis, Williamson Counties	253,673.00
16-7826-00	Dallas/Collin,Dallas, Denton Counties	920,291.00
16-7828-00	Houston/Fort Bend, Harris Counties	1,469,810.00
16-7830-00	Longview/Gregg, Harrison Counties	102,449.00
16-7856-00	Anderson County	17,650.00
16-7860-00	Angelina County	28,849.00
16-7862-00	Aransas County	7,521.00
16-7868-00	Atascosa County	11,078.00
16-7870-00	Austin County	6,481.00
16-7876-00	Bastrop County	16,007.00
16-7880-00	Bee County	10,430.00
16-7882-00	Bell County	69,349.00
16-7886-00	Bexar County	421,854.00
16-7896-00	Bowie County	48,338.00
16-7900-00	Brazoria County	114,567.00
16-7902-00	Brazos County	24,267.00
16-7910-00	Brooks County	6,331.00
16-7912-00	Brown County	15,676.00
16-7916-00	Burnet County	8,260.00
16-7918-00	Caldwell County	9,571.00
16-7920-00	Calhoun County	12,480.00
16-7924-00	Cameron County	234,711.00
16-7934-00	Cass County	18,931.00
16-7938-00	Chambers County	9,511.00
16-7940-00	Cherokee County	14,379.00
16-7964-00	Comal County	16,173.00
16-7970-00	Cooke County	8,818.00
16-7972-00	Coryell County	15,344.00
16-8002-00	Dawson County	6,300.00
16-8004-00	Deaf Smith County	10,475.00
16-8020-00	Dimmit County	8,893.00
16-8024-00	Duval County	7,566.00
16-8026-00	Eastland County	6,315.00
16-8028-00	Ector County	60,683.00
16-8034-00	Ellis County	33,296.00
16-8036-00	El Paso County	504,271.00
16-8040-00	Erath County	6,225.00
16-8044-00	Fannin County	10,355.00
16-8062-00	Frio County	8,124.00
16-8066-00	Galveston County	159,167.00
16-8080-00	Gray County	6,858.00
16-8084-00	Grayson County	34,336.00
16-8090-00	Grimes County	7,898.00
16-8092-00	Guadalupe County	17,183.00
16-8094-00	Hale County	16,987.00
16-8104-00	Hardin County	25,699.00
16-8122-00	Hays County	23,031.00
16-8126-00	Henderson County	20,604.00
16-8128-00	Hidalgo County	529,593.00
16-8132-00	Hill County	9,782.00
16-8134-00	Hockley County	8,139.00
16-8138-00	Hopkins County	12,767.00
16-8142-00	Howard County	8,606.00
16-8146-00	Hunt County	28,472.00
16-8148-00	Hutchinson County	10,581.00
16-8158-00	Jasper County	29,045.00
16-8162-00	Jefferson County	141,924.00
16-8170-00	Jim Wells County	22,172.00
16-8180-00	Kaufman County	19,700.00
16-8188-00	Kerr County	7,280.00
16-8196-00	Kleberg County	13,369.00
16-8200-00	Lamar County	20,258.00
16-8202-00	Lamb County	6,436.00
16-8214-00	Liberty County	37,380.00
16-8216-00	Limestone County	7,597.00
16-8226-00	Lubbock County	71,294.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-8234-00	Mc Lennan County	66,877.00
16-8242-00	Marion County	7,069.00
16-8248-00	Matagorda County	33,446.00
16-8250-00	Maverick County	73,751.00
16-8252-00	Medina County	8,622.00
16-8256-00	Midland County	38,857.00
16-8260-00	Milam County	7,853.00
16-8268-00	Montgomery County	75,077.00
16-8272-00	Morris County	7,325.00
16-8276-00	Nacogdoches County	21,720.00
16-8278-00	Navarro County	17,801.00
16-8280-00	Newton County	12,073.00
16-8282-00	Nolan County	7,853.00
16-8284-00	Nueces County	191,001.00
16-8292-00	Orange County	66,063.00
16-8294-00	Palo Pinto County	13,369.00
16-8296-00	Panola County	11,862.00
16-8302-00	Pecos County	6,481.00
16-8304-00	Polk County	13,867.00
16-8310-00	Presidio County	17,997.00
16-8322-00	Red River County	6,873.00
16-8324-00	Reeves County	10,355.00
16-8330-00	Robertson County	6,180.00
16-8336-00	Rusk County	19,293.00
16-8344-00	San Patricio County	36,355.00
16-8354-00	Shelby County	10,460.00
16-8358-00	Smith County	81,106.00
16-8364-00	Starr County	86,788.00
16-8376-00	Tarrant County	407,866.00
16-8402-00	Titus County	12,721.00
16-8404-00	Tom Green County	26,106.00
16-8414-00	Tyler County	13,400.00
16-8416-00	Upshur County	14,771.00
16-8420-00	Uvalde County	19,896.00
16-8422-00	Val Verde County	32,798.00
16-8424-00	Van Zandt County	11,877.00
16-8426-00	Victoria County	33,130.00
16-8430-00	Walker County	9,390.00
16-8432-00	Waller County	8,983.00
16-8436-00	Washington County	6,225.00
16-8438-00	Webb County	120,506.00
16-8442-00	Wharton County	17,846.00
16-8446-00	Wichita County	43,123.00
16-8452-00	Willacy County	25,021.00
16-8458-00	Wilson County	6,255.00
16-8462-00	Wise County	9,812.00
16-8464-00	Wood County	12,525.00
16-8468-00	Young County	8,365.00
16-8470-00	Zapata County	6,285.00
16-8472-00	Zavala County	15,615.00
16-8474-00	State Set-Aside Committee, TX	204,147.00
	Texas Total	7,987,316.00

Utah

16-8480-00	Cache County	\$17,077.00
16-8482-00	Carbon County	7,657.00
16-8488-00	Duchesne County	6,391.00
16-8496-00	Iron County	6,768.00
16-8510-00	Salt Lake County	192,207.00
16-8516-00	San Juan County	6,888.00
16-8518-00	Sanpete County	6,768.00
16-8526-00	Uintah County	9,662.00
16-8528-00	Utah County	63,803.00
16-8536-00	Washington County	17,936.00
16-8540-00	Weber County	57,216.00
16-8544-00	State Set-Aside Committee, UT	61,581.00
	Utah Total	453,954.00

Vermont

16-8552-00	Caledonia County	\$13,731.00
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EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-8554-00	Chittenden County	36,280.00
16-8562-00	Lamoille County	10,717.00
16-8566-00	Orleans County	16,309.00
16-8568-00	Rutland County	24,267.00
16-8576-00	State Set-Aside Committee, VT	58,939.00
	Vermont Total	160,243.00

Virginia

16-8584-00	Accomack County	\$21,735.00
16-8608-00	Brunswick County	7,672.00
16-8610-00	Buchanan County	22,835.00
16-8616-00	Caroline County	12,947.00
16-8618-00	Carroll County	9,782.00
16-8622-00	Charlotte County	6,180.00
16-8634-00	Dickenson County	16,248.00
16-8652-00	Giles County	8,215.00
16-8658-00	Grayson County	7,627.00
16-8664-00	Halifax County	33,356.00
16-8674-00	Isle of Wight County	10,687.00
16-8684-00	Lancaster County	11,003.00
16-8686-00	Lee County	17,288.00
16-8690-00	Louisa County	11,455.00
16-8692-00	Lunenburg County	8,290.00
16-8698-00	Mecklenburg County	16,067.00
16-8702-00	Montgomery County	17,620.00
16-8708-00	Northampton County	6,104.00
16-8710-00	Northumberland County	9,692.00
16-8712-00	Nottoway County	6,496.00
16-8716-00	Page County	10,807.00
16-8720-00	Pittsylvania County	28,291.00
16-8724-00	Prince Edward County	9,405.00
16-8730-00	Pulaski County	19,640.00
16-8742-00	Russell County	23,528.00
16-8744-00	Scott County	11,244.00
16-8748-00	Smyth County	26,091.00
16-8760-00	Tazewell County	29,060.00
16-8764-00	Washington County	26,890.00
16-8766-00	Westmoreland County	10,280.00
16-8768-00	Wise County	30,914.00
16-8770-00	Wythe County	19,142.00
16-8778-00	Bristol City	6,602.00
16-8782-00	Charlottesville City	8,275.00
16-8792-00	Danville City	31,276.00
16-8802-00	Fredericksburg City	6,406.00
16-8808-00	Harrisonburg City	6,270.00
16-8810-00	Hopewell City	9,466.00
16-8814-00	Lynchburg City	19,097.00
16-8820-00	Martinsville City	7,340.00
16-8822-00	Newport News City	67,842.00
16-8824-00	Norfolk City	92,727.00
16-8828-00	Petersburg City	21,463.00
16-8832-00	Portsmouth City	53,855.00
16-8836-00	Richmond City	77,519.00
16-8838-00	Roanoke City	31,321.00
16-8844-00	Staunton City	7,099.00
16-8846-00	Suffolk City	25,292.00
16-8852-00	Williamsburg City	6,948.00
16-8856-00	State Set-Aside Committee, VA	687,799.00
	Virginia Total	1,673,188.00

Washington

16-8858-00	Adams County	\$13,626.00
16-8860-00	Asotin County	7,401.00
16-8862-00	Benton County	81,000.00
16-8864-00	Chelan County	50,192.00
16-8866-00	Clallam County	32,889.00
16-8868-00	Clark County	102,796.00
16-8872-00	Cowlitz County	50,117.00
16-8874-00	Douglas County	22,051.00
16-8878-00	Franklin County	36,898.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

16-8882-00	Grant County	51,488.00
16-8884-00	Grays Harbor County	45,339.00
16-8888-00	Jefferson County	11,938.00
16-8890-00	King County	601,897.00
16-8896-00	Kitsap County	89,155.00
16-8898-00	Kittitas County	16,248.00
16-8900-00	Klickitat County	15,585.00
16-8902-00	Lewis County	42,369.00
16-8906-00	Mason County	22,865.00
16-8908-00	Okanogan County	36,943.00
16-8910-00	Pacific County	12,631.00
16-8912-00	Pend Oreille County	10,264.00
16-8914-00	Pierce County	266,259.00
16-8920-00	Skagit County	59,838.00
16-8922-00	Skamania County	6,466.00
16-8924-00	Snohomish County	200,044.00
16-8928-00	Spokane County	161,353.00
16-8932-00	Stevens County	26,513.00
16-8934-00	Thurston County	89,140.00
16-8938-00	Walla Walla County	28,171.00
16-8940-00	Whatcom County	81,031.00
16-8944-00	Yakima County	204,521.00
16-8948-00	State Set-Aside Committee, WA	24,611.00
	Washington Total	2,501,639.00

West Virginia

16-8950-00	Huntington/Cabell, Wayne Counties	\$57,954.00
16-8954-00	Barbour County	11,093.00
16-8956-00	Berkeley County	25,548.00
16-8958-00	Boone County	12,480.00
16-8960-00	Braxton County	9,571.00
16-8962-00	Brooke County	12,405.00
16-8968-00	Calhoun County	7,175.00
16-8970-00	Clay County	7,355.00
16-8974-00	Fayette County	26,965.00
16-8978-00	Grant County	7,702.00
16-8980-00	Greenbrier County	19,097.00
16-8982-00	Hampshire County	6,753.00
16-8984-00	Hancock County	15,811.00
16-8988-00	Harrison County	37,621.00
16-8990-00	Jackson County	14,078.00
16-8994-00	Kanawha County	80,820.00
16-8998-00	Lewis County	9,842.00
16-9000-00	Lincoln County	12,345.00
16-9002-00	Logan County	21,494.00
16-9004-00	McDowell County	14,711.00
16-9006-00	Marion County	37,938.00
16-9008-00	Marshall County	15,223.00
16-9010-00	Mason County	16,459.00
16-9012-00	Mercer County	22,956.00
16-9014-00	Mineral County	8,305.00
16-9016-00	Mingo County	20,001.00
16-9018-00	Monongalia County	28,563.00
16-9024-00	Nicholas County	16,896.00
16-9026-00	Ohio County	17,907.00
16-9032-00	Pocahontas County	6,481.00
16-9034-00	Preston County	17,952.00
16-9036-00	Putnam County	18,585.00
16-9038-00	Raleigh County	43,319.00
16-9040-00	Randolph County	19,760.00
16-9042-00	Ritchie County	8,169.00
16-9044-00	Roane County	10,671.00
16-9048-00	Taylor County	9,647.00
16-9050-00	Tucker County	6,994.00
16-9054-00	Upshur County	12,932.00
16-9062-00	Wetzel County	10,671.00
16-9066-00	Wood County	38,360.00
16-9068-00	Wyoming County	13,354.00
16-9070-00	State Set-Aside Committee, WV	32,882.00
	West Virginia Total	844,845.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

Wisconsin		
16-9072-00	Eau Claire/Chippewa, Eau Claire Counties	\$43,575.00
16-9098-00	Ashland County	8,139.00
16-9102-00	Bayfield County	7,129.00
16-9104-00	Brown County	58,994.00
16-9120-00	Clark County	15,148.00
16-9126-00	Dane County	62,823.00
16-9134-00	Douglas County	17,650.00
16-9136-00	Dunn County	11,048.00
16-9148-00	Grant County	22,835.00
16-9158-00	Jackson County	7,793.00
16-9162-00	Juneau County	11,847.00
16-9164-00	Kenosha County	39,671.00
16-9170-00	La Crosse County	25,428.00
16-9176-00	Langlade County	7,958.00
16-9182-00	Marathon County	38,526.00
16-9184-00	Marinette County	16,896.00
16-9186-00	Marquette County	6,481.00
16-9190-00	Milwaukee County	296,886.00
16-9198-00	Monroe County	13,671.00
16-9200-00	Oconto County	12,706.00
16-9214-00	Polk County	13,098.00
16-9216-00	Portage County	22,835.00
16-9220-00	Racine County	57,774.00
16-9226-00	Rock County	48,082.00
16-9230-00	Rusk County	7,747.00
16-9236-00	Sawyer County	9,330.00
16-9242-00	Taylor County	7,913.00
16-9246-00	Vernon County	9,013.00
16-9248-00	Vilas County	7,536.00
16-9252-00	Washburn County	6,918.00
16-9264-00	Waushara County	8,818.00
16-9266-00	Winnebago County	40,048.00
16-9272-00	State Set-Aside Committee, WI	314,574.00
	Wisconsin Total	1,278,890.00
Wyoming		
16-9288-00	Fremont County	\$20,740.00
16-9300-00	Lincoln County	6,044.00
16-9302-00	Natrona County	29,271.00
16-9320-00	Uinta County	10,837.00
16-9326-00	State Set-Aside Committee, WY	83,108.00
	Wyoming Total	150,000.00
American Samoa		
16-9328-00	American Samoa	\$106,050.00
	American Samoa Total	106,050.00
Guam		
16-9330-00	Guam	\$101,000.00
	Guam Total	101,000.00
Northern Marianas		
16-9332-00	Northern Mariana Islands	\$65,650.00
	Northern Marianas Total	65,650.00
Puerto Rico		
16-9334-00	Puerto Rico	\$2,180,200.00
	Puerto Rico Total	2,180,200.00

EMERGENCY FOOD AND SHELTER NATIONAL BOARD PROGRAM—PHASE XVI ALLOCATIONS—Continued

Trust Territories		
16-9338-00	Trust Territories	\$22,725.00
	Trust Territories Total	22,725.00
Virgin Islands		
16-9340-00	Virgin Islands	\$141,400.00
	Virgin Islands Total	141,400.00

[FR Doc. 98-3865 Filed 3-4-98; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL RESERVE SYSTEM**Agency Information Collection Activities: Proposed Collection; Comment Request****AGENCY:** Board of Governors of the Federal Reserve System**ACTION:** Notice**Background**

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 4, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested

from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report titles: Notice By Financial Institutions of Government Securities Broker or Government Securities Dealer Activities; Notice By Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer
Agency form numbers: FR G-FIN, FR G-FINW

OMB control number: 7100-0224

Frequency: on occasion

Reporters: state member banks, foreign banks, uninsured state-chartered branches or state-chartered agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge corporations
Annual reporting hours: 33 (32 hours for FR G-FIN; 1 hour for FR G-FINW)
Estimated average hours per response: 1 hour for FR G-FIN; 15 minutes for FR G-FINW

Number of respondents: 37 (32 for FR G-FIN; 5 for FR G-FINW)

Small businesses are affected.

General description of report: This information collection is mandatory (15 U.S.C. 78o-5(a)(1)(B)(ii)) and is not given confidential treatment.

Abstract: Each financial institution that acts as a government securities broker or dealer is required to notify its appropriate regulatory authority of its broker-dealer activities, unless exempted from the notice requirement by Treasury Department regulation. Notification is required to record the intent to engage in government securities broker or dealer activity, to

amend information submitted previously, and to record termination of such activity. Financial institutions use forms G-FIN and G-FINW to fulfill these notification requirements. The Federal Reserve uses the information in its supervisory capacity to measure compliance with the Government Securities Act of 1986.

Board of Governors of the Federal Reserve System, March 2, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98-5753 Filed 3-4-98; 8:45AM]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Mid-America Bancorp, Inc.*, Jewell, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Heartland Bank, N.A., Jewell, Kansas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Texas United Bancshares, Inc.*, La Grange, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bancshares, Inc., La Grange, Texas, and thereby indirectly acquire Premier Holdings Nevada, Inc., Carson City, Nevada; State Bank, La Grange, Texas; and South Central Texas Bancshares, Inc., Flatonia, Texas, and thereby indirectly acquire South Central Texas Bancshares Delaware, Inc., Wilmington, Delaware; Flatonia State Bank, Flatonia, Texas; and Central Texas Bank, Gonzales, Texas.

Board of Governors of the Federal Reserve System, March 2, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-5751 Filed 3-4-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455

East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to acquire State Savings Company, Columbus, Ohio, and thereby indirectly acquire State Savings Bank, Columbus, Ohio, Century Bank, Upper Arlington, Ohio, and State Savings Bank, FSB, Scottsdale, Arizona, and thereby engage in operating a savings and loan association, pursuant § 225.28(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98-5752 Filed 3-4-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Request for Industry Guidelines and Principles

AGENCY: Federal Trade Commission.

ACTION: Notice requesting industry guidelines and principles regarding online information practices.

SUMMARY: The Federal Trade Commission is currently preparing a report to Congress on the effectiveness of self-regulation as a means of protecting consumer privacy online. The Commission will report on the extent to which commercial Web sites, including sites directed to children, are disclosing their information practices and offering consumers choice regarding the online collection and use of their personal information. The Commission will also report its assessment of existing industry guidelines and principles on the online collection and use of consumers' personal information. The Commission requests that interested trade associations and industry groups voluntarily submit copies of their information practice guidelines and principles for inclusion in the Commission's report.

DATES: Copies of guidelines and principles must be submitted to the Commission on or before March 31, 1998.

ADDRESSES: Six paper copies of each set of guidelines or principles should be submitted to: Secretary, Federal Trade Commission, Room H-159, Sixth Street & Pennsylvania Ave., N.W., Washington, D.C., 20580. Submissions should be captioned as "Privacy Guidelines 1998-P954807."

To enable prompt and efficient review and dissemination of the guidelines or principles to the public, they also should be submitted, if possible, in

electronic form, on either a 5¼ or a 3½ inch computer disk, with a disk label stating the name of the submitter and the name and version of the word processing program used to create the document. Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.

FOR FURTHER INFORMATION CONTACT:

Martha Landesberg, Attorney, Division of Credit Practices, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202-326-2825, or Toby Milgrom Levin, Attorney, Division of Advertising Practices, Federal Trade Commission, Sixth Street & Pennsylvania Avenue N.W., Washington, D.C. 20580, telephone 202-326-3156.

SUPPLEMENTARY INFORMATION: Over the past three years the Federal Trade Commission has held a series of public workshops devoted to the consumer protection issues raised by the proliferation of consumers' personal information on the Internet. Workshop participants have included members of the online business community, privacy and consumer advocates, and experts in interactive technology. In June 1996, workshop participants discussed a wide array of subjects, including the collection and use of personal information on the World Wide Web (the "Web"); the necessary elements of self-regulatory efforts to enhance consumer privacy online; developments in interactive technology that could enhance online information privacy; consumer and business education efforts; the role of government in protecting online information privacy; and the special issues raised by the online collection and use of information from and about children. On January 6, 1997, the Commission published the staff report *Consumer Privacy on the Global Information Infrastructure* (1996), which summarized the workshop testimony.

On March 6, 1997, the Commission published a notice in the **Federal Register** announcing a follow-up workshop and seeking written commentary on a number of relevant issues, including: (1) Web sites' current actual practices in the collection, compilation, sale, and use of consumers' personal information, including information about children; (2) current implementation of self-regulatory efforts to address online privacy, including proposals presented at the June 1996 Workshop; and (3) current design and implementation of technologies intended to enhance online information

privacy. In June 1997, Commission staff convened a follow-up workshop designed to further develop the record on these topics. The transcripts of the 1996 and 1997 workshops, the staff report *Consumer Privacy on the Global Information Infrastructure* (1996), as well as the commentary submitted in connection with the 1997 workshop, are posted on the Commission's Web site at <http://www.ftc.gov>.

The 1997 workshop demonstrated that consumers are deeply concerned about the privacy and security of their personal information in the online environment. Research presented at the workshop indicates that consumers are looking for greater protections. The workshop testimony showed that members of the online industry are aware of the need to address consumers' concerns. Throughout the series of Commission workshops on these issues, the online industry has argued that self-regulation is the most efficient and effective means of creating online privacy protections. Trade association representatives have made commitments to develop privacy policies as guidance for their members, and to encourage their members to post their own information practices on their Web sites.

The Commission is currently preparing a report to Congress on whether industry proposals demonstrated in the workshops have been translated into broader industry progress toward effective self-regulation. In March 1998, Committee staff will survey commercial Web sites to determine the extent to which these sites, including sites directed to children, are disclosing their information practices and offering consumers choice regarding the collection and use of their personal information online. Staff will also assess existing industry guidelines and principles regarding the online collection and use of consumers' personal information. Staff requests that interested trade associations and industry groups submit their guidelines and principles on or before March 31, 1998 for inclusion in the report. The Commission will report its findings to Congress in June 1998.

Availability of Submissions

All guidelines and principles will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and Commission regulations, 16 CFR part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, Sixth Street &

Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission will make this notice and, to the extent technically possible, all submissions received in response to this notice, available to the public through the Internet at the following address: <http://www.ftc.gov>. The Commission cannot currently receive submissions responding to this notice over the Internet.

Authority: 15 U.S.C. §§ 41 *et seq.*

By direction of the Commission, Commissioner Azcuernaga not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98-5610 Filed 3-4-98; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA-98-4]

Fiscal Year 1998 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to further strengthen the national system of legal assistance aimed at supporting the elder rights activities of state and area agencies on aging and at improving the quality and accessibility of the legal assistance provided to older people.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for four (4) to six (6) projects that build and strengthen the national system of legal assistance which supports the elder rights activities of state and area agencies on aging and which improves the quality and accessibility of the legal assistance provided to older people.

The deadline date for the submission of applications is May 18, 1998. As provided by Title IV, Section 424(c) of the Older Americans Act, eligibility for grant awards is limited to national nonprofit legal assistance organizations experienced in providing support, on a nationwide basis, to local legal assistance providers.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Elder Rights Protection, 330 Independence Avenue, S.W., Room 4270, Washington, DC 20201, or by calling 202/619-0769.

Dated: February 26, 1998.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 98-5740 Filed 3-4-98; 8:45 am]

BILLING CODE 4150-40-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Availability of Annual Reports

In accordance with section 13 of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) gives notice that annual reports for the following CDC Federal advisory committees have been filed with the Library of Congress:

Advisory Committee for Injury Prevention and Control Injury Research Grant Review Committee

Copies of these reports are available to the public for inspection at the Newspaper and Current Periodical Reading Room, Room LM 133, Madison Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC 20540-4760, telephone 202/707-5690. Additionally, on weekdays between 8 a.m. and 4:30 p.m., copies will be available for inspection at the Management Analysis and Services Office, Committee Management and Program Panels Activity, CDC, 4 Executive Park Drive, Suite 1117, Atlanta, Georgia 30329, telephone 404/639-6389. Copies may also be obtained by writing to the CDC Committee Management and Program Panels

Activity (MS E-72), 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Dated: February 27, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-5665 Filed 3-4-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY-09-98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. *National Exposure Registry (0923-0006)—Revision*

The information collected is part of the Agency for Toxic Substances' ongoing National Exposure Registry (NER)—a database composed of a listing

of persons, along with health and demographic information, with documented exposure to selected toxic substances subregistries). The NER was created in response to a Congressional Superfund mandate to create a registry of persons with exposure to hazardous substances and a registry of persons with illness or health problems as a result of exposure to hazardous substances. The mandate was created because there is little or no information available about the potential health effects of low-level, long-term exposure to hazardous substances on a general population—such as is found at waste sites. Unlike most occupationally exposed populations, this environmentally-exposed population has extremely vulnerable components such as pregnant women, the elderly, those with compromised health, and children.

Since the adverse health effects are not known, neither is the latency period for the potential health effects. Therefore, the NER is a longitudinal project: a baseline and biennial follow-ups that will continue until all parties involved agree the established criteria for ending that chemical specific subregistry have been met. The questionnaire is administered (usually in a personal interview) at baseline; the same questionnaire is administered (using computer assisted interviews) to each registrant longitudinally. The data is compared to national norms at each collection and intrafile comparisons are made over multiple collections. Other than their time to participate, there is no cost to respondents. The period requested is for 3 years. Total average annual burden hours are 5,833.33.

Year	Number of registries	Total Number of respondents	Responses per respondent	Total responses	Hrs. per respondent	Total burden (in hrs.)
Year 1	0 updates, 1 new	13,000	1	13,000	0.5	6,500
Year 2	1 update, 0 new	13,000	1	13,000	0.5	6,500
Year 3	4 updates, 0 new	9,000	1	9,000	0.5	4,500

2. *Information Collection To Establish Community Assistance Panels (CAPs)—(0923-0007); Extension*

The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into

the environment. To facilitate this effort, ATSDR seeks the cooperation of the community being evaluated through direct communication and interaction. Direct community involvement is required to conduct a comprehensive scientific study and to effectively disseminate specific health information in a timely manner. Also, this direct interaction fosters a clear understanding of health issues that the community considers to be of importance and establishes credibility for the agency. The Community Assistance Panel

nomination forms are completed by individuals in the community to nominate themselves or others for participation on these panels. Other than the possible cost of a postage stamp, there is no cost to respondents. This request is for a 3-year extension of the current OMB approval of the Community Assistance Panel nomination form. Total annual burden hours are 200.

Respondents	Number of respondents	Number of responses/re-spondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
General Public	1200	1	.1666	200

3. X-Ray Examination Program—(0920-0020)—Extension

The X-ray Examination Program is a federally mandated program under the Federal Mine Safety and Health Act of 1977, PL-95-164. The Act provides the regulatory guidance for the

administration of the National Coal Workers' X-ray Surveillance Program, a surveillance program to protect the health and safety of underground coal miners. This program requires the gathering of information from coal mine operators, participating miners, participating x-ray facilities and

participating physicians. The Appalachian Laboratory for Occupational Safety and Health (ALOSH), National Institute for Occupational Safety and Health (NIOSH) is charged with administration of this program. Total annual burden hours are 4,791.

Form title	Total of respondents	Responses/re-spondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Roentgenographic Interpretation Title 42 CFR 37.40 (b) 37.50(a); 37.60(a)	20,000	1	0.05	1,000
Miner Identification Title 42 CFR 37.20 37.40(b); 37.60(a)	10,000	1	0.333	3,333
Coal Mine Operator Plan Title 42 CFR 37.4(a)	500	1	0.5	250
Facility Certification Title 42 CFR 37.42(c)	300	1	0.5	150
Interpreting Physician Certification Title 42 CFR 37.51(c)	350	1	0.1666	58

Dated: February 24, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98-5662 Filed 3-4-98; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs 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: Dermatologic and Ophthalmic Drugs 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 March 19 and 20, 1998, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Walker Room, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Tracy Riley or Angie Whitacre, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455, or FDA Advisory Committee Information

Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 19, 1998, the committee will discuss generic topical dermatologicals draft guidance. On March 20, 1998, the committee will participate in a scientific discussion of clinical trial design questions for products intended for the treatment of psoriasis.

Procedure: On March 19, 1998, from 8:30 a.m. to 1 p.m., and on March 20, 1998, from 8:30 a.m. to 5:30 p.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 should be made to the contact person by March 11, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m., on March 19 and 20, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 13, 1998, 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.

Closed Committee Deliberations: On March 19, 1998, from 1 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the

meeting will be closed to permit discussion on pending investigational new drug applications issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 25, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98-5630 Filed 3-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N-0309]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Infant Formula Requirements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 1997

(62 FR 66634), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0256. The approval expires on February 28, 2001.

Dated: February 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-5627 Filed 3-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0376]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Tobacco Retailer Tracker Study" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 25, 1997 (62 FR 62775), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0358. The approval expires on May 31, 1998.

Dated: February 25, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-5628 Filed 3-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0311]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 5, 1997 (62 FR 42131), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0116. The approval expires on February 28, 2001.

Dated: February 25, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98-5629 Filed 3-4-98; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-855 (OMB # 0938-0685)]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by the Balanced Budget Act of 1997 (P.L. 105-33). Without this information, HCFA would not be able to properly implement the requirements set forth in the statute. As a note, HCFA has incorporated in this submission all public comments submitted to HCFA and OMB, in response to the 12/18/97 **Federal Register** notice (Volume 62, Number 243) [Page 66376-66377] soliciting comments on these information collection requirements. In addition, HCFA has included in this submission

responses to all public comments received and, as appropriate, revised the collection instrument and/or instructions.

HCFA is requesting OMB review and approval of this collection by 03/24/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 03/23/98. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: Revision of a currently approved collection.

Title of Information Collection: Medicare and Other Federal Health Care Program Providers/Supplier Enrollment Application.

Form Number: HCFA-855, HCFA-855C, HCFA-855R, HCFA-855S.

Use: This information is needed to enroll providers and suppliers into the Medicare program by identifying them, and verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims.

Frequency: Initial Enrollment/Certification.

Affected Public: Business or other for-profit, Individuals or Households, Not-for-profit institutions, and Federal Government.

Number of Respondents: 225,000.

Total Annual Responses: 225,000.

Total Annual Hours Requested: 435,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 03/23/98:

Health Care Financing Administration,
Office of Information Services,
Information Technology Investment
Management Group, Division of
HCFA Enterprise Standards, Room
C2-26-17, 7500 Security Boulevard,

Baltimore, MD 21244-1850, Fax
Number: (410) 786-1415, Attn: John
Burke HCFA-855 and,
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC
20503, Fax Number: (202) 395-6974
or (202) 395-5167, Attn: Allison
Herron Eydt, HCFA Desk Officer

Dated: February 26, 1998.

John P. Burke III,

*HCFA Reports Clearance Officer, HCFA,
Office of Information Services, Information
Technology Investment Management Group,
Division of HCFA Enterprise Standards.*

[FR Doc. 98-5699 Filed 3-4-98; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration [HCFA-1103-GN]

Medicare Program; HCFA Market Research for Providers and Other Partners

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

ACTION: General notice with comment
period.

SUMMARY: This notice seeks public comments on information needs of Medicare risk contract health maintenance organizations (HMOs) and competitive medical plans (CMPs) and communication strategies that could improve the effectiveness and efficiency of the risk contract program. Under section 4002 of the Balanced Budget Act of 1997, and with the implementation of the Medicare+Choice program, all HMOs and CMPs will contract with HCFA under requirements of the Medicare+Choice program. The information sought in this notice will facilitate future changes in the contracting program, as well as improve information needs and communication strategies under the current risk program. Respondents should prioritize issues raised in the preliminary research and identify any additional areas of information needs and best communication strategies.

This initiative is one component of our overall effort to develop a comprehensive communication strategy with Medicare providers and HMOs/CMPs and to develop innovative approaches that will assist all program participants to obtain and use information in the most accessible and effective manner. Preliminary research on the information needs of Medicare

risk contract HMOs and CMPs and effective communication strategies has identified a number of areas in which we could provide additional information and potential strategies for communicating that information effectively.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 4, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1103-GN, P.O. Box 26676, Baltimore, MD 21207.

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

Room 309-G, Hubert H. Humphrey
Building, 200 Independence Avenue,
SW, Washington, DC 20201, or
Room C5-09-26, 7500 Security
Boulevard, Baltimore, MD 21244-
1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1103-GN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

Comments may also be submitted electronically to the following e-mail address: HCFA-1103-GN@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will also be available for public inspection at the Independence Avenue address above.

FOR FURTHER INFORMATION CONTACT:
Sherry Terrell (410) 786-6601.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1876 of the Social Security Act (the Act) authorizes Medicare payment to health maintenance organizations (HMOs) and competitive medical plans (CMPs) that contract with HCFA to furnish covered services to Medicare beneficiaries. For purposes of

this notice the term HMO includes both CMPs and HMOs. To apply for and be approved to operate as a Medicare risk contractor, HMOs must be licensed in the State in which they operate and have at least 5,000 commercial members. Most HMOs that have applied for Medicare contracts have at least several years of experience managing commercial enrollments and existing operational systems in place. Even for HMOs with many years of experience, however, applying for a Medicare risk contract may require substantial investments of staff time and significant costs. Our requirements for participation, the extent of our oversight of risk contracts, and ongoing interaction between the HMO and

HCFA are generally much greater than HMOs experience in obtaining and maintaining State licensure and in serving commercial clients.

Because of these different requirements, information and communication processes between the HMO and HCFA are an important component of the Medicare risk contracting program. HMOs that are applying for Medicare risk contracts need information and guidance in understanding our requirements in order to ensure that their operational systems and approach to Medicare contracting meets those requirements. Once approved and operational, risk contract HMOs have ongoing needs for information and communication with us in order to operate successfully and to

remain in compliance with our standards.

Our information comes from a number of different sources, including Peer Review Organizations (PROs) and other contractors, who are responsible for specific operational functions.

HMOs are responsible for obtaining, understanding, and integrating into their operations the information available from all these sources and for seeking clarification of specific aspects of the risk contract process, when necessary. Table 1 summarizes the major areas of responsibility for providing information and ongoing communication with risk contract HMOs for each of these information sources.

TABLE 1.—HCFA INFORMATION SOURCES

Source	Information responsibility
HCFA Central Office	Legal, regulatory, and financial issues. Payment Process. Accretion/Deletion Process. Application. Site Visit.
HCFA Regional Office	Operational requirements/review. Review marketing materials and other beneficiary communications. Monitoring site visits and follow-up retroactive enrollments.
Peer Review Organizations	Communications on cooperative quality improvement projects. Investigation and follow-up of beneficiary complaints and non-coverage notices.
Other Contractors Intermediaries and Carriers ..	Coverage decisions (for example, local carriers medical review policies). Payment rates for out-of-area services.
CHDR	Health dispute resolution.
NCQA	Receive HEDIS®.
ACR Review	Review completeness ACR submission.

II. The Application Process

Undertaking a Medicare risk contract requires that HMOs address a number of issues that are different from their commercial enrollment and service delivery processes. The differences between the experience of HMOs in operating a commercial HMO based on employer contracts and the requirements for a Medicare risk contract makes it likely that an HMO beginning the Medicare risk application process will obtain assistance from some source that has prior experience in Medicare risk contracting. For HMOs that are part of a national chain that has other Medicare risk contracts, that experience may come from a group in the corporate office of the chain. Other HMOs may hire an individual with prior Medicare risk contract experience to lead the application and implementation processes. Many HMOs hire consulting firms with Medicare risk contract experience to guide them through the process of applying and to assist in preparation of the application.

If requested, we will provide information to clarify requirements. Establishing the correct lines of communication early in the process is essential to the HMO's ability to develop a successful Medicare application.

A. Ongoing Operations

Once we have approved the application submitted by the HMO, implementation and ongoing operations of the Medicare risk plan requires continuing interaction and information exchange between the HMO and HCFA. We have specific responsibilities with respect to communication with the HMO. We delegate some of our responsibilities for quality assurance to PROs that work directly with the HMOs. We also use contractors to handle some functions; for example, we contract for Adjusted Community Rating (ACR) review services and this contractor deals directly with each HMO to obtain information and clarify submissions before completing a preliminary review and forwarding the ACR submissions to

us for approval. In addition, HMOs require information from intermediaries and carriers to coordinate coverage decisions and to pay out-of-area providers. HMOs also must work with the Center for Health Dispute Resolution (CHDR) on reconsideration.

The operational Medicare risk HMO maintains close communication with us on an ongoing or periodic basis for the following functions and requirements:

- *Marketing Materials and Plans.* The HMO must obtain advance approval of any materials that will be used to market to, or communicate with, Medicare beneficiaries.
- *Enrollment and Disenrollment.* The HMO submits monthly lists of new enrollees and disenrolled members to our data system either directly or through a contractor (for example, CompuServe) that we use to determine payment. Discrepancies require resolution that involve interaction between the HMO and HCFA.
- *Quality Assurance.* The HMO must provide information to HCFA Central and Regional Offices and may

participate in quality assurance and quality improvement initiatives that we have developed with the designated PRO in its area. Beginning in 1997, HMOs must provide HEDIS® data to us, through our contractor, the National Committee for Quality Assurance (NCQA); and participate in the Consumers Assessments of Health Plans Study (CAHPS) survey of Medicare beneficiaries. Working with the HMO staff, the PRO also follows up with HMO member complaints, grievances, and appeals. We can also request corrective action plans for quality related issues and monitor compliance.

• *Financial.* Annually, the HMO must prepare financial projections and analyses to support the benefit package and premiums that will be offered to Medicare beneficiaries. We currently use a contractor to initiate the ACR

review process and to work with the HMOs to clarify components of the HMO's submission. Our final review and approval process may involve further requests for information and clarification.

• *New Regulations and Changes in Regulations.* We develop new regulations based on legislation and make revisions in existing regulations. In some cases, the HMOs are asked to provide information necessary for the development of new regulations and to provide data, information, or comments on these regulations while in the developmental stage. The final regulation is then published in the **Federal Register**. If necessary, we may provide clarification and elaboration of the intent and operational implications of the new regulation.

• *Ongoing Monitoring and Reporting.* Medicare HMOs are responsible for

regular reporting to us. Site visits to each HMO are conducted bi-annually by our staff. The site visits are comprehensive in nature and normally include review of every operational area of the HMO. Following the site visit, we notify the HMO of any areas in which deficiencies were identified and ask it to prepare a corrective action plan. We will provide direction to other entities with which the HMOs communicate.

B. Preliminary Research

In discussions with several Medicare risk contract HMOs, PROs, and others, we have identified a preliminary list of information needs that are not currently being fully met. These information items are summarized in Table 2 for HMOs in the application process and in Table 3 for operational Medicare risk contract HMOs.

TABLE 2.—ADDITIONAL INFORMATION THAT WOULD BE USEFUL DURING THE APPLICATION PERIOD

A. Basic information on Medicare and operational information on risk contracting, including—	• HCFA manuals; • Operational Policy Letters (OPLs); • Transmittal Letters; • Guidelines and regulations, such as National Marketing Guidelines, and Physician Incentive Plan regulations. • Organizational structure of HCFA. • Informing applicants of the duration of the application review process and providing a contact person for the review. • Informing applicants when there is a delay in the process, and of the reason for the delay. • Published documents, with a brief description of contents, and instructions on how to obtain them and; • Names of contacts, by operational area, with e-mail addresses and telephone numbers.
B. Sources of information, including:	• Medicare utilization statistics, by geographic area; • Information on studies conducted by, or supported by, HCFA on managed care quality, outcomes, utilization patterns, special population needs, and "best practices"; • Results of quality of care studies and outcomes surveys, by area of country and type of facility; • Quality measurement by hospital and skilled nursing facility (SNF), to assist in recruiting quality facilities for the provider networks; • Regulations affecting HMOs, hospitals, physicians, and other providers; • Listings of Diagnosis-Related Group (DRG)-exempt facilities; and, • Physician fee schedules and DRG payment rates for hospitals.
C. Information and data, including:	

TABLE 3.—INFORMATION WANTED/NEEDED BY MEDICARE RISK CONTRACTOR HMOs

A. Upon Contract Award: Operational Information	• Provide a basic package of materials (interviewees suggested that this occur during the application process). • Provide written advice on key set-up issues, such as expected interactions with PROs, CHDR, local carriers and intermediaries; availability of use of MCCOY, CompuServe, and/or Litton; systems and reporting requirements and the format in which they must be provided.
B. Operational Information:	
1. Carrier and Intermediary	• Provide clearer examples of what services and procedures are covered, as determined by local carriers and fiscal intermediaries, especially for controversial medical areas. • Provide appropriate local prevailing physician Medicare fee schedules to determine reimbursement of out-of-area care.
2. Accretion and Deletion Process	• Provide a complete and accurate listing of codes used in reports, such as Reply Listings and Exception Detail; include accurate and current institutional status code on Special Reply. • Label cumulative 6-month report with start and end dates and disseminate the anticipated release schedule. • Enable Litton/CompuServe to provide corrected information with the list of errors. Presently, HMOs have to look up the information although Litton/CompuServe have the information available. • Develop industry standards and methodology for calculation of voluntary disenrollment rates. • Summarize changes made in manuals given to plans on an annual basis.
3. Marketing	• Inform HMOs on a regular basis on the status of marketing materials in the review process.

TABLE 3.—INFORMATION WANTED/NEEDED BY MEDICARE RISK CONTRACTOR HMOs—Continued

4. ACR Process	• Provide detailed information on the ACR review process, including delineation of rationale for steps and the detail behind each step. • Provide the methodology for how study factors are derived. • Provide a description of how capitation rates are developed and calculated. • Provide explicit instructions up-front on the information HMOs must submit, including the information requirements of reviewers. • Provide explicit directions for how ACR information should be formatted (for example, using LOTUS-DOS). • Provide acceptable and unacceptable data sources and methodologies. • Publish alternative "recommended" studies. • Provide guidelines for Medicare risk point of service premium calculations. • Provide national demographic cost factors for utilization in the APR. • Inform HMOs on a regular basis of the status of ACR submissions in the review process.
5. Quality Improvement (QI)	• Release benchmark data (for example, congestive heart failure and percentage of Medicare beneficiaries on ACE inhibitors) and access measures (for example, sentinel events, such as inpatient admission that should not occur if quality ambulatory care is provided). • Provide, under the HEDIS® 3.0 (Health Plan Employer Data and Information Set), information to HMOs. • Develop clearer standards and reviewer guidelines for Quality Improvement studies. • Disseminate CHDR and Beneficiary Information Tracking System (BITS) reports to all plans.
6. Other	• Provide information on our organizational structure and key contacts, by operational area, with e-mail addresses and telephone numbers. • Provide information on conferences where staff are scheduled to discuss specific issues. • Provide information about activities and new initiatives such as the Reengineering Application and Monitoring (RAM) initiative on an on-going basis. • Inform HMOs when staff will be out of the office, and identify a back-up person in his or her absence. • Provide guidelines for coordination of dual eligibles and how best to serve the special needs populations. • Disseminate to HMOs any information disseminated to other participants in Medicare risk program, for example, hospitals, physicians, beneficiaries.

A number of information process issues have also been identified in these limited preliminary discussions. Process issues relate to timeliness and completeness of information that we provide to Medicare risk contract HMOs and to consistency of the information provided. A summary of process issues raised in these preliminary discussions is provided in Table 4.

TABLE 4.—INFORMATION PROCESS ISSUES AND SUGGESTIONS RAISED BY HMOs AND OTHER INTERVIEWEES

A. Updated and Revised HCFA Materials:	• Revised, updated, and indexed HMO/CMP Manual. • Revise applications to explicitly state requirements. • Establish clean copies of background materials; update as necessary; and tab.
B. Improve Timeliness of Communications Relative to HMO Operational Requirements:	
1. Accretion and Deletion Issues	• Improve timeliness and accuracy of information and data exchanged between Social Security Administration, HCFA, and authorized vendors. • Improve timeliness, accuracy, and exchange of data used to determine specific categories of beneficiaries. • Review Reply Listing and Exception Detail codes for accuracy, currency, and completeness prior to disseminating. • Change timing of Reply Listing to be 1 week earlier. • Disseminate DRG tape timely. • Communicate changes affecting Medicare claims process timely; summarize changes in one place. • Inform HMOs as soon as an overpayment or underpayment is discovered or suspected. • Disseminate OPLs as we release or receive them.
2. Payment Issues	
3. Dissemination of Operational Policy Letters (OPLs).	
4. Timeliness of Communications and Responses.	• Allow sufficient time for HMOs to implement changes in operational procedures and information systems when issuing policies, regulations, and/or guidelines. • Strive to have structure in place prior to implementation of policies, regulations, and/or guidelines. • Provide information to HMOs, at regular intervals, as new approaches are being developed. • Schedule the Annual Renewal Process earlier in the year.
5. HMOs' Ability to Reach HCFA Staff	• Provide to HMOs a list of staff who have specific responsibility for specific HMO related functions and issues. • Establish standards for timeliness of response. • Increase the number of staff or streamline communication process and information transmittal mechanisms to improve timeliness of response.
6. Bi-Annual Review	• Allow sufficient time for HMOs to implement corrective action plan, to demonstrate change, prior to re-auditing.
C. Consistency and Coordination:	• Assign to the HMO a specific contact person to coordinate all activities and to provide clarification to questions and problems. • Assign specific staff to resolve inquiries and problems related to their specific topic areas.

TABLE 4.—INFORMATION PROCESS ISSUES AND SUGGESTIONS RAISED BY HMOs AND OTHER INTERVIEWEES—Continued

D. Simplifying Information Processes and Requirements: 1. Designating HMO-specific and Corporate Medicare Liaisons. 2. Streamline Application Process 3. Real-Time, On-Line Medicare Beneficiary Eligibility. 4. Streamline Marketing Approval Process E. Coordination with Contractors:	• Identify a “point” person to answer questions about the status of the development of new, and the updating of existing, policies or regulations. • Allow HMOs to designate an HMO-specific and corporate liaison. • Carbon copy designated Medicare liaison on all communications. • Streamline application process to be “less paper bound” and more real-time activity. • Designate appropriate “boilerplate” sections of the application. • Strive to make Medicare beneficiary eligibility a real-time, on-line activity. • Allow HMOs to maintain system logs for documentation. • Institute a national “use and file” policy. • Provide sufficient training to our contractors and reviewers who perform functions, such as the ACR review, PRO review, and on-site quality monitoring before allowing such agents to perform these functions. • Improve communication between HCFA, the PROs, and CHDR; clarify respective roles of HCFA, PROs, CHDR, and HMOs.
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In addition, a number of potential ways that we could communicate information to Medicare risk contract HMOs has been identified. It is likely that the most effective communication strategies may be different for Medicare risk HMOs with different characteristics and that we may want to develop multiple communication strategies to ensure that information is provided appropriately to all Medicare HMOs. Table 5 describes communication strategies that we have identified during preliminary discussions with program participants.

TABLE 5.—SUMMARY OF MAJOR RECOMMENDATIONS

A. Communication Strategy: 1. Written Materials 2. Verbal Communication, by Telephone and In-Person. 3. E-mail and Electronic Data Transfers	• Written materials should be clear and complete; changes made to updated policies, regulations, and manuals should be explicit. • Materials should be organized to ensure that all written materials on a specific topic are available in one place and/or are cross-referenced with other related materials. • One contact point should be designated for HMOs to identify and request all written materials that are available. This could be on the HCFA Website, with a dedicated e-mail address or an 800 number specifically for ordering written materials. • We should move towards providing timely written responses to outstanding inquiries and issues currently answered verbally. Currently, HMOs find the need to maintain extensive documentation of verbal communications. The use of e-mail would facilitate this. • Currently, HMOs believe that they are not well informed of the status of our various activities (not all HMOs are members of the American Association of Healthcare Plans (AAHP) or have access to outside counsel or government affairs programs in Washington, D.C.) and it is easy to lose track of the initiatives over time because of sporadic communications. • We should create and disseminate a newsletter which could provide timely and concise information on our activities, such as initiatives, demonstrations, and pilot programs, as well as the status of regulatory developments, that may offer HMOs opportunities to participate or may affect their operations. —Most HMOs would be willing to pay to receive a newsletter that provided them with information and understanding of our initiatives and regulations. • HMOs would like one person assigned to serve as their contact person for the coordination of all activities and for seeking clarification to questions. • We should update our voice mail to indicate absences, and designate an appropriate back-up person with the authority to answer questions. • We should set up a telephone hotline that HMOs could access to receive clarification and consistent answers to specific regulatory or operational issues. • We should develop a fax-on-demand service to provide up-to-date information on hot topics, as the Agency for Health Care Policy and Research and provider associations have done. • Many HMOs would prefer e-mail communication to verbal communications. E-mail would facilitate transmittal of questions and responses that are currently being handled by telephone and would produce written documentation of the issue discussed and guidance received. • HMOs would like us to make beneficiary eligibility a real-time, on-line activity that would improve the timeliness and accuracy of our data and enable Medicare beneficiaries to be enrolled sooner. They would like to be able to show a log for documentation rather than paper copies in a file. • We should move towards accepting the electronic file transfer of draft marketing materials. This procedure would permit us to make changes directly in the document, and return them to the HMOs in a timely manner, and produce documentation of comments and approval. • HMOs support our collection of ACRs on-line, noting this was a pilot project in 1996 that will be mandatory in 1997. However, not all plans received the relevant documentation or received it after their ACRs had been submitted. Some HMOs attempting the electronic submission were unsuccessful in doing so, because of the system freezing or designated passwords not working. HMOs believe strongly that, before making a new procedure mandatory, we should first test the system to ensure it works and then disseminate the information in a timely manner prior to implementation. • Implement a mechanism(s) for systematically tracking various HMO materials in review. Most useful to be able to track are:
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TABLE 5.—SUMMARY OF MAJOR RECOMMENDATIONS—Continued

4. HCFA Website	Applications and Service Area Expansions; Review of Marketing Materials; and ACR filings. HMOs would like to see us expand the amount of information available through the HCFA Website, and develop a process for posting information on a more routine and timely basis (within 1 to 2 weeks of release). Increased posting of materials on the HCFA Website would reduce our burden in copying and mailing requested materials. Materials that the HMOs would like made available through the website are— • OPLs—the complete catalog of OPLs be made available on the Internet; at a minimum, HMOs would like a comprehensive index of available OPLs by subject area; • General information about HCFA, including conferences where staff will be speaking and a directory of staff by responsibility for specific areas and issues, with telephone numbers and e-mail addresses; • Routine HCFA reports; and relevant statistics and data. Specific examples of reports and data cited include— —Medicare/Medicaid Sanction reports, which some plans currently receive in hard copy once a year; —CHDR and BITS reports, and analysis of disenrollment patterns; —OSCAR–3 reports, which contain information that HMOs find helpful and an added value in credentialing SNFs for inclusion in provider network; —List of participating providers; —Local fee schedules and DRGs; and —Messages sent through MCCOY, our Managed Care Option Information on-line data base system, because data processors are not the appropriate staff to receive these. —Some HMOs indicated that they would be willing to pay a fee to access reports on-line through a password system.
5. CD-ROMs	• CD-ROMs of HCFA manuals should be updated to be compatible with the Windows program rather than just DOS. We should consider selecting a standard word processing program in which to publish reports and data. Currently, HMOs are dealing with unformatted, and sometimes unusable, ASCII files. • OPLs should also be made available on a CD-ROM.
B. Conferences and Training:	Given the emergence of new Medicare risk contractors and the use of consultants, some HMOs believe we should offer the following courses and seminars to current and potential risk contractors: • A basic course on Medicare and the risk contracting program for inexperienced organizations that are considering applying for a contract. • An Application Preparation seminar explaining the various sections of the application (such as, enrollment and disenrollment, grievances and appeals, coverage issues, and marketing materials) and addressing frequently asked questions. This presentation would allow us to more efficiently deliver information that is repeated to many of the HMOs during various points of the application process. • A course for risk contractors discussing the operational and regulatory aspects of risk contracting. —We should require that potential applicants attend a seminar series prior to being able to submit an application. • Forums with plans and advocacy groups on new regulations or new interpretations of regulations, or new policies such as HEDIS®/CAHPS, enrollment and payment, and physician incentive plan regulations are very helpful to HMOs. —HMOs would like us to continue offering such seminars and, to the extent possible, expand their use. —The seminars should be offered in a timely manner to consider the operational impacts on HMOs. • Periodic Meetings. The HMOs would like us to conduct meetings on a regular basis, such as quarterly, that bring together risk Medicare contractors to discuss issues affecting all HMOs and to conduct question and answer sessions. These sessions would allow us to be aware of issues and concerns to HMOs, as well as HMOs to be aware of our perspective. • Also, our staff who deal directly with Medicare risk contractors would benefit from a structured training program that would enable them to understand Medicare risk contracting rules and regulations and HMO operations, including monitoring of compliance. —Structured training could include direct observation of plan operations to witness the sophistication of some operational aspects. —We may also want to consider having our reviewers attend the NCQA “Building Blocks” sessions, as well as having at least one representative from each Regional Office attend AAHP’s annual Medicare/Medicaid conference that highlights industry-wide concerns.

III. Discussion

Under section 4002 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), and with the implementation of the Medicare+Choice program, all HMOs and CMPs will contract with us under

requirements of the Medicare+Choice program. Our preliminary discussions of information needs, information process, and communication strategies have produced a significant number of issues that will be considered in the development of our Medicare risk

contract HMO communication strategy. Although the preliminary research was conducted before the BBA, the results are applicable to the Medicare+Choice program. However, since only a relatively small number of HMOs and other organizations have participated in

this preliminary process, we are seeking additional comments and suggestions on these issues. Respondents should prioritize issues raised in the preliminary research and identify additional areas of information needs and communication strategies. In addition, it would be useful to obtain comments on those issues that would be most likely to improve the effectiveness and efficiency of the Medicare risk contract program in order to establish priorities and develop a program to implement the communication strategy. This notice seeks comments and suggestions related to these issues, that we may use to develop and refine communications with Medicare risk contract HMOs.

IV. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses. Most HMOs are small entities, either by nonprofit status or by having revenues of \$5 million or less annually. For purposes of the RFA, HMOs are considered small entities.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan Statistical Area and has fewer than 50 beds.

Preliminary research on the information needs of Medicare risk contract HMOs and effective communication strategies has identified a number of areas in which we could provide additional information to HMOs and has identified potential strategies for communicating that information more effectively. The purpose of this notice is to seek public comments on the information needs of Medicare risk contract HMOs and communication strategies that could improve the effectiveness and efficiency of the risk contract program. For these reasons, we

are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice would not have a significant impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and the time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in that document.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program)

Dated: November 26, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98-5234 Filed 3-4-98; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it

is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: <http://www.health.org>.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414-328-7840 (formerly: Bayshore Clinical Laboratory)
Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615-255-2400
Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800-541-4931, 334-263-5745
Alliance Laboratory Services 3200 Burnet Ave., Cincinnati, OH 45229, 513-569-2051 (formerly: Jewish Hospital of Cincinnati, Inc.)
American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703-802-6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866, 800-433-2750
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta

- Way, Salt Lake City, UT 84108, 801-583-2787, 800-242-2787
- Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-202-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
- Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305-325-5784
- Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215-2802, 800-445-6917
- CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984 (formerly: CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., a Member of the Roche Group)
- Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800-876-3652/417-269-3093 (formerly: Cox Medical Centers)
- Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88-6819, Great Lakes, IL 60088-6819, 847-688-2045/847-688-4171
- Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941-418-1700/800-735-5416
- Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912-244-4468
- DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800-898-0180/206-386-2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
- DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310
- ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601-236-2609
- General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6267
- Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800-725-3784/915-563-3300 (formerly: Harrison & Associates Forensic Laboratories)
- Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102-5037, 860-545-6023
- LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913-888-3927/800-728-4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
- Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702-334-3400 (formerly: Sierra Nevada Laboratories, Inc.)
- Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800-437-4986/908-526-2400 (formerly: Roche Biomedical Laboratories, Inc.)
- Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823
- Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734/800-331-3734
- MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901-795-1515/800-526-6339
- Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419-381-5213
- Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302-655-5227
- MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800-832-3244/612-636-7466
- Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317-929-3587
- Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800-752-1835/309-671-5199
- MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-4512, 800-950-5295
- Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612-725-2088
- National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805-322-4250
- Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361/801-268-2431
- Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 541-341-8092
- Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310-312-0056 (formerly: Centinela Hospital Airport Toxicology Laboratory)
- Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509-926-2400/800-541-7891
- PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 415-328-6200/800-446-5177
- PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817-595-0294 (formerly: Harris Medical Laboratory)
- Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-339-0372/800-821-3627
- Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619-279-2600/800-882-7272
- Premier Analytical Laboratories, 15201 East I-10 Freeway, Suite 125, Channelview, TX 77530, 713-457-3784/800-888-4063 (formerly: Drug Labs of Texas)
- Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800-473-6640
- Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810-373-9120/800-444-0106. (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
- Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410-536-1485. (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
- Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800-526-0947/972-916-3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
- Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220-3610, 800-574-2474/412-920-7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
- Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800-288-7293/314-991-1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
- Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108-4406, 800-446-4728/619-686-3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
- Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201-393-5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
- Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630-595-3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc)
- Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804-378-9130
- Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800-749-3788/254-771-8379
- S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505-727-8800/800-999-LABS
- SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770-452-1590 (formerly: SmithKline Bio-Science Laboratories)
- SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-637-7236 (formerly: SmithKline Bio-Science Laboratories)
- SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352-787-9006 (formerly: Doctors & Physicians Laboratory.)
- SmithKline Beecham Clinical Laboratories 400 Egypt Rd., Norristown, PA 19403, 800-877-7484/610-631-4600 (formerly: SmithKline Bio-Science Laboratories)
- SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847-447-4379/800-447-4379. (formerly: International Toxicology Laboratories)
- SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818-989-2520/800-877-2520.
- South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219-234-4176
- Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602-438-8507
- Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W.

Saginaw, Lansing, MI 48915, 517-377-0520 (formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405-272-7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573-882-1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305-593-2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818-226-4373/800-966-2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800-492-0800/818-996-7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915-561-8851/888-953-8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555-0551, 409-772-3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940-123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800-661-9876/403-451-3702

Gamma-Dynacare Medical Laboratories, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519-679-1630

MAXXAM Analytics, Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905-890-2555 (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98-5767 Filed 3-4-98; 8:45 am]

BILLING CODE 4160-20-U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-2898-N-07]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval

number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Economic Opportunities for Low and Very Low-Income Persons.

Office: Office of Economic Opportunity, EPE Assistant Secretary for Fair Housing and Equal Opportunity.

OMB Approval Number: 2529-0043.

Description of the Need for the Information and its Proposed Use: This information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses that provide economic opportunities to them.

Form Number: Form HUD 958 and Form HUD 60002.

Respondents: State, Local Business or Tribal Government, Other For-Profit and Not-For-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD-60002	58,593		1		2		117,186
Form HUD-598	100		1		1		100
.....	90		1		4		360

Total Estimated Burden Hours: 117,646.

Status: Reinstatement with change, of a previously approved collection, for which approval has expired.

Contact: Delores Scott-Southerland, HUD, (202) 708-2251; Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: February 27, 1998.

[FR Doc. 98-5737 Filed 3-4-98; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4263-N-89]

Submission for OMB Review: Comment Request**AGENCY:** Office of the Assistant Secretary for Administration HUD.**ACTION:** Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of

an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 26, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Periodical Estimate for Partial Payment and Related Schedules.

Office: Public and Indian Housing.

OMB Approval Number: 2577-0025.

Description of the Need for the Information and its Proposed Use: The Periodical Estimate for Partial Payment and related schedules are submitted monthly to the public housing agency (PHA) by a general contractor. The forms are used to establish the amount due on the project from a PHA for work completed during the current month.

Form Number: HUD-5001, 51002, 51003, and 51004.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Monthly and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-51001	12		145		3.5		6,090
HUD-51002	10		145		1		1,450
HUD-51003	36		145		1.5		7,830
HUD-51004	12		145		2.5		4,350
Recordkeeping	1,740		1		.25		435

Total Estimated Burden Hours: 20,155.

Status: Reinstatement, no changes.

Contact: William C. Thorson, HUD, (202) 708-4703, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: February 26, 1998.

[FR Doc. 98-5738 Filed 3-4-98; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR**Office of the Secretary****Invitation for Proposals**

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit proposals for restoration of resources and services injured by the Exxon Valdez oil spill. The Invitation to Submit Restoration

Proposals for Federal Fiscal Year 1999, a booklet explaining the process, is available from the Trustee Council office.

DATES: Proposals are due April 15, 1998, at 5:00 p.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council, 645 "G" Street, Suite 401, Anchorage, Alaska 99501-3451.

FOR FURTHER INFORMATION CONTACT: The Restoration Office, (907) 278-8012 or toll free at (800) 478-7745 (in Alaska) or (800) 283-7745 (outside Alaska).

SUPPLEMENTARY INFORMATION: Following the Exxon Valdez oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan calls for annual work plans identifying projects

to accomplish restoration. Each year proposals for restoration projects are solicited from a variety of organizations, including the public.

Dated: February 26, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98-5690 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-RG-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Receipt of Applications for Permit**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of

1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-839607

Applicant: Franz Metz, Hobe Sound, FL.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement to the survival of the species.

PRT-839405

Applicant: The Cincinnati Zoo, Cincinnati, OH.

The applicant requests a permit to import 4 wild-caught cheetahs (*Acinonyx jubatus*) from Namibia for the purpose of captive propagation.

PRT-839842

Applicant: Michael A. Passaglia, Yuba City, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcax*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT-770191

Applicant: U.S. Fish and Wildlife Service, Jacksonville, FL.

Permit Type: Enhancement.

Name and Number of Animals: West Indian manatee (*Trichechus manatus*), unlimited.

Summary of Activity to be Authorized: The applicant requests renewal and amendment to the enhancement permit for recovery, rehabilitation and release of West Indian manatees (*Trichechus manatus*). To reduce space constraints at Florida facilities, the applicant has requested an amendment to the permit that would allow for the temporary transfer of manatees to facilities outside of Florida for continued rehabilitation. Authorization for incidental public display with an appropriate education program at the out-of-state facilities is requested as is currently allowed for in-state facilities.

Source of Marine Mammals: Florida.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the

Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT-839518

Applicant: John Kloosterman, Tucson, AZ.

The applicant requests a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken prior to April 30, 1994, from the Baffin Bay polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address on or before April 6, 1998.

Dated: February 27, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98-5614 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Proposed Listing Priority Guidance for Fiscal Years 1998 and 1999

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces proposed guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during fiscal year (FY) 1998 and FY 1999. Although the Service is returning to a more balanced listing program, serious backlogs remain and a method of prioritizing among the various activities is necessary. Highest

priority will be processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority will be processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Processing of proposed or final designations of critical habitat will be accorded the lowest priority.

DATES: Comments on this guidance will be accepted until April 6, 1998. The FY 1997 Listing Priority Guidance (extended on October 23, 1997) will remain in effect until the Final FY 1998 and FY 1999 guidance is published.

ADDRESSES: Comments regarding this guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ-452, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703-358-2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098-43105), that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates). However, this system does not provide for prioritization among different types of listing actions such as preliminary determinations, proposed listings, and final listings.

Serious backlogs of listing actions resulted from the 1995 funding

rescission and 1996 major reductions in funding for the listing program and from the 1995–96 listing moratorium. The enactment of Pub. L. 104–6 in April 1995 rescinded \$1.5 million from the Service's budget for carrying out listing activities through the remainder of FY 1995. Pub. L. 104–6 prohibited the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down. The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 species. The extremely limited funding available to the Service for listing activities generally precluded petition processing and the development of proposed listings from October 1, 1995, through April 26, 1996.

When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service faced the considerable task of allocating the available resources to the significant backlog of listing activities. The Final Listing Priority Guidance for FY 1996 was published on May 16, 1996 (61 FR 24722). The Service followed that three-tiered approach until the Final Listing Priority Guidance for FY 1997 was published on December 5, 1996 (61 FR 64475). The FY 1997 Listing Priority Guidance employed four tiers for assigning relative priorities to listing actions to be carried out under section 4 of the Act. Tier 1, the Service's highest priority, was the processing of emergency listings for species facing a significant risk to their well-being. Processing final decisions on pending proposed listings was assigned to Tier 2. Tier 3 was to resolve the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list or reclassify species from threatened to endangered status. Preparation of proposed or final critical habitat designations and processing reclassifications, activities which provide little or no additional conservation benefit to listed species, were assigned lowest priority (Tier 4).

While operating the listing program under the Final FY 1997 Listing Priority

Guidance, the Service focused its resources on issuing final determinations (Tier 2 listing activities); no Tier 1 actions (emergency listings) were required during FY 1997. During FY 1997, the Service made final determinations for 156 species (145 final listings and 11 withdrawals). As a result of this expeditious progress, only 100 proposed species remained at the end of FY 1997 (including newly proposed species). After April 1, 1997, the Service began implementing a more balanced listing program and began processing more Tier 3 listing actions. Thus, the Service also made expeditious progress on determining the conservation status of species designated by the Service as candidates for listing. A candidate is a species for which the Service has found that there is sufficient information indicating that a listing proposal is appropriate. Such a finding may be made on the Service's own initiative, or as a result of the petition process. Once a species is placed on the Service's list of candidates, its conservation status must be resolved by either proposing the species for listing or by completing a candidate removal form. During FY 1997, the Service proposed 23 species from the candidate list. In addition, the Service published 9 petition findings in FY 1997. The Service also updated the list of candidate species with the publication of the most recent Candidate Notice of Review published on September 19, 1997 (see 16 U.S.C. 1533(b)(3)(B)(iii)(II)); at that time, there were 207 candidate species. This total represents 52 additions to the list of candidates.

During FY 1997, the Service returned to a more balanced listing program, but serious backlogs remain. Besides the 100 species awaiting final rules and the 207 candidates awaiting resolution of their conservation status, there are 35 species with due/overdue 90-day petition findings and 30 species with due/overdue 12-month petition findings.

It is important to recognize that the Service faces even greater backlogs in its responsibilities to implement other aspects of the Act. There is a large section 7 consultation and Habitat Conservation Planning (HCP) backlog. The recovery backlog of over 300 species awaiting Recovery Plans and an extreme shortage of recovery implementation funding make the recovery backlog most severe. The Service bases its funding requests on the workloads faced by all activities of the endangered species program. Because the magnitude of the other endangered species backlogs exceeds the listing

backlog, the President's FY 1998 request for funding endangered species programs was focused on section 7 consultation, HCPs, and recovery rather than listing. However, the President's budget for FY 1999 includes a significant increase in funding for listing.

In enacting the Department of the Interior's FY 1998 Appropriations Act (Pub. L. 105–163), Congress agreed with the President's priorities regarding endangered species funding, providing significant increases to the section 7 consultation, HCP, and recovery programs, while still providing for a modest increase in the listing program funding. Moreover, Congress expressly limited the amount the Service can spend on listing actions (including the designation of critical habitat) to \$5.19 million.

Given the backlogs of proposed species pending final action, candidate species awaiting proposal, and petitions awaiting administrative findings, it is extremely important for the Service to focus its efforts on listing actions that will provide the greatest conservation benefits to imperiled species in the most expeditious and biologically sound manner. It has been longstanding Service policy (1983 Listing and Recovery Priority Guidelines (48 FR 43098)) that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. The Service also must prioritize among types of listing actions and this level of prioritization is the guidance provided below.

The Service has made this guidance applicable to FY 1999 as well as FY 1998 to avoid any confusion over whether this guidance will remain in effect if the budget process for FY 1999 is delayed. However, when the Service receives its FY 1999 budget, it will review this guidance, and, if appropriate, modify or terminate it.

Proposed Listing Priority Guidance for Fiscal Years 1998 and 1999

To address the biological, budgetary, and administrative issues noted above, the Service submits the following proposed listing priority guidance. As with the Final Listing Priority Guidance for FY 1997 issued December 5, 1996 (extended on October 23, 1997), this guidance supplements, but does not replace, the 1983 listing priority guidelines, which was silent on the

matter of prioritizing among different types of listing activities.

As noted above, the Department of the Interior's FY 1998 appropriation provides no more than \$5.19 million for the Service's endangered species listing program. The \$5.19 million budget for all listing activities will fall far short of the resources needed to completely eliminate the listing backlogs in FY 1998 and FY 1999. Therefore, some form of prioritization is still necessary, and the Service will implement the following listing priority guidance in FY 1998 and FY 1999.

The following sections describe a three-tiered approach that assigns relative priorities, on a descending basis, to listing actions to be carried out under section 4 of the Act. The 1983 listing priority guidelines will continue to be used to set priority among species within types of listing activities. The Service emphasizes that the Final Listing Priority Guidance for FY 1997 (extended on October 23, 1997) will be effective until final FY 1998 and FY 1999 guidance is issued, unless extended or canceled by future notice. In order to continue to move toward a more balanced listing program, the Service will concurrently undertake listing actions in Tiers 1 and 2 during FY 1998 with a listing budget of only \$5.19 million. As the Service informed Congress in its budget justification, critical habitat designations (Tier 3 actions) during FY 1998 should not be expected. The FY 1998 listing appropriation is only sufficient to support high-priority listing, candidate assessment, petition processing activities, and a minimal amount of high priority delisting/reclassification actions. A single critical habitat designation could consume up to twenty percent of the total listing appropriation, thereby disrupting the Service's biologically based priorities. Higher priority listing actions (Tiers 1 and 2) provide the greatest amount of protection for imperiled species while making the most efficient use of limited resources.

Completion of emergency listings for species facing a significant risk to their well-being remains the Service's highest priority (Tier 1). Processing final decisions on pending proposed listings, the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal), processing 90-day or 12-month administrative findings on petitions, and undertaking a limited number of delisting/reclassification activities are assigned to Tier 2. Third priority is the processing of petitions for critical habitat designations and the

preparation of proposed and final critical habitat designations; these actions provide little added conservation benefit and are therefore assigned lowest priority (Tier 3).

Tier 1—Emergency Listing Actions

The Service will immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant and imminent risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This would include preparing a proposed rule to list the species. The Service will conduct a preliminary review of every petition that it receives to list a species or reclassify a threatened species to endangered in order to determine whether an emergency situation exists. If the initial review indicates an emergency situation, the action will be elevated to Tier 1 and an emergency rule to list the species will be prepared. Emergency listings are effective for 240 days. A proposed rule to list the species is usually published at the same time as an emergency rule. If the initial review does not indicate that emergency listing is necessary, processing of the petition will be assigned to Tier 2 as discussed below.

Tier 2—Processing Final Decisions on Proposed Listings; Resolving the Conservation Status of Candidate Species (Resulting in a New Proposed Rule or a Candidate Removal); Processing Administrative Findings on Petitions To Add Species To the Lists and Petitions to Delist or Reclassify Species; and Delisting or Reclassifying Actions

The majority of the unresolved proposed species face high-magnitude threats. Focusing efforts on completing final determinations provides maximum conservation benefits to those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a withdrawal of a proposed listing. Completion of a withdrawal may not appear consistent with the conservation intent of this guidance. However, once a determination not to make a final listing has been made, publishing the withdrawal of the proposed listing takes minimal time and appropriations. Thus it is more cost effective and efficient to bring closure to the proposed listing than it is to postpone the action and take it up at some later time. For the same reasons, the Service will consider critical habitat prudency and determinability findings to be Tier 2

activities, although actual designation of critical habitat is a Tier 3 activity. The publication of new proposals (candidate conservation resolution) and the processing of petition findings to add species to the lists of threatened and endangered species have significant conservation benefit and these actions are also now placed in Tier 2. Delisting activities also have been placed in Tier 2 because of the indirect conservation benefits of these actions. Nationwide in FY 1998 and FY 1999, the Service will undertake the full array of listing actions in Tiers 1 and 2 as appropriate. However, some Regions and some Field Offices still have significant backlogs of proposed species, candidates, petitions, and delistings. Therefore, additional guidance is needed to clarify the relative priorities within Tier 2.

Setting Priorities Within Tier 2

Pursuant to the 1983 listing priority guidelines, proposed rules dealing with taxa believed to face imminent, high-magnitude threats have the highest priority within Tier 2. If an emergency situation exists, the species will be elevated to Tier 1. Proposed listings that cover multiple species facing high-magnitude threats have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed first to avoid possible extinction. Proposed listings for species facing high-magnitude threats that can be quickly completed have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete. Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue will be processed first.

Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. It provides some protection in that all Federal agencies must "confer" with the Service on actions that are likely to jeopardize the continued existence of proposed species.

Resolving the conservation status of candidates will be afforded the second highest priority within Tier 2. The resolution of a candidate species' conservation status will be accomplished through the publication of new proposed rules or the processing of candidate removal forms (which, when signed by the Director, remove species from the candidate list). The 1983 listing priority guidelines are the basis for assigning a candidate species a listing priority number. This system ensures that species in the greatest need

of protection should be processed first. New proposed listings for species facing imminent, high-magnitude threats (candidates with the highest listing priority numbers) will be processed ahead of candidates with lower listing priority numbers. The Service includes new proposals for petitioned species that are currently on the candidate list in this priority level within Tier 2.

The processing of 90-day petition findings and 12-month petition findings to add species to the lists will be the next priority among Tier 2 listing activities. Once a 90-day petition finding is published, the Service will make every reasonable effort to complete the 12-month finding in the appropriate time frame. When it is practicable for the Service to complete a 90-day finding within 90 days, the Service is statutorily afforded a 12-month period from the receipt of a petition to completion of the 12-month finding. However, in those cases in which it is not practicable for the Service to complete a 90-day finding within 90 days of receipt of the petition, after the 90-day finding is completed, the Service will still require 9 months to complete a thorough biological status review and issue a 12-month finding.

Finally, the Service expects to complete a small number of delistings and reclassifications during FY 1998 and FY 1999. The recovery of listed species is the ultimate goal of the endangered species program. The Service finds that the prompt delisting of recovered species and the reclassification of recovering species (from endangered to threatened status) is necessary to keep the public and other interested parties informed of a species' conservation status; this is especially important to reducing the section 7 consultation backlog since a species that is recovered and delisted will no longer require consultation. Monitoring of species already on the lists is accomplished through the recovery program; however, the small expenditure of funds necessary to process the change in a species' status will continue to be undertaken by the listing program. Delisting and reclassifications will be afforded the lowest priority in Tier 2. As with the processing of withdrawals, the conservation benefit of these actions may not be readily apparent. However, the Service believes that significant, albeit indirect, conservation benefit will result from the processing of certain high-priority delisting or reclassification actions. Moreover, the Service is obligated to maintain the lists of threatened and endangered species and

it is of utmost importance to keep the lists accurate and up to date.

The Service expects to make substantial progress in removing or reducing the backlogs of proposed species awaiting final determination, candidates awaiting resolution, and petitions awaiting findings during FY 1998 and FY 1999. During FY 1998 and FY 1999, the application of both the listing priority guidance described above and the 1983 guidelines are critical to maintaining nationwide and program-wide biologically sound priorities to guide the allocation of limited listing resources.

Tier 3—Processing Critical Habitat Determinations

Designation of critical habitat, when undertaken, consumes large amounts of the Service's listing appropriation and, in most cases, does not add any conservation benefit beyond those achieved when a species is listed as endangered or threatened. It is essential during periods of limited listing funds to maximize the conservation benefit of listing appropriations. The Service has determined that in most cases no additional protection is gained by designating critical habitat for species already on the lists and the application of the Service's limited resources is best utilized to add new species to the lists rather than designating critical habitat for species already receiving full protection under the Act. The Service places higher priority on addressing imperiled species that presently have very limited or no protection under the Act, than on devoting limited resources to the expensive process of designating critical habitat for species already protected by the Act. Critical habitat will remain in Tier 3, and the Service does not intend to process Tier 3 actions, including petitions related to critical habitat designation, during FY 1998; this will be re-evaluated when FY 1999 appropriations are received. Furthermore, because the protection that flows from critical habitat designation applies only to Federal actions, the designation of critical habitat provides little or no additional protection beyond the "jeopardy" prohibition of section 7, which also applies only to Federal actions.

Allocating Listing Resources Among Regions

The Service allocates its listing appropriation among its seven Regional Offices based strictly on the number of proposed and candidate species for which the Region has lead responsibility with the exception of providing minimum "capability

funding" for one listing biologist for each Region. The objective is to ensure that those areas of the country with the largest percentage of known imperiled species will receive a correspondingly high level of listing resources. The Service's experience in administering the Act for the past two decades has shown, however, that it needs to maintain at least a minimal listing program in each Region in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term, thus the "capability funding" to each Region. In the past, when faced with seriously uneven workloads, the Service has experimented with reassigning workload from a heavily burdened Region to less burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a listing package will be useful for recovery planning and other conservation activities, and that expertise should be concentrated in the geographic area inhabited by the species. In addition, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge may be useful in processing a final decision. For these reasons, the Service has found it unwise to reassign one Region's workload to personnel in another Region. Because the Service must maintain a listing program in each Region, Regions with few outstanding proposed listings may be able to address lower priority listing actions within Tier 2 (such as new proposed listings or petition findings), while Regions with many outstanding proposed listings will use most of their allocated funds on finalizing proposed listings.

Addressing Matters in Litigation

The Service understands the numerous statutory responsibilities it bears under the Act. These responsibilities, however, do not come with an unlimited budget. The Service is often required to make choices about how to prioritize its responses to those statutory responsibilities in order to make the best use of its limited resources. Under these circumstances, technical compliance with the Act with respect to one species often means failure to comply with the technical requirements of the Act for another species. This guidance is part of a continuing effort to express to the public that the Service is striving towards compliance with the Act in the manner that best fulfills the spirit of the

Act, using the Service's best scientific expertise.

The Service understands that some may believe they have reason to bring suit against the Service for failing to carry out specific actions with regard to specific species. These actions question the Service's judgment and priorities, placing the emphasis of Act compliance on technical fulfillment of the statute for specific species rather than on the best use of the Service's resources to provide the maximum conservation benefit to all species. There are many outstanding section 4 matters currently in litigation. In each case, the plaintiff seeks, in effect, to require the Service to sacrifice conservation actions which the Service believes would have major impacts for actions which the Service believes would have much lesser effects.

In no case will the Service adjust its priorities to reflect the threat or reality of litigation. The Service has argued and will continue to argue before the courts that it should be allowed to prioritize its activities so as to best fulfill the spirit of the Act. Should any court not accept this argument, the Service will, of course, carry out the instruction of the court or the terms of any settlement reached. The Service believes, however, that such obligations impede the overall conservation effort for a much lesser benefit for a single species.

For example, during FY 1997, a plaintiff succeeded in obtaining a court order that required the Service to designate critical habitat for the southwestern willow flycatcher. The Service acknowledges that it had a responsibility to carry out this action and intended to meet its statutory requirement, like all others, when its budget and backlog of higher priority listing actions allowed. However, the Service still contends that this particular action had relatively little conservation benefit, especially compared to the numerous listings of wildlife and plants that had to be delayed to allow it to proceed when it did. The Service's Region 2 is suffering from their inability to prioritize its responsibilities and complete several high priority species issues last year.

Public Comments Solicited

The Service intends that any action resulting from this proposed guidance be as accurate and as effective as possible. Therefore, any suggestions from the public, concerned governmental agencies, the scientific community, environmental groups, industry, commercial trade entities, or any other interested party concerning any aspect of this proposed guidance are hereby solicited. The Service will take

into consideration any comments and additional information received and will announce final guidance after the close of the public comment period and as promptly as possible after all comments have been reviewed and analyzed. The Final FY 1997 Listing Priority Guidance, extended on October 23, 1997, will remain in effect until publication of the Final FY 1998 and FY 1999 Listing Priority Guidance.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: March 2, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98-5814 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Amended Environmental Assessment and Receipt of Application for Amendment to Previously Issued Incidental Take Permit From Waterside Downs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Waterside Down Development Corporation (Applicant), is seeking to amend a previously-issued incidental take permit (ITP), PRT-800150, from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act), as amended. The ITP authorizes for a period of 5 years, the incidental take of the threatened Florida scrub jay, *Aphelocoma coerulescens* in Brevard County, Florida. The originally issued ITP was to authorize incidental take incidental to construction of a mixed use development/commercial enterprise on approximately 76.5 acres, known as Waterside Down-Phase I.

The Applicant proposes to expand the original project, originally known as Waterside Down-Phase I, by 63.30 acres. Within this additional acreage, the Applicant proposes to construct as yet an unspecified number of single family homes, condominium units, and necessary infrastructure to this to the original ITP, known as Waterside Downs-Phase II. Waterside Downs-Phase II is located on the barrier island of Brevard County, adjacent to a Wal-Mart/Albertson strip mall and Brittany Apartments to the north, S.R. A1A to

the east, Holy Name of Jesus Church and a residential development to the south, and vacant land scheduled to be Waterside Down-Phase I on the east. Of the 63.3 acres of land within Waterside Downs-Phase II, the Service has determined that 4.96 acres are considered occupied by the Florida scrub-jay. The amendment would address this additional amount of impact to the Florida scrub-jay as a result of adding in Phase II.

The Service also announces the availability of a supplement to the May 1996, Environmental Assessment (EA), Finding Of No Significant Impact (FONSI) and an amended Habitat Conservation Plan (HCP) for the revised level of expected/anticipated incidental take. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that re-issuing the ITP with the requested amendment is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The FONSI is based on information contained in the EA and amended HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the amended application, EA, and amended HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before April 6, 1998.

ADDRESSES: Persons wishing to review the amended application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville, Florida, Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216-0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit PRT-800150 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679-7110; or Mr. Jay Herrington at the Jacksonville, Florida, Field Office (see **ADDRESSES** above), telephone: 904/232-2580.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay, *Aphelocoma coerulescens*, is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration due to the expanded placement of permanent infrastructure, homes, and other attributes of the amended project (now including both Waterside Downs-Phase I and Waterside Downs-Phase II) will reduce the availability of feeding, shelter, and nesting habitat.

The supplement to the May 1996, EA considers the environmental consequences of several alternatives for the amended project. One action proposed is issuance of the amended ITP based upon submittal of the revised HCP as proposed. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens* and exposure of the Applicant under Section 9 of the Act. A third alternative is a proposed Project that is designed with a different mitigation strategy focusing on management of existing lands surrounding the project area. The proposed action alternative is issuance of the ITP as requested to be amended to minimize and mitigate the loss of an additional 4.96 acres of occupied scrub-jay habitat. This provides for restrictions of construction activity during the species' nesting season. Further, the revised HCP and ITP proposes to increase, in relative proportion compared to the original project, and purchase of additional offsite habitat for the Florida scrub jay, and the endowment fund for the offsite acquired habitat.

As stated above, the Service has made a preliminary determination that the

issuance of an amended ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA, HCP, and appropriate amendments. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an amended ITP would not have significant effects on the human environment in the project area.

2. The additional proposed take is incidental to an otherwise lawful activity.

3. The applicant has ensured that adequate additional funding will be provided to implement the measures proposed in the submitted revisions to the HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the amended ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of his permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of the amended Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinions, in combination with the above findings, will be used in the final analysis to determine whether or not to issue an amended ITP.

Dated: February 26, 1998.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 98-5664 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 4, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 176, Page 47826, that an application had been filed with the Fish and Wildlife Service by Darryl Hastings

for a permit (PRT-834072) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Davis Strait population, Northwest Territories, Canada prior to April 30, 1994.

Notice is hereby given that on February 6, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358-2104 or Fax (703) 358-2281.

Dated: February 27, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98-5613 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Stock Assessment Reports

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised marine mammal stock assessment reports for Alaska sea otter, walrus and polar bear; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), the Fish and Wildlife Service (FWS) has developed draft revised marine mammals stock assessment reports for sea otter, polar bear and walrus in Alaska which are available for public review and comment.

DATES: Comments must be received by June 3, 1998.

ADDRESSES: Copies of the draft revised stock assessment reports are available from the (1) Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; or (2) Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Room 840-ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203. Copies of FWS's final stock assessment reports for the southern sea otter in California, the northern sea otter in

Washington State, and the Florida and Antillean stocks of West Indian manatees from the southeastern United States and Puerto Rico, respectively, are available from address (2) above.

Comments on the draft revised stock assessment reports for Alaska species should be sent to Supervisor, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT:

Jeff Horwath in the FWS's Division of Fish and Wildlife Management Assistance, Arlington, Virginia at (703) 358-1718. For information specifically about sea otter, polar bears, and Pacific walrus in Alaska, contact David McGillivray at (907) 786-3800 or FAX: (907) 786-3816.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361-1407) requires the FWS and the National Marine Fisheries Service (NMFS) to

prepare stock assessment reports for each marine mammal stock that occurs in waters under the jurisdiction of the United States. In late 1995, the FWS issued final stock assessment reports for marine mammals in Alaska as required, and announced their completion and public availability in a **Federal Register** notice on October 4, 1995 (60 FR 52008). These reports contained information regarding the distribution and abundance of the stocks, population growth rates and trends, estimates of human-caused mortality from all sources, descriptions of the fisheries with which the stocks interact, and the status of each stock.

Section 117 of the MMPA also requires the FWS and the NMFS, consistent with any new information that indicates that the status of a stock has changed or can be more accurately determined, to revise these reports annually for strategic stocks of marine

mammals and every three years for stocks determined to be none-strategic. In accordance with these statutory provisions, the FWS has reviewed all of the final stock assessment reports and determined that it would be appropriate at this time to revise the reports for the Alaska species in order to incorporate new information that was not available in 1995. Although the FWS has decided to revise these reports based on additional information, the status of the stocks has not changed.

Table 1 in this notice summarizes the draft revised stock assessment reports. The table lists the stocks, their geographic range, regional designation, estimated abundance (N_{EST}), minimum abundance estimate (N_{MIN}), Potential Biological Removal level (PBR), maximum theoretical growth rate (R_{MAX}), recovery factor (F_R), annual estimated average human-caused mortality, and the status of the stock.

TABLE 1.—SUMMARY OF DRAFT STOCK ASSESSMENT REPORTS FOR SEA OTTER, POLAR BEAR, AND PACIFIC WALRUS IN ALASKA

Species	Stock	N_{EST}	N_{MIN}	R_{MAX}	F_R	PBR	Mortality causes (5 yr average)			Stock status
							Subsistence	Fishery	Other	
Sea otter	Southeast Alaska	8,807	8,709	0.20	1.00	871	376	0	Unk	Non-strategic.
Sea otter	Southcentral Alaska	22,867	20,948	0.20	1.00	2,095	312	<1	Unk	Non-strategic.
Sea otter	Southwest Alaska	68,212	65,761	0.20	0.86	5,659	99	<2	Unk	Non-strategic.
Polar bear	Alaska Chukchi/Bering Seas.	(²)	(²)	(¹)	0.50	Unk	45	0	<10	Non-strategic.
Polar bear	Alaska Southern Beaufort Sea.	1,801	1,599	0.06	1.00	72	55	0	<1	Non-strategic.
Pacific Walrus	Alaska	201,039	188,316	0.08	1.00	7,533	4,869	17	4	Non-strategic.

¹ Probably similar to Alaska Southern Beaufort Sea Stock.

² Not available.

Dated: February 24, 1998.

Robyn Thorson,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 98-5701 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-98-1020-24-1 A]

Sierra Front/Northwest Great Basin Resource Advisory Council; Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of

Land Management (BLM) Council meetings will be held as indicated below. The agenda includes: options on Black Rock Desert; Winnemucca Land Use Plan amendment options; Walker River water rights; meeting structure and schedule for 1998; and public comment period.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for public comments. The public comment period for the council meeting is listed below. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Joan Sweetland at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (702) 885-6000.

DATE, TIME: The council will meet on Thursday, April 2, 1998 from 10:00 a.m. to 5:00 p.m. and Friday, April 3, 1998,

from 8:00 a.m. to 2:00 p.m. at the Bureau of Land Management, Nevada State Office, 1340 Financial Boulevard, Reno, NV 89502-7147, in the first floor conference room. This is the new Nevada State Office. If due to unforeseeable problems this site is not available, the alternate site of the meeting will be the Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. The dates and times will remain the same. The public comment period will be Friday, April 3, 1998 at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joan Sweetland, Public Affairs Specialist, Carson City Field Office, telephone (702) 885-6000.

Dated: February 20, 1998.

Karl L. Kipping,

Associate District Manager.

[FR Doc. 98-5640 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

(NV-910-0777-30)

BLM Nevada State Office Moves From 850 Harvard Way, Reno, Nevada, to 1340 Financial Blvd., Reno, Nevada 89502-7147, on March 31, 1998**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Bureau of Land Management Nevada State Office move location and date.

SUMMARY: This corrects a Feb. 27, 1998, notice regarding the dates when the Bureau of Land Management Nevada State Office will close and move to a new office space. Reno BLM personnel will move March 31, 1998, to 1340 Financial Blvd. in Reno, Nev. 89502-7147, not March 10, 1998, as previously published.

The public room at 850 Harvard Way, Reno, Nev., will close for business at noon, March 31, 1998, and will reopen at 1340 Financial Blvd. on April 6, 1998. The new, main telephone number will be (702) 861-6400. The mailing address will remain P.O. Box 12000, Reno, Nev. 89520-0006.

FOR FURTHER INFORMATION CONTACT: Atanda Clinger, Records Administrator, Public Contact and Records Sub-Unit, Bureau of Land Management Nevada State Office, 850 Harvard Way, Reno, Nevada, 89502-2055, telephone for 850 Harvard Way, (702) 785-6632, for 1340 Financial Blvd., (702) 861-6400.

Dated: February 27, 1998.

Maxine F. Shane,*Acting Chief, External Affairs,
BLM Nevada State Office.*

[FR Doc. 98-5663 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-HC-U

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[OR-958-0777-63; GP7-0051; OR-19151]

Public Land Order No. 7320; Revocation of Secretarial Order Dated December 14, 1927; Oregon**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Public land order.

SUMMARY: This order revokes in its entirety a Secretarial order which withdrew 5.94 acres of Revested Oregon and California Railroad Grant Land for the Bureau of Land Management's Powersite Classification No. 196. The

land is no longer needed for the purpose for which it was withdrawn. The land is in an overlapping withdrawal and remains closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: April 6, 1998.**FOR FURTHER INFORMATION CONTACT:**

Betty McCarthy, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-952-6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated December 14, 1927, which established Powersite Classification No. 196, is hereby revoked in its entirety:

Willamette Meridian*Revested Oregon and California Railroad Grant Land*

T. 33 S., R. 9 W.,
Sec. 36, lot 3.

The area described contains 5.94 acres in Josephine County.

2. The land is included in the Bureau of Land Management's withdrawal for the Rogue Wild and Scenic River, and remains closed to operation of the public land laws, including the mining and mineral leasing laws.

Dated: February 17, 1998.

Bob Armstrong,*Assistant Secretary of the Interior.*

[FR Doc. 98-5643 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[AK-040-08-1410-00; AA-77257]

Realty Action: Recreation and Public Purpose (R&PP) Act Classification and Lease: Alaska**AGENCY:** Bureau of Land Management, Anchorage Field Office.**ACTION:** Notice of Realty Action, Recreation and Public Purposes Classification and Lease of Public Land—Anchorage, Alaska.

SUMMARY: The following public lands in the Chenik Lake area located on the northeast bank of the Chenik Lake near Iliamna Alaska have been examined and found suitable for classification and lease to the State of Alaska under the provisions of the Recreation and Public Purpose Act, of June 14, 1926 as amended (43 U.S.C. 869 et seq.). The State of Alaska proposes to lease the

existing Chenik Lake Sockeye Salmon Enhancement Project site lands for 10 years. This lease is intended to authorize continuous utilization, operation and maintenance of the existing Chenik Lake research facilities, fish weir site operation and personnel housing for the Chenik Lake Sockeye Salmon Enhancement Project.

Seward Meridian, Alaska

T. 12 S., R. 29 W.,
Sec. 20, SE $\frac{1}{4}$ NE $\frac{1}{4}$

Containing 1.00 acre, more or less.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Lease is consistent with current BLM land use planning and would be in the public interest.

These lands have been selected by the State of Alaska for future conveyance under the Alaska Statehood Act.

This State wildlife project meets the criteria for special pricing.

The authorized officer will impose the following terms and conditions on the lease:

1. A fuel containment structure will be placed underneath the fuel storage barrel to prevent possible ground contamination.

2. The cabin and outhouse will be painted in an earth tone color or left to weather naturally.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act, Alaska Statehood Act and leasing under the mineral leasing laws.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a Salmon Enhancement Project Site. Comments on the classification are restricted to whether the land is physically suited for a Salmon Enhancement Project Site, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Salmon Enhancement Project Site. For a period

of 45 days from the date of publication of this notice, interested parties may submit comments regarding the proposed lease or classification of the lands to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507-2599. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:

Kathy A. Stubbs, BLM, Anchorage, District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507-2599, (907) 267-1284 or 1-800-478-1263.

Dated: February 20, 1998.

Joe Dygas,

Acting Field Manager.

[FR Doc. 98-5705 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-942-5700-00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT:

Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825-0451, (916) 978-4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 25 N., R. 7W., Supplemental plat of the W $\frac{1}{2}$ of section 4 accepted December 3, 1997, to meet certain administrative needs of the BLM, Redding Resource Area.

T. 17N., R. 10 E., Supplemental plat of section 4, accepted December 3, 1997, to meet certain administrative needs of the U.S. Forest Service, Tahoe National Forest.

T. 27 S., R. 40 E., Supplemental plat of a portion of the NW $\frac{1}{4}$ of section 6, accepted December 3, 1997, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 27 S., R. 40 E., Supplemental plat of the SE $\frac{1}{4}$ of section 12, accepted December 3, 1997, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 27 S., R. 40 E., Supplemental plat of section 27, accepted December 3, 1997 to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 23 N., R. 6 W., Supplemental plat of the NW $\frac{1}{4}$ of section 3, accepted December 4, 1997, to meet certain administrative needs of the BLM, Redding Resource Area.

T. 36 N., R. 3 W., Metes-and-bounds survey of tracts, and independent resurvey of sections, (Group 811) accepted January 15, 1998, to meet certain administrative needs of the U.S. Forest Service, Shasta-Trinity National Forest.

T. 37 N., R. 3 W., Metes-and-bounds survey of tracts, and independent resurvey & protraction of unsurveyed sections, (Group 811) accepted January 15, 1997, to meet certain administrative needs of the U.S. Forest Service, Shasta-Trinity National Forest.

San Bernardino Meridian, California

T. 8 S., R. 2 W., Dependent resurvey and metes-and-bounds survey, (Group 1132) accepted December 18, 1997, to meet certain administrative needs of the Bureau of Indian Affairs, Southern California Agency, Pechanga Indian Reservation. All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: February 20, 1998.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 98-5644 Filed 3-4-98; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Norsk Hydro USA Inc., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Middle District of Florida in *United States v. Norsk Hydro*

USA Inc., and Farmland Industries, Inc., Case No. 98-361-CIV-T-24C. The Complaint in this case alleges that Horsk Hydro USA, Inc., entered into a secret agreement with Seminole Fertilizer Corp., which had the effect of eliminating Seminole as a viable bidder on an ammonia storage facility in Tampa, Florida, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint also alleges that Farmland Industries, Inc., participated in the efforts to reach the agreement and would have benefitted from Hydro's purchase of the facility. The proposed Final Judgment enjoins Hydro and Farmland from submitting any jointly determined bid for the acquisition of any ammonia asset located in the United States that is being sold by or under the auspices of a court or agency of the United States, unless they (1) disclose to the seller of the asset and the person administering the sale of the asset that a joint bid is being submitted, and (2) do not, without disclosing to the seller in advance of the sale, violate any of the terms or conditions for bidding imposed by the seller of the asset or violate any of the terms or conditions for bidding imposed by the person administering the sale of the asset. Each defendant is required to establish and maintain an antitrust compliance program which includes annually briefing its officers and directors engaged in the ammonia business on the meaning and requirements of the Final Judgment and the antitrust laws.

Public comment on the proposed Final Judgment is invited during the next 60 days. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nezida S. Davis, Acting Chief, Atlanta Field Office, Antitrust Division, Department of Justice, Suite 1176, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303 (telephone: 404-331-7100).

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation by the United States and Defendant Norsk Hydro USA, Inc.

It is stipulated by and between the undersigned parties that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the Middle District of Florida, Tampa Division;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements

of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant Norsk Hydro USA Inc. and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding; and

4. This Stipulation and the Final Judgment to which it related are for settlement purposes only and do not constitute an admission by Defendant Norsk Hydro USA Inc. in this or any other proceeding that Section 1 of the Sherman Act, 15 U.S.C. 1, or any other provision of law, has been violated.

This 6th day of February, 1998.

David Mark, Jr.

Attorney for Defendant, Norsk Hydro USA Inc., McDermott, Will & Emery, 227 West Monroe Street, Chicago, IL 60606, (312) 372-2000.

Karen Sampson Jones.

Belinda A. Barnett.

Attorneys for Plaintiff, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia 30303, (404) 331-7100.

Stipulation by the United States and Defendant Farmland Industries, Inc.

It is stipulated by and between the undersigned parties that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the Middle District of Florida, Tampa Division;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant Farmland Industries, Inc. and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding; and

4. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by Defendant Farmland Industries, Inc. in this or any other proceeding that Section 1 of the Sherman Act, 15 U.S.C. 1, or any other provision of law, has been violated.

This 18th day of February, 1998.

David Everson,

Attorney for Defendant, Farmland Industries, Inc., Stinson, Mag & Fizzell, P.C., 1201 Walnut Street, Suite 2700, Kansas City, Missouri 64106, (816) 842-8600.

Karen Sampson Jones.

Belinda A. Barnett.

Attorneys for Plaintiff, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia 30303, (404) 331-7100.

Final Judgment

Whereas plaintiff, United States of America, having filed its Complaint in this action of _____ and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any such issue of fact or law.

And Whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

Now, Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties,

It Is Hereby Ordered, Adjudged and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II. Definitions

As used in this Final Judgment:

A. *Hydro* means defendant Norsk Hydro USA Inc. and its parents, subsidiaries, successors and assigns, directors, officers, managers, agents, and employees engaged in the ammonia business, and any other person acting for, on behalf of, or under the control of them with respect to the ammonia business.

B. *Farmland* means defendant Farmland Industries, Inc. and its parents, subsidiaries, successors and assigns, directors, officers, managers,

agents, and employees engaged in the ammonia business, and any other person acting for, on behalf of, or under the control of them with respect to the ammonia business.

C. *Ammonia asset* means any asset used principally in the manufacture, processing, production, storage, distribution, or sale of ammonia and whose purchase price exceeds \$750,000.

D. *Ammonia business* means the manufacturing, processing, production, storage, distribution, or sale of ammonia.

E. *Jointly determined bid* or "joint bid" means any combining, pooling, or supplementing of resources, money, or property in connection with an actual or proposed offer for property which is to be sold through a bid process.

F. *Person* means any individual, association, cooperative, partnership, corporation, or other business or legal entity.

III. Applicability

This Final Judgment shall apply to defendants Hydro and Farmland, including each of their directors, officers, managers, agents, employees, parents, subsidiaries, and successors and assigns engaged now or in the future in the ammonia business, and to all other persons in active concert or participation with each defendant in the ammonia business who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Defendants are enjoined and restrained from submitting any jointly determined bid for the acquisition of any ammonia asset located in the United States that is being sold by or under the auspices of a court or agency of the United States.

V. Limiting Conditions

A. Nothing in Section IV shall prohibit defendants from submitting any jointly determined bid for the acquisition of any ammonia asset located in the United States that is being sold by or under the auspices of a court or agency of the United States so long as, before or at the time of submitting any such jointly determined bid, the defendants:

1. Disclose to the seller of the asset and the person administering the sale of the asset that a jointly determined bid is being submitted and with whom the joint bid is being submitted; and

2. Do not, without disclosing to the seller in advance of the sale, violate any of the terms or conditions for bidding imposed by the seller of the asset or

violate any of the terms or conditions for bidding imposed by the person administering the sale of the asset.

B. Section IV shall not apply to any purchases by defendants, either jointly or separately, that are for the benefit of, on behalf of, or in the name of, Farmland Hydro L.P. Section IV shall apply to any jointly determined bid submitted by either defendant and any third person or to any jointly determined bid submitted by defendants that is not made for the benefit of, on behalf of, or in the name of Farmland Hydro L.P.

VI. Compliance

A. Defendants are ordered to establish and maintain an antitrust compliance program which shall include designating, within thirty (30) days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendants to ensure compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

1. Distributing, within ninety (90) days of entry of this Final Judgment, a copy of this Final Judgment to all officers and directors, and any person who otherwise manages defendants with respect to the ammonia business;

2. Distributing in a timely manner a copy of this Final Judgment to any person who succeeds to a position described in Section VI(A)(1);

3. Briefing annually defendants' officers and directors engaged in the ammonia business on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtaining annually from each officer or employee designated in Section VI(A) (1) and (2) a written certification that he or she: (a) Has read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer;

5. Maintaining a record of recipients from whom the certification required by Section VI(A)(4) has been obtained; and

6. Prior to the submission of any jointly determined bid, distributing a copy of this Final Judgment to any

person with whom defendants submit a jointly determined bid for the acquisition of any ammonia asset that is being sold by or under the auspices of a court or agency of the United States.

B. Defendants are also ordered to file with this Court and serve upon plaintiff, within ninety (90) days after the date of entry of this Final Judgment, affidavits as to the fact and manner of compliance with this Final Judgment.

C. If defendants' Antitrust Compliance Officer learns of any violations of the Final Judgment defendants shall forthwith take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment.

VII. Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the plaintiff shall, upon written request by the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from defendants, to interview defendants' officers, employees, or agents engaged in the ammonia business, who may have counsel present, regarding such matters.

B. Upon written request by the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of

such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 20 days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance herewith, and to punish any violations of its provisions. Nothing in this provision shall give standing to any person not a party to this Final Judgment to seek any relief related to it.

IX. Term

This Final Judgment will expire on the tenth anniversary of its date of entry.

X. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Norsk Hydro USA Inc. ("Hydro") and Farmland Industries, Inc. ("Farmland") in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 19, 1998, the United States filed a civil antitrust complaint alleging that defendants and others conspired unreasonably to restrain competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that defendants Hydro and Farmland met with representatives of Seminole Fertilizer Corporation ("Seminole")¹ on March 5,

¹ Seminole, a wholly owned subsidiary of Tosco Corporation, sold all of its assets in May 1993. Before its assets were sold, defendant maintained its corporate offices in Stamford, Connecticut, and was a manufacturer and distributor of phosphatic

1992, and discussed sharing pipeline capacity and the cost of bidding on an ammonia tank and pipeline interest, hereinafter referred to as the Tampa Facility, then being auctioned pursuant to bankruptcy proceedings. At the conclusion of the meeting, defendants and Seminole reached a tentative agreement, which was later reduced to writing. The Complaint also alleges that on March 9 and March 10, 1992, Defendant Hydro and Seminole discussed the terms of the agreement by telephone on several occasions and that they executed the written agreement two hours before the scheduled auction of the Tampa Facility on March 12, 1992. The agreement provided that Seminole would give bid support of up to \$2.5 million to Defendant Hydro, if necessary, to defeat a competing bid. In exchange, Defendant Hydro agreed to give Seminole increased pipeline capacity if defendant Hydro was the successful bidder.

This agreement had the effect of eliminating Seminole, Defendant Hydro's chief rival, as a viable competing bidder for the Tampa Facility, because it required Seminole to assist Hydro in bidding up the price in the face of any bid, including a bid by Seminole alone—against Hydro. Almost immediately after signing the agreement, Seminole stated that it was no longer going to attend the auction of the Tampa Facility. At the auction on the afternoon of March 12, there were no bids for the Tampa Facility other than the one previously submitted by Defendant Hydro, a bid which the bankruptcy trustee had hoped to top.

Defendants' intentions were to have the Tampa Facility become an asset of their joint venture, Farmland Hydro L.P. ("FHLP"), if Defendant Hydro was the successful bidder. Defendant Farmland participated in the negotiations leading to the March 12 agreement, assented to Defendant Hydro's execution of the agreement on its behalf as a partner in FHLP, and directly benefited from the agreement because of its partnership with Defendant Hydro.

On February 19, 1998, the United States and defendants filed a Stipulation by which they consented to the entry of a proposed Final Judgment following compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment, as will be discussed in detail in Section

IV.A., would order defendants to refrain from submitting any jointly determined bid for the acquisition of any ammonia asset (as defined in the Final Judgment) located in the United States that is being sold by or under the auspices of a court or agency of the United States, unless defendants disclose to the seller of the asset and the person administering the sale of the asset that a jointly determined bid is being submitted and with whom the joint bid is being submitted. The Final Judgment also prohibits defendants from violating any of the terms or conditions for bidding imposed by the seller of the asset or from violating any of the terms or conditions for bidding imposed by the person administering the sale of the asset, without disclosing such to the seller in advance of the sale. By its terms, the Final Judgment does not apply to any purchases by defendants, either jointly or separately, that are for the benefit of, on behalf of, or in the name of FHLP. The judgment does, however, apply to any jointly determined bid submitted by either defendant and any third person or to any jointly determined bid submitted by defendants that is not made for the benefit of, on behalf of, or in the name of FHLP.

II. Defendants

Defendant Hydro is a subsidiary of Norsk Hydro a.s. ("Norsk AS"), a Norwegian corporation, which is majority owned by the Norwegian government. Hydro is headquartered in New York City, New York, and is a holding company for various subsidiaries. One of the indirect subsidiaries of Hydro, Hydro Agri Ammonia, Inc. ("Hydro Agri"), is a wholesale distributor of ammonia headquartered in Tampa, Florida. At the time of the alleged violation, Norsk AS controlled approximately twenty-five percent of the world trade ammonia.

Defendant Farmland is a cooperative headquartered in Kansas City, Missouri, which provides products and services to its members, who are primarily farmers and ranchers. Through FHLP, which Farmland formed with an affiliate of Hydro in November 1991, Farmland is also engaged in manufacturing and distributing phosphatic fertilizers.

III. The Tampa Facility and Events Leading up to the Alleged Violation

A. The Tampa Facility

The Tampa Facility, which consists of an ammonia terminal located in the Port of Tampa, Florida, and a one-half interest in a pipeline system connected

to the ammonia terminal,² is used for storing, handling, and delivering anhydrous ammonia, one of the raw materials used in the manufacture of phosphatic fertilizers. Located on approximately 17½ acres of land leased from the Tampa Port Authority, the Tampa Facility has a single tank with a 35,000 metric ton storage capacity. It services five nearby phosphatic fertilizer plants,³ where the ammonia is combined with phosphoric acid to create diammonium phosphate. The Tampa Facility is able to service by truck or rail other phosphatic fertilizer plants not connected to it. During the early 1990's the Tampa Facility was owned by the Royster Company ("Royster"), now known as Mulberry Phosphates, Inc. ("MPI").

B. The Bankruptcy of Royster and the Failed Auction

Royster was a manufacturer of phosphatic fertilizers and related products for the domestic and export markets. Its principal facilities included a plant for the production of diammonium phosphate, located in Mulberry, Florida, and the Tampa Facility. Royster filed for bankruptcy protection on April 8, 1991, after months of experiencing financial hardships. Under the reorganization plan submitted to the Bankruptcy Court, Royster proposed to liquidate certain assets, including its Tampa Facility. Shortly after news of the potential sale of the Tampa Facility went public, Defendant Hydro and Seminole separately expressed interest in acquiring it. After extensive negotiations with Royster officials, Defendant Hydro agreed to purchase the property for \$15.5 million and executed an asset purchase agreement for the property on September 25, 1991. The agreement guaranteed Royster the right to purchase a continuing supply of ammonia from the terminal for its Mulberry plant and contained a through-put provision that permitted it to put the ammonia through the pipeline from the terminal to the plant. In November of that same year, the Bankruptcy Court ordered that the Tampa Facility be sold by auction and that bids be taken against Hydro's offer of \$15.5 million. The auction was scheduled for March 12, 1992. It was not until the auction was announced that a third company, CF Industries

fertilizer. It operated production and storage facilities in central Florida, near Tampa. The staff filed a complaint, a proposed Final Judgment, and related papers against Seminole on June 18, 1997. The Final Judgment was entered by the Honorable Elizabeth A. Kovachevich and filed on September 19, 1997.

² Seminole owned the other one-half interest in the pipeline, along with a separate ammonia terminal (consisting of two ammonia tanks) that also was connected to the pipeline.

³ If Seminole had been successful in acquiring the Tampa Facility, it would have been the exclusive supplier to those five plants.

("CF")⁴, publicly expressed any interest in acquiring the Tampa Facility.

On December 18, 1991, the Bankruptcy Court issued an order approving bidding procedures in connection with the proposed sale of the Tampa Facility. Any third party offer had to: (1) Be substantially similar to the one contained in the Hydro Asset Purchase Agreement; (2) be at least \$1 million more than Defendant Hydro's offer of \$15.5 million; (3) include an offer to enter into a through-put agreement with Royster; and (4) include a confidentiality agreement with Royster and Defendant Hydro regarding disclosure of the terms of the Royster/Hydro Through-put Agreement. In addition, the Order required that the third party deposit \$1 million in escrow no later than the time at which it submitted an offer. The money deposited was to remain in escrow pending the earlier of (a) the closing of the sale to the third party if its offer was approved by the Bankruptcy Court or (b) the entry of an order approving the sale of the Tampa Facility to either Hydro or another third party bidder. After depositing the \$1 million, the third party was entitled to receive documents setting forth the results of the inspection of the Tampa Facility's tank, the cost of repair, the terms of the Royster/Hydro Through-put agreement, and the terms of any through-put agreements submitted by any other third parties.

In February 1992, CF deposited \$1 million in escrow. Seminole made its escrow deposit on March 9, 1992, three days before the auction. At the time of the auction, there were four bidders who were qualified to bid: Defendant Hydro, CF, Seminole, and Superfos Investments Limited ("Superfos").⁵ CF informed Royster shortly before the auction that it would not be bidding, because of environmental concerns it had recently identified. Only Defendant Hydro appeared at the auction site on the afternoon of March 12 to bid on the Tampa Facility. There having been no new bids tendered, Defendant Hydro's standing offer of \$15.5 million was accepted, pending approval by the Bankruptcy Court. In a meeting later that afternoon to finalize the details of the sale before a March 13 court hearing, Royster representatives discovered that

Defendant Hydro and Seminole had executed a joint bidding agreement approximately two hours before the auction was scheduled to begin.

At the hearing the following day, Royster representatives advised the Bankruptcy Court of the agreement between Seminole and Defendant Hydro. The Bankruptcy Court deferred ratification of the sale and ordered discovery to be taken. A few days later, the Bankruptcy Court received two anonymous communications regarding the bidding agreement. One communication was a letter alleging that Seminole had agreed to backstop Defendant Hydro's bid and that Seminole's bid supplement was leaked to CF, causing the latter to withdraw. The other communication was one of Seminole's internal memoranda written by Steve Yurman, Seminole's president, describing the terms of the March 12 agreement. After reviewing the information obtained during discovery in light of the anonymous correspondence, the Bankruptcy Court, at a hearing on March 20, refused to ratify the sale of the Tampa Facility to Defendant Hydro and ordered that a second auction be held. At the second auction, on June 17, 1992, CF and Defendant Hydro submitted bids, and CF won the Tampa Facility with a final bid of \$21.6 million. (By the time of the second auction, CF had been able to resolve its environmental concerns.)

C. Evidence of Collusion

On February 26, 1992, representatives of Seminole and Defendant Hydro and Farmland met at the Rihga Royal Hotel in New York to discuss a "joint venture" proposal by Seminole. The proposal involved Defendant Hydro buying the Tampa Facility and keeping the interest in the pipeline, but possibly selling the tank to CF. The meeting concluded with no agreements being reached.

The same parties met again on March 5, 1992, at the same hotel. They primarily discussed sharing pipeline capacity and the cost of bidding on the terminal. Specifically, Seminole and Defendants Hydro and Farmland proposed that Defendant Hydro and Seminole enter into an agreement whereby Seminole would supplement Defendant Hydro's bid and consent to Royster's transfer of its pipeline interest to Defendant Hydro in return for Defendant Hydro giving Seminole extra pipeline capacity.⁶ A tentative

agreement was reached and Defendant Hydro indicated that it would have its attorneys reduce the agreement to writing and send Seminole a draft to review. Defendant Hydro sent the first written draft to Seminole on March 6, and on March 9 and March 10 representatives of Defendant Hydro and Seminole discussed, via telephone on several occasions, the terms of the draft agreement.

On the morning of March 12, officials of Tosco, Seminole and Defendants Hydro and Farmland, along with their attorneys, met in Tampa, Florida, at the law offices of MacFarlane Ferguson, Defendant Hydro's local counsel, to resume negotiating the details of the proposed agreement. After hours of negotiations, the parties agreed, in part, that (a) Seminole would supplement Defendant Hydro's bid up to \$2.5 million, if necessary to win the auction, and consent to Royster's assignment of its one-half interest in the pipeline lease to Defendant Hydro and (b) Defendant Hydro, in return, would give Seminole the right to use an extra 40,000 tons of the pipeline's capacity. Almost immediately after signing the agreement, Seminole stated that it was no longer attending the auction.

One of Seminole's representatives appeared at the auction moments before it started and advised Royster that it was withdrawing from the bidding. Later that evening, representatives of Defendant Hydro and Seminole talked by telephone and agreed to instruct their counsel to confer with one another to prepare for the court hearing the next day.

In this case, there was virtually no evidence of covert activity, which indicated that the subjects of the investigation were not aware of, or did not appreciate, the illegal nature of their actions. This lack of covertness and the lack of criminal intent it indicates are the main reasons this case is being filed civilly rather than criminally. See Antitrust Division Manual, Section III.E., at III-12 (October 18, 1987) (Second Edition).

IV. Explanation of Proposed Final Judgment

A. Prohibited Conduct and Limiting Conditions

Section IV enjoins defendants from submitting any jointly determined bid for the acquisition of any ammonia asset located in the United States that is being sold by or under the auspices of a court or agency of the United States. Under Section V however, defendants are permitted to submit jointly determined bids if two conditions are met, i.e.,

⁴ CF is a cooperative which has been a major participant in the fertilizer business since the mid-1960's and has operated world-scale phosphatic fertilizer plants in Florida since 1969.

⁵ Since Superfos was a major creditor of Royster, the Bankruptcy Court exempted Superfos from the \$1 million escrow requirement and gave it permission to submit a credit bid. Thus, Superfos could deduct from its bid offer the amount it was owed by Royster.

⁶ As owner of the other one-half interest in the Tampa Facility's pipeline lease, Seminole already had the right to use 450,000 tons of the pipeline's 900,000 ton capacity.

defendants must (1) disclose to the seller of the asset and the person administering the sale of the asset that a jointly determined bid is being submitted and with whom the joint bid is being submitted, and (2) not, without disclosing to the seller in advance of the sale, violate any of the terms or conditions for bidding imposed by the seller of the asset or violate any of the terms or conditions for bidding imposed by the person administering the sale of the asset.

Similarly, Section V(B) allows jointly determined bids by defendants, submitted either jointly or separately, that are for the benefit of, on behalf of, or in the name of FHLP. This latter provision still does not exempt jointly determined bids that are submitted by either defendant and any third person or any jointly determined bids submitted by defendants that are not made for the benefit of, on behalf of, or in the name of FHLP.

B. Compliance Program and Certification

Under Section VI of the Final Judgment defendants are required, within thirty days of entry of the Final Judgment, to establish and maintain an antitrust compliance program which shall include designating an Antitrust Compliance Officer with responsibility for accomplishing the compliance program. The Antitrust Compliance Officer is required to, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that it is in compliance with the program. The Antitrust Compliance Officer is also required to (1) distribute a copy of the Final Judgment to all officers and directors, and any person who otherwise manages defendant with respect to the ammonia business, (2) distribute in a timely manner a copy of the Final Judgment to any person who succeeds to a position described in Section (VI)(A)(1) of the Final Judgment, (3) brief annually defendant's officers and directors engaged in the ammonia business on the meaning and requirements of the Final Judgment and the antitrust laws, and (4) obtain annually from each officer or employee designated in Section (VI)(A) (1) and (2) of the Final Judgment a written certification that he or she: (a) Has read, understands, and agrees to abide by the terms of the Final Judgment; (b) understands that failure to comply with the Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has

not been reported to the Antitrust Compliance Officer.

Moreover, prior to the submission of any jointly determined bid, defendants must distribute a copy of the Final Judgment to any person with whom defendants submit a jointly determined bid for the acquisition of any ammonia asset that is being sold by or under the auspices of a court or agency of the United States. Defendants are also required to file with the Court and serve upon plaintiff, within ninety (90) days after the date of the Final Judgment, affidavits as to the fact and manner of their compliance with this Final Judgment. Defendants are also required to take appropriate action to terminate or modify any activities uncovered that violate any provision of the Final Judgment.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

VI. Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Nezida S. Davis, Acting Chief, Atlanta Field Office, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia, 30303, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry.

VII. Alternative to the Proposed Final Judgment

The Department considered, as an alternative to the proposed Final Judgment, litigation seeking comparable

equitable relief. In the view of the Department of Justice, a trial would involve substantial cost to the United States and is not warranted because the Proposed Judgment provides relief that will remedy the violations of the Sherman Act alleged.

VIII. Determinative Materials and Documents

No materials and documents described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were used in formulating the proposed Final Judgment.

Dated: February 18, 1998.

Respectfully submitted,

Karen Sampson Jones,
Belinda A. Barnett,

Attorneys for Plaintiff, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia 30303, (404) 331-7100.

[FR Doc. 98-5704 Filed 3-4-98; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 30, 1997, Mallinckrodt Chemical Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to manufacture bulk finished product.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 6, 1998.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 13, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98-5672 Filed 3-4-98; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 30, 1997, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059) ...	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254) ...	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphaacetylmethadol (9648) ..	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the controlled substances for distribution bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 4, 1998.

Dated: February 13, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98-5673 Filed 3-4-98; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 16, 1997, MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana,

California 92704, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	I
Diphenoxylate (9170)	II

The firms plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 4, 1998.

Dated: February 13, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98-5671 Filed 3-4-98; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 18, 1997, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 4, 1998.

Dated: February 24, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98-5669 Filed 3-4-98; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 18, 1997, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Opium, granulated (9640)	II

The firm intends to import the listed controlled substances to produce codeine phosphate, codeine sulfate, morphine sulfate, oxycodone and hydrocodone.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of

controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 6, 1998.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 24, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98-5670 Filed 3-4-98; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

March 2, 1998.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on March 23-24, 1998.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on March 23-24, 1998, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on March 23, 1998, will be as follows:

Committee Meetings

9:00-10:30 a.m.

(Open to the Public)

Policy Discussion

Research and Education Programs—Room M07

Preservation and Access/Challenge

Grants—Room 415

Public Programs—Room 420

Federal/State Partnership—Room 430

10:00 a.m. until Adjourned

(Closed to the Public)

Discussion of specific grant applications

before the Council

(Closed to the Public)

1:30-2:30 p.m.

Jefferson Lecture Committee Meeting—

Room 430

2:30-4:00 p.m.

Conversation with Jefferson Lecturer—

Room 527

The morning session on March 24, 1998, will convene at 10:30 a.m., in the 1st Floor Council Room, M-09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks

B. Staff Report

C. Budget Report

D. Legislative Report

E. Committee Reports on Policy and General Matters

1. Overview

2. Research and Education Programs

3. Preservation and Access and Challenge Grants

4. Public Programs

5. Jefferson Lecture

(The meeting will be closed to the public at this point.)

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Ms. Nancy E. Weiss, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606-8322, TDD (202) 606-8282. Advance notice of any special needs or accommodations is appreciated.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98-5633 Filed 3-4-98; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* March 2, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

2. *Date:* March 6, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in the Media, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

3. *Date:* March 9, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

4. *Date:* March 13, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in the Media, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

5. *Date:* March 16, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

6. *Date:* March 20, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in the Media, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

6. *Date:* March 27, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in the Media, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

7. *Date:* March 30, 1998.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Museums and Historical Pubic Programs, for projects at the January 12, 1998 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98-5632 Filed 3-4-98; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95-541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by April 1, 1998. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy at the above address or (703) 306-1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received as follows:

Permit Application: 99-001

1. *Applicant:* Gerald L. Kooyman, Center for Marine Biotechnology and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093-0204.

Activity for Which Permit is Requested: Taking, and Import into the U.S.

The applicant proposes to capture and restrain 6 adult Emperor penguins for 30 minutes while a 260 gram satellite transmitter is glued to the feathers. The transmitters expected to remain attached for three months before shedding. Twenty Emperor penguins will be captured and held for twenty minutes. During captivity stomach samples will be obtained by stomach lavage. These procedures are the only means of determining diet preferences, diving behavior and distribution patterns of individual birds in the Ross Sea. None of this information is known about Emperor penguins occurring in the Ross Sea during the winter.

Location: Ross Sea pack ice. Access is via the R/V Nathaniel B. Palmer.

Dates: May 1, 1998 to August 1, 1998.

Permit Application: 99-002

2. *Applicant:* William R. Fraser, Department of Biology, Montana State University, Bozeman, Montana 59717.

Activity for Which Permit is Requested: Taking, and Import Into the U.S.

The applicant, as a participant in the Long-Term Ecological Research Program (LTER), is seeking to understand the factors that control the abundance and distribution of seabirds within and between seasons in the LTER study region. Part of this research encompasses understanding seasonal variability in the diets of the region's most common seabirds, of which the early winter period still remains of the least known and one of the most important from an ecological perspective. Research on seabirds in general suggests that winter feeding conditions may determine the survival of annual cohorts and breeding adults, and adult breeding condition in spring, in effect, some of the key variables that influence long-term demography.

The applicant proposes to capture up to 100 Adelie penguins, 100 Chinstrap penguins and 50 Emperor penguins in order to weigh, measure and obtain stomach contents through stomach lavage. The applicant also proposes to kill up to 75 Snow Petrels, 50 Southern Fulmars and 75 Antarctic Petrels in order to obtain measurements, weights and study stomach contents. These seabirds will then be imported into the U.S. for subsequent distribution to museums and teaching collections at various institutions, thus ensuring the full use of these specimens.

Location: Bellingshausen Sea, vicinity of Marguerite Bay. Access is via the R/V Lawrence M. Gould.

Dates: May 1, 1998 to September 1, 1998.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 98-5611 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date & Time: March 26-27, 1998 at 8:30 am to 5:00 pm.

Location: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. James T. Callahan, Program Director, National Science Foundation, 4201 Wilson Blvd., Room 615, Arlington, Virginia 22230, (703) 306-1469.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals, submitted to being considered by the Research Collections in Systematics and Ecology Programs as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of Government in the Sunshine Act.

Dated: March 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-5745 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Earth Sciences Proposal Review Panel (1569).

Date and Time: March 25, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 770.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306-1559.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-5748 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental and Integrative Activities (1193).

Date and Time: March 24, 1998; 8:30 am-5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Michael Foster, Program Director, CISE/EIA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Advanced Resources for Experiments (CARE) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-5747 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: March 25-27, 1998; 8:00 a.m. to 4:30 p.m. each day.

Place: University Corporation for Atmospheric Research (USCAR)/UNIDATA, 3300 Mitchell Lane, Suite 170, Boulder, CO 80301.

Contact Person: Dr. Clifford Jacobs, Section Head for the USCAR and Lower Atmosphere Facilities Oversight Section, Division of Atmospheric Sciences, Room 775, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306-1521.

Purpose of Meeting: To provide and make recommendations concerning the renewal proposal of the five year award to operate the UNIDATA Program Center under management of the University Corporation for Atmospheric Research (UCAR).

Agenda: To review and evaluate the renewal proposal for the five year award to operate the UNIDATA Program Center under management of the University Corporation for Atmospheric Research (UCAR).

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data; such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-5750 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 23-24, 1998: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 310 and 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Margrete Klein, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306-1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Women and Girls program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-5749 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: March 23-25, 1998, 8:30 A.M. until 5:00 P.M.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ann Boyle, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1875.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Grants for Vertical Integration of Research and Education in the Mathematical Sciences Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: March 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98-5746 Filed 3-4-98; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Company; (Turkey Point Units 3 and 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR-31 and DPR-41, which authorize operation of Turkey Point Units 3 and 4 (the facility) at a steady-state reactor power level not in excess of 2300 megawatts thermal per unit. The facility is a pressurized-water reactor located at the licensee's site in Dade County, Florida. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

In exemptions dated March 27, 1984, and August 12, 1987, the staff approved the use of 1-hour rated fire barriers in lieu of 3-hour barriers in certain outdoor areas at Turkey Point Units 3 and 4. In addition, the staff found that, for certain outdoor areas not protected by automatic fire detection and suppression systems, separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of 20 feet free of intervening combustibles provided an acceptable level of fire safety.

Based on the results of the industry's Thermo-Lag fire endurance testing program, the licensee concluded that the outdoor Thermo-Lag fire barrier designs cannot achieve a 1-hour fire resistive rating but can achieve a 30-minute fire resistive rating when exposed to a test fire that follows the ASTM E-119 standard time-temperature curve. Because of these test results, the licensee in a letter dated June 15, 1994, requested an exemption to use 30-minute fire barriers for outdoor applications in lieu of the 1-hour fire barriers previously approved; however, the exemption request was withdrawn by letter dated June 28, 1996.

In a letter dated December 12, 1996, the licensee submitted an exemption request (evaluated herein) for outdoor

areas, excluding the turbine building area. The licensee requested that the NRC approve the use of 25-minute raceway fire barriers for these outdoor applications in lieu of the 1-hour fire barriers which were previously approved (refer to SEs dated March 27, 1984, and August 12, 1987). This request was based on the following: (1) The fire loading and potential fire severities are low; (2) there are minimal ignition sources; (3) transient ignition sources and combustibles are controlled in these zones; and (4) manual fire fighting equipment is readily accessible to the zones.

10 CFR 50, Appendix R, Section III.G.2.a requires:

Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

The underlying purpose of this rule is to provide reasonable assurance that one safe shutdown train and associated circuits used to achieve and maintain safe shutdown are free of fire damage.

In its December 12, 1996, exemption request, as supplemented by letters dated July 31 and October 31, 1997, the licensee requested an exemption for outdoor fire zones, excluding the turbine area, permitting the use of the following in lieu of Section III.G.2.a requirements:

(1) Separation of cables and equipment and associated nonsafety circuits of redundant trains west of the Open Turbine Building Structure column line A by a 1-hour rated fire barrier until a horizontal distance of 20 feet is attained. Water suppression systems are provided for the major combustible sources, however no suppression or detection is provided for the raceways. This request is applicable to fire zones 81; and 86 West of the A-line.

(2) Separation of cables and equipment and associated non-safety circuits of redundant trains by a 25-minute rated fire barrier until a horizontal distance of 20 feet is attained. No suppression or detection is provided. This request is applicable to fire zones 47 and 54; 86 North of column line 22 and East of the A-line; 79, 84, 88 and 89 East of the Jc-line; and 106R, 113, 114, 115, 116, 118, 119, 120, 131 and 143.

(3) Separation of cables and equipment and associated non-safety circuits of redundant trains by a 25-minute rated fire barrier until a horizontal distance of 10 feet is attained in Roof Top locations. No suppression

or detection is provided. This request is applicable to fire zones 106R, 114, 115, 118 and 143.

(4) Separation of cables and equipment and associated non-safety circuits of redundant trains by a radiant energy shield having an equivalent 30-minute fire rating until a horizontal distance of 20 feet is attained. A radiant energy shield is a line of sight barrier between redundant equipment and/or components. The radiant energy shield may be combustible. No suppression or detection is provided. This request is applicable to fire zones 47 and 54; 86 North of column line 22 and East of the A-line; 79, 84, 88 and 89 East of the Jc-line; and 106R, 113, 114, 115, 116, 118, 119, 120, 131 and 143.

(5) The existing separation of approximately 12 feet on center for the Component Cooling Water (CCW) Pumps combined with fire detection and a dual-header partial-coverage suppression system for the pumps. This request is applicable to fire zones 47 and 54.

(6) The existing separation of approximately 14 feet on center for the Intake Cooling Water (ICW) Pumps and associated conduits, with fire detection for the pumps. No suppression is provided. This request is applicable to fire zones 119 and 120.

(7) The use of a partial height (10 feet high) fire barrier between the Unit 3 Emergency Diesel Generator (EDG) "A" and "B" radiator rooms. No suppression or detection is provided. This request is applicable to fire zone 131.

III

In summary, according to the licensee's submittal, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

In addition, the licensee asserts that special circumstances as set forth in 10 CFR 50.12, paragraphs (a)(2)(ii) and (a)(2)(iii) are present, i.e., (1) Application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule since the alternative actions proposed by the licensee will assure that a fire in the power plant will not disable the capability to safely shut down the plant, and (2) compliance with the regulation would result in costs significantly in excess of those contemplated when the regulation was adopted, since it was not foreseen that the fire barriers would have to be upgraded.

IV

The NRC staff has reviewed the licensee's supporting information for its exemption request and conducted a site visit.

During its site visit the staff performed the following actions during walkdowns of the outdoor areas:

- Reviewed the general area and assessed fire protection features (manual and automatic).
- Reviewed the location of the fire brigade equipment.
- Reviewed fire brigade accessibility to the area.
- Observed fire hazards and fire loadings associated with the area.
- Observed the material conditions of the plant and of the fire protection equipment.
- Observed the adequacy of administrative controls (noted any transient combustibles).
- Reviewed the adequacy of the fire rating of the raceway fire barriers in the area.

Based on the plant open/outdoor configuration of the fire zones noted below, the impact a fire may have on the plant and its ability to shut down in the event of a fire tends to be localized to the zone of concern. During its site evaluation the staff observed that the hot fire gases and smoke would be directly vented to the atmosphere. Therefore, components required to achieve and maintain safe shutdown would not be subjected to convective heat. In outdoor areas a ceiling jet and hot gas layer would not develop, unlike enclosed compartments.

Fire Zone 47—Unit 4 Component Cooling Water Pump Room and Fire Zone 54—Unit 3 Component Cooling Water Pump Room

Fire zone 47, the Unit 4 component cooling water pump room, is located outdoors near the southeast corner of auxiliary building elevation 18'–0". This fire zone is separated from other auxiliary building fire areas by 3-hour fire rated walls. This zone does not have a ceiling and is open to the atmosphere. Fire zone 54, the Unit 3 component cooling water pump room, is located outdoors near the northeast corner of auxiliary building elevation 18'–0". This fire zone is open to the atmosphere and is separated from other auxiliary building fire areas by 3-hour fire barriers.

The major safe-shutdown-related equipment in these zones are the CCW pumps (three pumps) and heat exchangers. The pumps are arranged in an "L" configuration and are spaced approximately 12 feet on center. The

power cables for each pump are routed in embedded conduit with the exception of a short length from the embedded conduit to the motor terminal box which is flexible steel conduit. The local control stations for these pumps are more than 20 feet apart. The conduits and their post-fire safe shutdown functions (identified in the Appendix) are protected by an electrical raceway fire barrier system which has a minimum fire resistive rating of 25 minutes.¹

These CCW pumps and cabling lack the required 20 feet of spacial separation as specified in Appendix R III.G.a.2.b. The NRC approved this configuration in an exemption dated March 27, 1984, on the basis that the licensee had installed redundant open-head deluge fire control-suppression systems activated by ultraviolet (UV) fire detectors; however, this area was resubmitted for review since cabling with less than 20 feet of separation is protected by a 25-minute rated fire barrier. The in-situ fire load in this area is low, consisting of two horizontal cable trays installed approximately 10 feet above the floor and 1 gallon of lubricating oil in each pump. Manual hose stations and portable fire extinguishers are accessible. If a fire occurred in either of these fire zones, it is anticipated that the UV fire detectors would react and activate the deluge fire suppression system. Since the suppression system would provide fast total coverage of the CCW pumps, there is reasonable assurance that a fire affecting one pump would be confined to that pump. The 12 feet of separation between the pumps provides adequate passive protection to assure that one train of CCW pumps would remain free of fire damage. In addition, since these fire zones are outdoor areas with no significant equipment or component obstructions, there is reasonable assurance that the required post-fire safe shutdown functions protected by the 25-minute electrical raceway fire barrier system would remain free of fire damage until the deluge system activated and controlled the fire. The staff has determined that licensee's proposal provides adequate protection, will not pose an undue risk to public health and safety, and that the underlying purpose

of the rule is satisfied. Therefore, the staff finds the licensee's proposed exemption for these areas to be acceptable.

Fire Zone 106R—Control Room Air Conditioner Condensing Units on the Control Building

Fire Zone 106R is the control building roof. The major safe shutdown equipment on the roof are the cable spreading room and computer room chillers and the control room air conditioning evaporative units. The control building roof is of concrete construction and is covered with a composite, built-up roof. The staff requested the licensee to evaluate the combustibility of this roof design and consider the potential effect of a fire on the combustible (Thermo-Lag) raceway fire barriers and the components they protect. The licensee determined that this roof consists of (1) A Koroseal vapor barrier; (2) Flintkote roof insulation; (3) Lexsuo adhesive; (4) eight layers of Ruberiod asphalt felt; and (5) clean, dry, opaque 1/4" to 5/8" gravel. The licensee determined that this roof is the original roof; its fire classification is indeterminate. Because of the uncertainty as to the combustibility and fire classification of the control building roof, the licensee's proposed exemption which would permit it to separate cables and equipment and associated nonsafety circuits of redundant trains by a 25-minute rated fire barrier until a horizontal distance of 10 feet is attained is not acceptable.

Roof and Fire Zone 118—Control and Auxiliary Building Roof

Fire zone 118 is the control and auxiliary building roof. The auxiliary building roof construction is concrete without an asphalt roof membrane. There are minimal in-situ combustibles in this fire zone and intervening combustibles between redundant safe shutdown functions is not a concern. In addition, this roof is inside the radiation control area of the facility. The only transient combustible materials admitted are those used in maintenance or work activity within this area and controlled by the licensee's administrative controls. Therefore, transient combustibles are not a concern.

Located in fire zone 118 are redundant safe shutdown trains of DC equipment/inverter room heating ventilation and air conditioning (HVAC) (Component Nos. E16D, E16E, E16F), electrical equipment room HVAC (Component Nos. E232/V76, E16E/E16F), cable spreading room HVAC (S74A/S75A, S74B/S75B), and the

auxiliary building exhaust fan (V8A, V8B). In addition, the cabling and raceway associated with this equipment are routed in this fire zone. The conduits and the associated post-fire safe shutdown functions (identified in the appendix) are separated from the redundant train in this fire zone by a 25-minute rated fire barrier until a horizontal distance of 10 feet is attained. All other post-fire safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) located in this fire zone are separated from their redundant equipment by a horizontal distance of greater than 10 feet. In addition, the space between the equipment is free of fixed combustibles. Since this fire zone is outdoors and the in-situ fire load is minimal, there is reasonable assurance that any fire would be small and that the required post-fire safe shutdown equipment protected by the 25-minute electrical raceway fire barrier system would remain free of fire damage until the fire burned itself out or was detected by plant personnel and adequately controlled and suppressed by the plant fire brigade. The staff has determined that licensee's proposal provides adequate protection, will not pose an undue risk to public health and safety, and that the underlying purpose of the rule is satisfied. Therefore, the staff finds the licensee's proposed exemption for this area to be acceptable.

Fire Zone 113—Unit 4 Feedwater Platform and Fire Zone 116—Unit 3 Feedwater Platform

Fire zones 113 and 116 are the feedwater platforms for Units 3 and 4, respectively. These platforms are located in the outdoor area on elevation 38'-0". The major safe shutdown equipment located in each of these fire zones is two trains of auxiliary feedwater control valves and the auxiliary building supply fans. The train A valves (three valves) are located above the platform, on elevation 42'-0" and the train B valves (three valves) are on elevation 30'-7". They are separated by a 1/4-inch thick steel checker-plate platform. In addition, these areas contain the associated feedwater and auxiliary feedwater systems that penetrate the reactor containment building. The area is bounded on two sides, north and west, by concrete walls. The east side is bounded by the respective Unit 3 or 4 reactor containment building. The south side is open to the atmosphere and the ceiling is concrete. The redundant post-fire safe shutdown trains located in these areas are not protected by an automatic suppression system. However, these fire

¹ As specified by the licensee's exemption request, the fire resistive rating of 25-minute electrical raceway fire barrier system applications (e.g., fire barrier application for various conduit diameters, lateral bends, radial bends, junction boxes, conduit bank enclosures) will be bounded by tests and will be representative of the tested configurations. The fire endurance and hose stream testing will also be done in accordance with Generic Letter 86-10, Supplement 1, and will have met the acceptance criteria.

zones are protected by UV fire detection capabilities, manual hose stations, and portable fire extinguishers.

Where there are intervening combustibles between redundant safe shutdown trains or the required post-fire safe shutdown circuits or equipment (e.g., components, power and control circuits, and power distribution circuits) are not separated from its redundant equipment by a minimum of 20 feet, the equipment is protected by an electrical raceway fire barrier system with a 25-minute fire resistive rating. The raceway protected by electrical raceway fire barrier systems are identified in the Appendix. These fire zones are outdoor areas and the in-situ fire load is low. Therefore, there is reasonable assurance that if a fire occurred the required post-fire safe shutdown equipment protected by the 25-minute electrical raceway fire barrier system would remain free of fire damage until the fire was automatically detected and then controlled and suppressed by the plant fire brigade. The staff has determined that licensee's proposal provides adequate protection, will not pose an undue risk to public health and safety, and that the underlying purpose of the rule is satisfied. Therefore, the staff finds the licensee's proposed exemption for this area to be acceptable.

Fire Zone 115—Unit 3 Main Steam Platform and Fire Zone 114—Unit 4 Main Steam Platform

These two outside areas are located at the 53'-6" elevation. The major safe shutdown equipment in these fire zones consist of the main steam isolation valves, main steam isolation valve bypass valves, and the atmospheric dump valves. The redundant main steam isolation, bypass valves, and atmospheric dump valves are separated from each other by approximately 28 feet center to center. The redundant trains located in these areas are not protected by fixed fire suppression or automatic fire detection systems. Portable fire extinguishers and standpipes with the appropriate hose stations are available and accessible.

These areas are open to the atmosphere and do not have a ceiling. Redundant cables are separated horizontally by over 20 feet free off intervening combustibles and are routed in steel conduit. Where there are intervening combustibles or the required post-fire safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) is not separated from its redundant equipment by a minimum of 20 feet, the equipment is protected by a electrical raceway fire

barrier system with a 25-minute fire resistive rating. The raceway protected by electrical raceway fire barrier systems are identified in the Appendix. Since these fire zones are outdoor areas and the in-situ fire load is low, there is reasonable assurance that if a fire occurred, it would be small and the required post-fire safe shutdown equipment protected by the 25-minute fire barrier system would remain free of fire damage until the fire burned itself out or was detected by plant personnel and controlled and suppressed by the plant fire brigade. The staff has determined that licensee's proposal provides adequate protection, will not pose an undue risk to public health and safety, and that the underlying purpose of the rule is satisfied. Therefore, the staff finds the licensee's proposed exemption for this area to be acceptable.

Fire Zone 119—Unit 4 Intake Structure and Fire Zone 120—Unit 3 Intake Structure

The Unit 3 and 4 intake structures are contiguous and are designated fire zone 119 (Unit 4) and fire zone 120 (Unit 3) to differentiate between the units. These fire zones are outdoors and are not bounded by walls or a ceiling. The in-situ combustible in these fire zones is a small amount of lubricating oil contained in the motor housings. The fire protection features provided for these zones are manual fire hose stations and portable fire extinguishers. These fire zones are protected by automatic UV fire detectors.

Where there are intervening combustibles between redundant shutdown trains or the required post-fire safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) is not separated from its redundant equipment by a minimum of 20 feet, the equipment is protected by an electrical raceway fire barrier system with a 25-minute fire resistive rating. The raceway protected by electrical raceway fire barrier systems are identified in the Appendix. Since these fire zones are outdoor areas and the in-situ fire load is low, there is reasonable assurance that if a fire occurred, the required post-fire safe shutdown equipment protected by the 25-minute fire barrier system would remain free of fire damage and that the fire would be automatically detected and adequately controlled and suppressed by the plant fire brigade. The staff has determined that licensee's proposal provides adequate protection, will not pose an undue risk to public health and safety, and that the underlying purpose of the rule is satisfied. Therefore, the staff finds the

licensee's proposed exemption for this area to be acceptable.

Fire Zone 143—Unit 3 Emergency Diesel Generator Roof

The major safe shutdown equipment on the Unit 3 emergency diesel generator building roof consists of the emergency diesel generator exhaust silencers. The roof construction is concrete without an asphalt roof membrane. There are no in-situ combustibles located in this fire zone; therefore, intervening combustibles between redundant safe shutdown equipment is not a concern.

All post-fire safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) located in this fire zone is separated from its redundant equipment by a horizontal distance of greater than 10 feet. The space between the equipment is free of fixed combustibles. Therefore, the licensee is relying on spacial separation in lieu of physical protection (e.g., raceway fire barriers) and has determined that the use of raceway fire barriers to assure that one train of required safe shutdown equipment remains free of fire damage is not required in this fire zone to provide reasonable assurance the equipment would be available. Since this fire zone is outdoors and there are no in-situ combustibles, there is reasonable assurance that any fire in this area would be small and that the required 10-foot separation of redundant safe shutdown trains would maintain one train free of fire damage until the fire burned itself out or was detected by plant personnel and controlled and suppressed by the plant fire brigade. The staff has determined that licensee's proposal provides adequate protection, will not pose an undue risk to public health and safety, and that the underlying purpose of the rule is satisfied. Therefore, the staff finds the licensee's proposed exemption for this area to be acceptable.

Generic Application of Alternative Physical and Spacial Separation Fire Protection Schemes

The licensee requested that the staff approve an exemption to use any of the following generic protection schemes in lieu of installing the 3-hour fire barriers required by Appendix R, Section III.G.2.a, in any outdoor fire zone (excluding the turbine building):

- Separation of cables and equipment and associated nonsafety circuits of redundant trains west of the open turbine building structure column line A by 1-hour rated fire barriers until a horizontal distance of 20 feet is attained.

- Separation of cables and equipment and associated nonsafety circuits of redundant trains by 25-minute rated fire barriers until a horizontal distance of 20 feet is attained.

- For roof top fire zones, separation of cables and equipment and associated nonsafety circuits of redundant trains by 25-minute rated fire barriers until a horizontal distance of 10 feet is attained.

- Separation of cables and equipment and associated nonsafety circuits of redundant trains by a radiant energy heat shield having an equivalent 30-minute fire rating until a horizontal distance of 20 feet is attained.

By letter dated October 31, 1997, the licensee submitted its technical bases for these protection schemes. In certain cases, the staff may find these schemes an acceptable alternative to the specific requirements of Section III.G of Appendix R to 10 CFR Part 50. However, in responding to the staff's request for additional information of June 16, 1997, and to the request made during the meeting between the NRC staff and the licensee on July 7, 1997, the licensee did not submit an analysis for each fire zone which identifies the post-fire safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) in the zone, their relative safe shutdown importance, how the equipment is protected, including detailed evaluations of the fire hazards and the potential worst-case fires that may occur. Therefore, the staff cannot evaluate the generic acceptability of these schemes or whether the application of a specific protection scheme would provide reasonable assurance that one train of safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) would be free of fire damage. Without a plant-specific fire-zone-by-fire-zone fire hazards analysis to support the use of these protection schemes on a case-by-case basis, the staff cannot assess the acceptability of these plant configurations and their ability to provide an adequate level of fire safety consistent with the underlying purpose of Section III.G of Appendix R to 10 CFR Part 50. However, additional information was recently submitted by the licensee and these remaining zones are being evaluated separately.

Conclusions

On the basis of its evaluation and review that included a site walkdown of the fire zones, the staff concludes the following:

For fire zone 47 (Unit 4 CCW) and fire zone 54 (Unit 3 CCW room), the use of a 25-minute fire rated electrical raceway fire barrier system in lieu of a 1-hour fire barrier system as required by Section III.G.2 of Appendix R to 10 CFR part 50 provides an adequate level of fire safety, poses no undue risk to public health and safety, meets the underlying purpose of the rule and is, therefore, acceptable.

For fire zone 113 (Unit 4 feedwater platform), fire zone 116 (Unit 3 feedwater platform), fire zone 119 (Unit 4 intake structure), and fire zone 120 (Unit 3 intake structure), the use of 25-minute fire barriers to separate cables and equipment and associated nonsafety circuits of redundant trains until a horizontal distance of 20 feet free of intervening combustibles is attained provides an adequate level of fire safety, poses no undue risk to public health and safety, meets the underlying purpose of the rule and is, therefore, acceptable.

For fire zone 115 (Unit 3 main steam platform) and fire zone 114 (Unit 4 main steam platform), the use of 25-minute fire barriers to separate cables and equipment and associated nonsafety circuits of redundant trains until a horizontal distance of 20 feet free of intervening combustibles is attained provides an adequate level of fire safety, poses no undue risk to public health and safety, meets the underlying purpose of the rule and is, therefore, acceptable.

For fire zone 143 (Unit 3 emergency diesel generator roof) and fire zone 118 (control and auxiliary building roof), the use of 25-minute fire barriers to separate cables and equipment and associated nonsafety circuits of redundant trains until a horizontal distance of 10 feet free of intervening combustibles is attained provides an adequate level of fire safety, poses no undue risk to public health and safety, meets the underlying purpose of the rule and is, therefore, acceptable.

For fire zone 106R, based on the uncertain combustibility and indeterminate fire classification of the built-up asphalt roof design, with respect to the use of 25-minute fire barriers to separate cables and equipment and associated nonsafety circuits of redundant trains until a horizontal distance of 10 feet free of intervening combustibles is attained, the staff cannot determine if an adequate level of fire safety would be provided and the exemption request is, therefore, unacceptable. The licensee's request for exemption for this fire zone is denied.

Without a specific analysis for each fire zone which identifies the post-fire safe shutdown equipment (e.g., components, power and control circuits, and power distribution circuits) in the zone, their relative safe shutdown importance, and how the equipment is protected (including detailed evaluations of the fire hazards and the potential worst-case fires that may occur), the staff cannot evaluate the acceptability of the generic protection schemes or whether the application of a specific protection scheme provides the reasonable assurance needed to satisfy the underlying purpose of Section III.G.2 of Appendix R to 10 CFR part 50. Therefore, the staff finds the generic applicability of these protection schemes to outdoor areas unacceptable at this time. However, additional information was recently submitted by the licensee and these remaining zones are being evaluated separately.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption for fire zones 47, 54, 113, 114, 115, 116, 118, 119, 120, and 143 will not have a significant effect on the quality of the human environment (63 FR 8695).

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, special circumstances are present in that application of the regulation in these particular circumstances is not necessary to achieve underlying purpose of the rule which is to provide reasonable assurance that one safe shutdown train and its associated circuits used to achieve and maintain safe shutdown are free of fire damage. Therefore, the Commission hereby grants Florida Power and Light Company an exemption from the requirements of Section III.G.2.a of Appendix R to 10 CFR part 50, as requested in the submittal, for fire zones 47, 54, 113, 114, 115, 116, 118, 119, 120, and 143. This exemption is effective upon issuance. The exemption for fire zone 106R is denied. The exemption requested for the remaining fire zones is being evaluated separately.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 24th day of February 1998.

Samuel J. Collins,

Director Office of Nuclear Reactor Regulation.

POST-FIRE SAFE SHUTDOWN FUNCTIONS—RACEWAY/CABLES AND COMPONENTS REQUIRING FIRE BARRIER PROTECTION
[Turkey Point Units 3 and 4]

Fire zone	System	Component ID	Protected raceway ID	Cable function
O/D 47	CCW	4P211B	4N1361	CCW pump control.
O/D 54	CCW	3P211B	3N1372	CCW pump control.
O/D 113 ...	AFW	CV-4-2816	4K369	AFW flow control valve control.
			4K323	
		CV-4-2817	4K379	
			4K265	
			4K612	
		CV-4-2818	4K614	
			4K389	
		CV-4-2831	4K1065	
			4K1244	
			PB4519	
			TB4835	
			4K1240	
			TB4835	
			4K1243	
			4K1407	
			4K1408	
		CV-4-2832	4K1240	
			4K1243	
			TB4835	
			4K1068	
			4K1244	
			PB4519	
			TB4835	
			4K1407	
			4K1409	
		CV-4-2833	4K1240	
			4K1243	
			TB4835	
			4K1066	
			4K1244	
			PB4519	
O/D 113 ...	AFW	CV-4-2833	TB4835	AFW flow control valve control.
			4K1407	
			4K1410	
O/D 116 ...	AFW	CV-3-2816	3K368	AFW flow control valve control.
			3K369	
		CV-3-2817	3K574	
			3K576	
			3K577	
		CV-3-2818	3K568	
			3K570	
			3K585	
O/D 114 ...	MSS	POV-4-2604B	4K1403	Main Steam isolation valve control.
			4K1514	
			4K1518	
		POV-4-2605B	4K1402	
			4K1515	
			4K1518	
		POV-4-2606B	4K1401	
			4K1517	
			4K1518	
O/D 115 ...	MSS	POV-3-2604B	3K1624	Main Steam isolation valve control.
			3K1841	
			3K1843	
			3K1845	
			PB3946	
			PB3947	
		POV-3-2605B	3K1624	
			3K1841	
			3K1843	
			3K1845	
			PB3946	
			PB3947	
			3K1623	
			3K1844	
		POV-3-2606B	3K1622	
			3K1841	
			3K1842	

POST-FIRE SAFE SHUTDOWN FUNCTIONS—RACEWAY/CABLES AND COMPONENTS REQUIRING FIRE BARRIER
PROTECTION—Continued
[Turkey Point Units 3 and 4]

Fire zone	System	Component ID	Protected raceway ID	Cable function
O/D 118 ... O/D 119 ...	HVAC ICW	E16F 4P9B	PB3946 4J1195 4R067 4R077	DC/Inverter HVAC E16F Power. ICW Pump 4P-9B Power.
O/D 120 ...	ICW	3P9B	3R067 3R077	ICW Pump 3P-9B Power.

[FR Doc. 98-5712 Filed 3-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA 97-067]

In the Matter of Julian H. McGriff; Order Prohibiting Involvement in NRC- Licensed Activities; Effective Immediately

I

During the period of April 1996 through March 5, 1997, Julian H. McGriff was employed by Southern Nuclear Operating Company, Inc. (SNC or licensee) at its Joseph M. Farley Nuclear Plant as an Emergency Preparedness Technician. SNC holds License Nos. NPF-2 and NPF-8 for Joseph M. Farley Nuclear Plant Units 1 and 2 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on June 25, 1977, and March 31, 1981, respectively. The licenses authorize SNC to operate the Joseph M. Farley Nuclear Plant (FNP or licensee) Units 1 and 2 in accordance with the conditions specified therein.

II

During an audit conducted by the licensee for the period November 25, 1996, through February 19, 1997, an inconsistency was identified relating to the documentation associated with the monthly check of a self-contained breathing apparatus (SCBA) on the 83 foot elevation of the FNP Unit 2 Auxiliary Building. The monthly check was required by Procedure FNP-0-EIP 16, Emergency Equipment and Supplies, Revision 31. Subsequently, the licensee performed a more in-depth investigation and determined that a December 17, 1996 inspection, documented by Mr. Julian H. McGriff, had not been conducted. The licensee identified approximately 36 additional discrepancies in the documentation associated with Mr. McGriff's inspections of emergency equipment.

Specifically, the licensee identified instances where inventory checklists were completed on dates different from the date the inspections were actually conducted, the deliberate misdating of checklists, and the completion of checklists for inspections never conducted. Mr. McGriff was terminated from employment with SNC on March 5, 1997.

On June 30, 1997, the NRC Office of Investigations (OI) completed an investigation of the alleged falsification of emergency preparedness checklists by Mr. McGriff. OI, in Report No. 2-97-005, concluded that during the period April 1996 through January 1997, Mr. McGriff failed to conduct at least three required inspections and deliberately falsified at least four checklists. The finding was based on the fact that inventory checklist documentation did not coincide with plant access records for Mr. McGriff, which indicated that entries were not made into the documented areas on the dates indicated on the checklists. Specifically, based on plant access data, the following checklist entries were falsified: (1) a December 17, 1996, entry for an inspection of the SCBA on the 83 foot elevation of the FNP Unit 2 Auxiliary Building that was documented but not performed; (2) a July 12, 1996, entry for an inspection of the SCBA in the Diesel Generator Building that was not performed; (3) an entry for an inspection of emergency supplies located in the Auxiliary Building that was intentionally documented as being performed on September 4, 1996, due to admonitions from Mr. McGriff's supervisor regarding the timeliness of inventory checks, when it was actually performed on September 30, 1996; and (4) a September 30, 1996, entry for an inspection of SCBAs in the Diesel Generator Building that was never performed. Numerous other instances where documentation did not coincide with plant access records for Mr. McGriff were also identified.

FNP Technical Specification (TS) 6.8.1.e requires that written procedures be established and implemented for Emergency Plan implementation. Emergency Plan Implementing Procedure FNP-0-EIP-16.0, Emergency Equipment and Supplies, Revision 31 requires periodic inventory verification of emergency equipment and supplies. Records associated with FNP-0-EIP-016, a safety related procedure at Farley, are required to be maintained in accordance with Section 17.2 of the licensee's 10 CFR Appendix B required Quality Assurance Operations Manual, Revision 32. The checklists, that are to be completed pursuant to FNP-0-EIP-016, are required to be maintained for the lifetime of the plant in accordance with Section 8.7 of licensee procedure FNP-0-AP-4, Control of Plant Records, Revision 18. FNP-0-AP-4 implements item 1.h of Appendix A to Regulatory Guide 1.33, dated 1978, and is required to be established, implemented and maintained in accordance with TS 6.8.1.a. The failure to perform the emergency equipment inventories as prescribed by FNP procedures is a violation of TS 6.8.1.e. In addition, 10 CFR 50.9(a) states, in part, that information required by the Commission's regulations to be maintained by the licensee shall be complete and accurate in all material respects. The failure of SNC to maintain complete and accurate records of emergency equipment inspections due to Mr. McGriff's falsification of inventory checklists is a violation of 10 CFR 50.9(a). The inaccuracy of these records is material because the licensee and the NRC relied upon them to determine the availability and status of emergency equipment.

On August 22, 1997, the NRC sent a letter to Mr. McGriff advising him that his actions appeared to be in violation of 10 CFR 50.5, "Deliberate Misconduct." 10 CFR 50.5, in part, prohibits an employee of a licensee from (1) engaging in deliberate misconduct that causes a licensee to be in violation of any rule or regulation or license

condition or limitation of any license issued by the Commission; or (2) deliberately submitting to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Mr. McGriff was offered the opportunity to either attend a predecisional enforcement conference or respond to the apparent violation in writing. After being granted an extension, Mr. D. Lewis Terry, Esquire, on behalf of Mr. McGriff, responded by letter dated October 28, 1997, to the apparent violation admitting that several of the inspections for which Mr. McGriff was responsible were not conducted and explaining the various discrepancies in Mr. McGriff's documentation of the inventories. The explanation of the discrepancies did not refute the violations, but merely provided Mr. McGriff's rationale for why he chose not to perform the required emergency equipment inventories and why documentation of inventories did not match his plant access records. Notwithstanding this explanation, the result was that records indicated completed inventories which were not performed on the dates specified. Mr. McGriff made no attempt to indicate to either his supervisor or document that he was not completing the records at the time of the inspections. In addition, he failed to annotate records to explain his assumptions and expectations rather than perform certain required emergency equipment inventories based on visual observation.

III

Based on the above, it appears that Mr. McGriff engaged in deliberate misconduct when he failed to perform certain required inspections of emergency equipment and deliberately falsified inventory checklists that SNC and the NRC relied upon to determine the availability and status of emergency equipment. Mr. McGriff's deliberate misconduct caused the licensee to be in violation of FNP TS 6.8.1.e and 10 CFR 50.9(a) and is, therefore, a violation of 10 CFR 50.5(a)(1) and (2). The NRC must be able to rely on licensees and their employees to fully comply with NRC requirements, including plant procedural requirements which ensure the availability and operability of equipment used in emergency situations and requirements to maintain records that are complete and accurate in all material respects. Mr. McGriff's deliberate misconduct, that caused the licensee to violate TS 6.8.1.e and 10 CFR 50.9(a), raises serious doubt as to

whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that public health and safety will be protected if Mr. McGriff were permitted to be involved in NRC-licensed activities at this time. Therefore, public health, safety and interest require that Mr. McGriff be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of his dismissal from SNC, March 5, 1997, and, if he is currently involved with another licensee in performing NRC-licensed activities, he must immediately cease such activities and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. McGriff is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. McGriff's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, *It is hereby ordered effective immediately, that:*

A. Mr. Julian H. McGriff is prohibited until March 5, 2000, from engaging in or exercising control over individuals engaged in NRC-licensed activities. If Mr. McGriff is currently involved in NRC-licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For a period of one year following the period of prohibition set forth in Paragraph IV.A above, Mr. Julian H. McGriff shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph IV.A above, provide notice to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. McGriff of good cause.

V

In accordance with 10 CFR 2.202, Mr. McGriff must submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. McGriff relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings Adjudications Staff, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia 30303 and to Mr. McGriff if the answer or hearing request is by a person other than Mr. McGriff. If a person other than Mr. McGriff requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. McGriff, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing

shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. McGriff may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 23rd day of February 1998.

Ashok C. Thadani,

Acting Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 98-5711 Filed 3-4-98; 8:45 am]

BILLING CODE 7580-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

Southern Nuclear Operating Company, Inc., et al.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc., et al. (the licensee), to partially withdraw its May 1, 1995, application for proposed amendments to Facility Operating License Nos. NPF-68 and NPF-81 for the Vogtle Electric Generating Plant (VEGP), Unit Nos. 1 and 2, respectively, located at the licensee's site in Burke County, Georgia. The May 1, 1995, application was supplemented by letters dated August 3 and 9, September 22, November 20 and December 21, 1995, January 26 and 30, February 19 and 29, March 5 and 12, May 6, June 17, August 23, and September 13, 1996.

The proposed amendments would have revised the Technical Specifications (TS) related to allowed

outage times for the Containment Spray and Cooling Systems, TS 3.6.6.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on September 7, 1995 (60 FR 46633). However, by letter dated February 17, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 1, 1995, and the supplements previously stated, and the licensee's letter dated February 17, 1998, which partially withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 27th day of February 1998.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-5714 Filed 3-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-254 and 50-265]

Commonwealth Edison Company and Midamerican Energy Company (Quad Cities Nuclear Power Station, Units 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR-29 and DPR-30, issued to Commonwealth Edison Company (the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements to

maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensees' application for exemption dated October 27, 1997.

The Need for the Proposed Action

The purpose of 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. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the Quad Cities Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption would not result in an increase in the probability or consequences of accidents, affect radiological plant effluents, or cause any significant occupational exposures. Therefore, there are no radiological

impacts associated with the proposed exemption.

The proposed exemption would not result in a change in nonradiological effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Quad Cities dated September 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on January 16, 1990, the staff consulted with the Illinois State official, Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' letter dated October 27, 1997, which is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 25th day of February 1998.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98-5710 Filed 3-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327 and 50-328]

Sequoyah Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR-77 and DPR-79 for the Sequoyah Nuclear Plant (SQN), Units 1 and 2, respectively, issued to the Tennessee Valley Authority (the licensee).

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated December 1, 1997, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the updated Final Safety Analysis Report (FSAR), which could also affect the schedule for submitting design change reports for facility changes made under 10 CFR 50.59 for SQN. Under the proposed exemption the licensee would schedule updates to the single, unified FSAR for the two units based on the refueling cycle of Unit 2.

The Need for the Proposed Action

The Code of Federal Regulations, 10 CFR 50.71(e)(4), requires licensees to submit updates to their FSAR annually or within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since Units 1 and 2 share a common FSAR, the licensee must update the same document annually or within 6 months after a refueling outage for either unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide for multiple unit facilities sharing a common FSAR in the rule.

Rather, the Commission stated that "With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis." 57 FR 39355 (1992). Allowing the exemption would maintain the UFSAR current within 24 months of the last revision and would not exceed a 24-month interval for submission of the 10 CFR 50.59 design-change report for either unit, if this is submitted with the FSAR revision.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that it involves administrative activities unrelated to plant operation.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational exposure or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

Alternative to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources:

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to SQN dated February 13, 1974.

Agencies and Persons Contacted:

In accordance with its stated policy, on January 29, 1998, the staff consulted with the Tennessee State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's request for the exemption dated December 1, 1997, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland this 24th day of February, 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98-5713 Filed 3-4-98; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Number: 030-14526; License Number: 37-00062-07]

Department of Veterans Affairs Medical Center (Philadelphia, PA); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 28, 1998, Ann Lovell (Petitioner) has requested that the U.S. Nuclear Regulatory Commission take immediate action to suspend or revoke the NRC license issued to the Philadelphia Veterans Administration Medical Center (PVAMC). As grounds for her request, the Petitioner asserts that the PVAMC executive management is operating in a manner that has the potential to present a significant danger to Medical Center patients, staff, and the general public. Specifically, the Petitioner asserts that there has been a consistent pattern of NRC violations occurring within the Medical Center for which PVAMC has failed to take corrective action; that PVAMC has supplied false information to NRC; that the Petitioner and two other members of the staff became contaminated with radioactive material in the nuclear medicine department as a result of what the Petitioner believes was an intentional incident; and that PVAMC

employees are fearful of bringing safety concerns to the licensee and to the NRC because of their concern for their safety and because of NRC's "history of inaction" regarding the medical center.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. It has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. The Petitioner's request for immediate action was denied by letter dated February 27, 1998.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W. (lower level), Washington, DC.

Dated at Rockville, Maryland, this 27th day of February 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98-5709 Filed 3-4-98; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT**Federal Prevailing Rate Advisory Committee; Open Committee Meetings**

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, April 16, 1998
Thursday, April 30, 1998
Thursday, May 14, 1998
Thursday, June 4, 1998
Thursday, June 18, 1998
Thursday, July 9, 1998
Thursday, July 23, 1998

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and

management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may 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: February 26, 1998.

Phyllis G. Heuerman,

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98-5681 Filed 3-4-98; 8:45 am]

BILLING CODE 6325-01-P

SECURITIES AND EXCHANGE COMMISSION**Existing Collection; Comment Request**

Upon written request, copies available from:
Securities and Exchange Commission,
Office of Filings and Information
Services, 450 5th Street, N.W.,
Washington, D.C. 20549.

Extension: Rule 23c-3 and Form N-23c-3,
SEC File No. 270-373, OMB Control No.
3235-0422.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office

of Management and Budget ("OMB") for extension and approval.

Rule 23c-3 under the Investment Company Act of 1940 [17 CFR 270.23c-3] permits certain closed-end investment companies ("closed-end funds" or "funds") periodically to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") or by sending three paper copies) attached to Form N-23c-3 [17 CFR 274.221], a cover sheet that provides limited information about the fund and the type of offer the fund is making.¹ The fund must describe in its annual report to shareholders to fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act [15 U.S.C. 80a-24] and the rules that implement section 24.²

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may

range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or the NASD to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission estimates that 10 funds currently rely upon the rule. The Commission estimates that each fund spends approximately 80 hours annually in preparing, mailing, and filing shareholder notifications for each repurchase offer, 4 hours annually in preparing and filing Form N-23c-3, 6 hours annually in preparing disclosures in the annual shareholder report concerning the fund's repurchase policy and recent offers, 28 hours annually in preparing procedures to protect portfolio liquidity, and 8 hours annually in performing subsequent reviews of these procedures. The total annual burden of the rule's paperwork requirements for all funds thus is estimated to be 1,260 hours. This represents an increase of 940 hours from the prior estimate of 320 hours. The increase results primarily from the recognition that sending notifications to shareholders and completing Form N-23c-3 imposes burdens in addition to the burden of preparing and filing the shareholder notifications with the Commission.³ The remaining increase

results from a more accurate calculation of the component parts of other previously combined information burdens.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0-4, 450 5th Street, N.W., Washington, DC 20549.

Dated: February 25, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-5727 Filed 3-4-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 9, 1998.

An open meeting will be held on Tuesday, March 10, 1998, at 10:00 a.m. A closed meeting will be held on Tuesday, March 10, 1998, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

Reduction Act for the collection of information in Form N-23c-3.

¹ Form N-23c-3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

² Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3], however, would generally exempt the fund from that requirement when the materials are filed instead with the National Association of Securities Dealers ("NASD"), as nearly always occurs under NASD procedures, which apply to the underwriter of every fund.

³ The Commission has not previously submitted to OMB a request for approval under the Paperwork

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, March 10, 1998, at 10:00 a.m., will be:

(1) Consideration of whether to amend Form N-1A. Form N-1A is used by mutual funds to register under the Investment Company Act of 1940 and the Securities Act of 1933. The amendments are intended to improve fund prospectus disclosure and to promote more effective communication of information about funds to investors. The amendments would focus prospectus disclosure on essential information about a particular fund that would assist investors in deciding whether to invest in that fund. The amendments also would minimize prospectus disclosure about technical, legal, and operational matters that generally are common to all funds.

Consideration of whether to adopt rule 498 under the Securities Act of 1933. Rule 498 would permit a mutual fund to offer investors a new disclosure document called a "profile", which summarizes key information about the fund, including the fund's investment strategies, risks, performance, and fees, in a concise, standardized format. The profile would offer investors the option of purchasing the fund's shares after reviewing the information in the profile or after requesting and reviewing the fund's prospectus (and other information). An investor deciding to purchase fund shares based on the information in a profile would receive the fund's prospectus with the confirmation of purchase.

(2) Consideration of whether to propose a new registration form, Form N-6, for insurance company separate accounts registered as unit investment trusts that offer variable life insurance policies. The form would be used by these separate accounts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. Form N-6 would focus prospectus disclosure on essential information that would assist an investor in deciding whether to invest in a particular variable life insurance policy, minimize prospectus disclosure

about technical and legal matters, improve disclosure of fees and charges, and streamline the registration process by replacing two forms that were not specifically designed for variable life insurance policies with a single form tailored to these products. For further information, contact Kevin M. Kirchoff at (202) 942-0672.

The subject matter of the closed meeting scheduled for Tuesday, March 10, 1998, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: March 2, 1998.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-5820 Filed 3-3-98; 11:36 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9750]

State of Connecticut

New Haven County and the contiguous Counties of Fairfield, Hartford, Litchfield, and Middlesex in the State of Connecticut constitute an economic injury disaster loan area as a result of a fire that occurred on January 28, 1998 in the Town of Branford. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on November 19, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 19, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-5676 Filed 3-4-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3062]

State of Delaware; and Contiguous Counties in Maryland

Sussex County and the contiguous County of Kent in the State of Delaware, and Caroline, Dorchester, Wicomico, and Worcester Counties in the State of Maryland constitute a disaster area as a result of damages caused by heavy rains and flooding resulting from a Nor'easter that occurred on February 4 and 5, 1998. Applications for loans for physical damage may be filed until the close of business on April 27, 1998 and for economic injury until the close of business on November 24, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 306206 for Delaware and 306306 for Maryland. For economic injury the numbers are 975500 for Delaware and 975600 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 24, 1998.

Aida Alvarez,
Administrator.

[FR Doc. 98-5679 Filed 3-4-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Declaration of Disaster #3045; Amendment #3]****State of Florida**

In accordance with a notice from the Federal Emergency Management Agency dated February 25, 1998, the above-numbered Declaration is hereby amended to include the Counties of Alachua, DeSoto, Dixie, Gilchrist, Lafayette, Pinellas, Taylor, and Union in the State of Florida as a disaster area due to damages caused by severe storms, high winds, tornadoes, and flooding beginning on December 25, 1997 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Charlotte (which was inadvertently omitted from Amendment #2) and Jefferson in the State of Florida may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 7, 1998 and for economic injury the termination date is October 6, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 25, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98-5678 Filed 3-4-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Declaration of Disaster #3045; Amendment #2]****State of Florida**

In accordance with notices from the Federal Emergency Management Agency dated February 20 and 23, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Florida as a disaster area: Baker, Bradford, Brevard, Clay, Columbia, Duval, Hamilton, Hardee, Highlands, Marion, Manatee, Seminole, Suwannee, and Volusia. This declaration is further amended to reopen the incident period to allow for additional damage resulting from continuing severe storms, high winds, tornadoes, and flooding. The incident period for this disaster is established as beginning on December 25, 1997 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Alachua, DeSoto, Flagler, Gilchrist, Glades, Lafayette, Madison, Nassau, Putnam, St. Johns, Sarasota, and Union Counties in Florida, and Charlton, Clinch, Echols, Lowndes, and Ware Counties in Georgia.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 7, 1998 and for economic injury the termination date is October 6, 1998.

The economic injury number for the State of Georgia is 975700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 24, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98-5680 Filed 3-4-98; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**[Declaration of Disaster #3061]****Massachusetts**

Barnstable County and the contiguous County of Plymouth in the Commonwealth of Massachusetts constitute a disaster area as a result of damages caused by a fire on February 10, 1998 in Provincetown. Applications for loans for physical damage may be filed until the close of business on April 27, 1998 and for economic injury until the close of business on November 24, 1998 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.250
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.625
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	

	Percent
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 306105 for physical damage and 975400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 24, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98-5677 Filed 3-4-98; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE**[Public Meeting Notice #2758]****Advisory Committee on Religious Freedom Abroad**

The Department of State announces a meeting of the Secretary of State's Advisory Committee on Religious Freedom Abroad (AC) on Thursday, March 12, 1998 from 10 a.m. to 1 p.m. in Room 1105 at the U.S. Department of State, 2201 C Street, N.W., Washington D.C. The purpose of the AC meeting will be to discuss recent work of Advisory Committee members to advocate religious freedom and to develop the work of the AC Task Forces over the next few months, including steps to facilitate implementation of the AC Interim Report recommendations. Members of the public will have an opportunity to present information formally to the Advisory Committee.

Advisory Committee members will also participate in a briefing organized by the Congressional Human Rights Caucus at 2:30 p.m. in Room 2200 of the Rayburn House Office Building, U.S. House of Representatives, Washington, D.C. The purpose of the CHRC meeting is to discuss the Interim Report of the Advisory Committee with members of Congress and their staff.

These meetings are open to the public up to the seating capacity of the rooms.

For the morning meeting, admittance to the State Department building is only by means of a pre-arranged clearance list, in accordance with routine security purposes. In order to be placed on the pre-clearance list, please provide your name, title, organization, social security number, date of birth, and citizenship to Mr. Cecil Grandy by fax at (202) 647-9519 or by telephone at (202) 647-1451. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: U.S.

driver's license with photo, a passport, or a U.S. Government agency ID.

For further information contact Ms. Alexandra Arriaga, Executive Secretary of the Advisory Committee by fax at (202) 647-9519 or by telephone at (202) 647-1422.

Dated: February 27, 1998.

John Shattuck,

Assistant Secretary of State, Bureau of Democracy, Human Rights and Labor, Chairman, Advisory Committee on Religious Freedom Abroad.

[FR Doc. 98-5845 Filed 3-3-98; 1:40 pm]

BILLING CODE 4710-18-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 190/ EUROCAE Working Group 52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 190/EUROCAE Working Group 52 meeting to be held March 17-20, 1998, starting at 8:00 a.m. each day. The meeting will be held at TRW, Inc., 1 Federal Systems Park Drive, Building FP1, Fairfax, VA 22033.

The agenda will include the following: Tuesday, March 17: (1) Registration (8:00-8:30 a.m.); (2) Opening Remarks and General Introductions; (3) Review and Approval of Summary of the Previous Meeting; (4) Certification Authorities Software Team Status; (5) Report on the Status of the FAA's Streamlining the Software Aspects of Certification Activity; (6) Terms of Reference Change and NAS Progress; (7) Progress with Paris Process Check Items; (8) Open Discussion on How the Web Is Working; (9) Issue Team Breakout Session Preparation. Wednesday, March 18: (10) Issue Team Breakout Sessions. Thursday, March 19: 8:00 a.m.-2:30 p.m. (11) Issue Team Breakout Sessions; 3:00-3:30 p.m. (12) Plenary Session Non-airborne Software Team Report and Voting on Papers; 4:00-4:30 p.m. (13) Plenary Session Service History Team Report and Voting on Papers. Friday, March 20: (14) Plenary Session PDS Team Report and Voting on Papers; (15) Plenary Session Structural Coverage Team Report and Voting on Papers; (16) Summary of the Status of Plenary Approvals; (17) Process Check; (18) Review of Meeting and Actions Raised; (19) Closing Remarks and Plans for Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833-9339 (phone); (202) 833-9434 (fax); or <http://www.rtca.org> (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 26, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98-5692 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Setter, Airport Manager, of the County of Delta, at the following address:

Delta County, 3300 Airport Road, Escanaba, MI 49829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Delta under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow

Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734-487-7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 11, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Delta was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 12, 1998.

The following is a brief overview of the application:

PFC Application No.: 98-05-C-00-ESC.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: July 1, 1998.

Proposed charge expiration date: August 31, 2000.

Total estimated PFC revenue: \$196,095.00.

Brief description of proposed projects: Land acquisition for Runway 18 obstacle free area; Clear obstructions in Runway 36 approach; Land acquisition for terminal area; Aviation easements and clear obstructions in Runway 9 approach; Handicap lift; Terminal building design; Construct aircraft terminal apron; Construct connecting taxiway; Construct terminal entrance road; Construct terminal parking area.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: FAR Part 135 operators who file FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the County of Delta.

Issued in Des Plaines, Illinois, on February 25, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98-5698 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Environmental Impact Statement: El Dorado County**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in El Dorado County, California.

FOR FURTHER INFORMATION CONTACT:

Richard J. Cushing, Environmental Planning Engineer, Federal Highway Administration, 555 Zang Street (Room 259), Lakewood, Colorado 80228, telephone 303-716-2139.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Eldorado National Forest, and the California Department of Transportation, will prepare an environmental impact statement (EIS) for a proposal to improve a portion of California Forest Highway 137, known as Wentworth Springs Road. The portion proposed for reconstruction begins at Stumpy Meadows reservoir and proceeds eastward for a distance of 23 kilometers (14.3 miles) to California Forest Highway 136, Ice House Road. The proposed improvements include reconstructing the existing road to a consistent alignment with 3.4 meter (11-foot) paved travel lanes and 0.3 meter (1-foot) paved shoulders.

Alternatives under consideration include (1) The "no build" alternative; (2) improvement of the existing roadway to appropriate American Association of State Highway and Transportation Officials' design criteria; and (3) other alternatives that may be developed during the scoping process.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Interagency meetings and a public hearing will be held in the project area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the

proposed action should be directed to the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 24, 1998.

James W. Keeley,

Project Development Engineer, FHWA, Denver, CO.

[FR Doc. 98-5700 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA-98-3558]

Fleetwood Enterprises, Inc.; Action on Application for Decision of Inconsequential Noncompliance

This document grants in part and denies in part the application by Fleetwood Enterprises, Inc. (Fleetwood) of Riverside, California for a determination that the failure of glazing to comply with the light transmittance requirements of 49 CFR 571.205, Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials," is inconsequential to safety. The glazing was installed in certain motor homes manufactured by Fleetwood.

Notice of receipt of the application was published on June 16, 1997 (62 FR 32676) and an opportunity for comment was afforded.

Standard No. 205 incorporates by reference the American National Standards Institute's (ANSI) "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z-26.1-1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26.1). This specifies that glazing materials used in windshields and in windows to the immediate right and left of the driver of trucks and buses shall have a luminous transmittance of not less than 70 percent of the light, at normal incidence, when measured in accordance with "Light Transmittance, Test 2" of ANSI Z-26.1-1980. (It also specifies that all windows of an automobile shall have a luminous transmittance of not less than 70 percent.)

From July 1995 through January 1997, Fleetwood manufactured approximately 1,438 1996 and 1997 model year Flair brand motor homes having front side windows with a luminous transmittance of 62 percent and approximately 188

Bounder brand motor homes and 733 Discovery brand motor homes, also of model years 1996 and 1997, having double panes of the same glazing in the front side windows. Fleetwood reported a luminous transmittance of 41 percent for the dual pane application. Beginning with vehicle production in January 1997, front side windows with a luminous transmittance of greater than 70 percent have been installed in all Fleetwood motor homes.

Fleetwood supported its application for inconsequential noncompliance with the following:

Fleetwood considered a Ford Motor Company inconsequentiality petition that references computer modeling studies and in-car evaluations conducted by Ford Motor Company that were used in their petition dated February 6, 1995 which showed a 5 point reduction in the percentage of light transmission, from 65 to 60 percent, resulted in a reduction of seeing distance of only 1 to 2 percent during night time driving, and little or no reduction in seeing distance during dusk and daytime driving. Based on these studies, the subject Flair brand motor home driver and passenger side windows with 62 percent light transmittance would be expected to result in no significant reduction in seeing distance during night time driving and virtually no reduction during dusk and daytime driving, compared to glass with a 70 percent transmittance. Reductions in seeing distances of 1 percent or less have no practical or perceivable effect on driver visibility based on observer's reports in vehicle evaluations by Ford of windshields with line-of-sight transmittance in the 60 to 65 percent range. The subject Bounder and Discovery brand motor home driver and passenger side windows with 41 percent light transmittance would be expected to result in no significant reduction in seeing distances during night time driving, and little to no reduction in seeing distance during dusk and daytime driving.

Fleetwood also considered that the stated purpose of Standard No. 205 to which the light transmittance requirements are directed is 'to ensure a necessary degree of transparency in motor vehicle windows for driver visibility.' NHTSA, in its March 1991 'Report to Congress on Tinting of Motor Vehicle Windows', concluded that the light transmittance of windows of the then new passenger cars and vans that complied with Standard No. 205 did not present an unreasonable risk of accident occurrence. The new passenger cars and vans that were considered to not present an unreasonable risk had effective line-of-sight light transmittances through the windshields as low as approximately 63 percent on passenger car windshields and 55 percent on van windshields (as determined by a 1990 agency survey, the results of which were included in the Report to Congress). Fleetwood feels that while light transmittance and driver visibility through front side windows is important to the safe operation of motor homes, it is not as important as driver visibility through motor

home windshields. Therefore, while the use of front side window glazing with luminous transmittance less than 70 percent is technically a non-compliance, we believe the condition presents no risk to motor vehicle safety.

Fleetwood's opinion that this non-compliance is not safety related is also based upon the consideration of the great amount of visibility that is inherent in the driver packaging of the subject motor homes. Factors which contribute to this visibility are:

1. The windshield glass is approximately 100 inches wide by 36 inches tall.
2. The windshield glass is installed at an incidence angle of 4 degrees back from vertical.
3. The involved side window glass on the Flair and Bounder brand motor homes is approximately 46 inches long by 31 inches tall. The involved side window glass on the Discovery brand motor home is approximately 52 inches long by 34 inches tall.
4. The involved side window glass is flat and is installed perpendicular to the ground.
5. The driver's seat H point ranges from approximately 50 to 62 inches from the ground.
6. The involved windows have a slider feature which allows them to be positioned out of line of sight (if desired), and
7. Side window visibility is primarily key in sharp turning maneuvers which are typically performed at low speeds.

No comments were received on the application.

NHTSA has reviewed Fleetwood's application and, for the reasons discussed below, concludes that the noncompliance of the Flair motor homes with a front side window light transmittance of 62 percent is inconsequential to motor vehicle safety. However, it denies the application with respect to the noncompliances of the Discovery and Bounder motor homes with a front side window light transmittance of 41 percent.

Fleetwood's argument was based in part on information from a similar inconsequentiality application from Ford Motor Company ("Ford") demonstrating that there is only a small effect upon seeing distance of a decline in light transmittance from 65 to 60 percent. Ford also cited a NHTSA report to Congress that the rake angle of certain windshields reduces the effective transmittance of light to 63 percent in some automobiles and to 55 percent in a particular minivan. (Ford's application involved 8,250 1995 Lincoln Continental passenger cars whose front door windows had a luminous transmittance of approximately 68 percent.) The application was granted (60 FR 31345) on June 14, 1995. Although a windshield might have the requisite minimum of 70 percent transmittance when tested in a vertical position, its rake angle as installed

reduces the light transmittance below 70 percent, and to 63 percent on some passenger cars, without creating a noncompliance with Standard No. 205. Given that fact, NHTSA has concluded that a value of 62 percent transmittance of the side windows on Flair motor homes is inconsequential to safety.

However, the agency cannot make the same finding with respect to the Discovery and Bounder motor homes where double pane glass has reduced the light transmittance to a reported 41 percent. Fleetwood characterized the role of front side windows as "primarily key in sharp turning maneuvers which are typically performed at low speeds" and to expect no significant reduction in night time seeing distances with windows having a light transmittance of 41 percent (Fleetwood derives the 41 percent transmittance value from a double pane application of the 62 percent transmittance windows. However, the agency believes that it is closer to 38.4 percent).

NHTSA cannot accept Fleetwood's assertion that the noncomplying glazing material in the Discovery and Bounder motor homes is inconsequential. The previously mentioned report to Congress discusses a research study which included glazing of 40 percent transmittance (Rompe and Engel, "The Influence of Windshields with Lower Light Transmission in Driver's Vision During Night Driving," SAE Technical Paper 870062). The study found 25 to 35 percent reductions in the ability of subjects to detect low contrast targets in simulated twilight driving when 40 percent transmittance glazing was substituted for 76 percent transmittance glazing. NHTSA also believes that side window visibility has a much greater safety role than in simply supplementing the large windshield of a motor home in low speed turning. Clear side window visibility is necessary in times of darkness for the driver to use the outside rear view mirrors and to have direct side vision at intersections and in lane change maneuvers.

Accordingly, for the reasons discussed above, it is hereby found that the applicant has met its burden of persuasion that the noncompliance of Flair motor homes with the requirements of 49 CFR 571.205 for light transmittance in front side window glazing is inconsequential to safety. However, it is also hereby found that the applicant has not met this burden of persuasion with respect to the noncompliance of Discovery and Bounder motor homes with the requirements of 49 CFR 571.205 for light transmittance in front side window glazing, and its application is denied.

(49 U.S.C. 30108, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 2, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-5743 Filed 3-4-98; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33548]

A T & L Railroad Company, Inc.— Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to A T & L Railroad Company, Inc. (ATL) over 31.65 miles of rail line in the State of Oklahoma between Oklahoma City, milepost 483.35, and El Reno, milepost 515.0 (line).¹ The trackage rights include the right to interchange freight with all existing and future railroads at Oklahoma City and El Reno, and industry access at Oklahoma City through reciprocal switching on the same basis as available to UP and other railroads.

The transaction was scheduled to be consummated on or after February 26, 1998.

The purpose of the trackage rights is to extend ATL's existing service and to give ATL access to additional carriers and shippers.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33548, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing,

¹ The line is owned by the State of Oklahoma and is leased and operated by UP.

P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796.

Decided: February 25, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-5718 Filed 3-4-98; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-398 (Sub-No. 5X)]

San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare and Kern Counties, CA

San Joaquin Valley Railroad Company (SJVR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 9-mile line of its railroad between milepost 295.2 near Richgrove and milepost 304.2 near Hollis in Tulare and Kern Counties, CA. The line traverses United States Postal Service Zip Codes 93261 and 93250.

SJVR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 4, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to

file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 16, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 25, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005-3934.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SJVR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 10, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SJVR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SJVR's filing of a notice of consummation by March 5, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: February 24, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-5301 Filed 3-4-98; 8:45 am]

BILLING CODE 4915-00-P

by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25). This fee is scheduled to increase to \$1000, effective March 20, 1998.

DEPARTMENT OF THE TREASURY

Assistant Secretary for Management and Chief Financial Officer; IRS Citizen Advocacy Panel; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. App.), as amended, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA, the Secretary of the Treasury has determined that the establishment of the IRS Citizen Advocacy Panel is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary, the Commissioner of Internal Revenue, and the National Taxpayer Advocate on ways to improve IRS service and responsiveness to its customers.

The Committee will consist of subcommittees located in IRS districts throughout the country. Each subcommittee of the CAP will consist of a maximum of 7 members, plus two alternates, who serve at the pleasure of the Secretary of the Treasury. A structured application process, managed at the Department of the Treasury, will be used to provide balanced panel membership representing, to the extent possible, a cross section of the taxpaying public residing in the IRS district.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days from the date of publication of this notice.

Questions regarding the establishment of this committee may be directed to Michael Lewis, Director, IRS Citizen Advocacy Panel, Office of the Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Room 2421, Washington, DC 20220, (202)622-3068.

Dated: February 27, 1998.

Michael Lewis,

Director, CAP, Office of the Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 98-5626 Filed 3-4-98; 8:45 am]

BILLING CODE 4810-25-P

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8859; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains corrections to a notice and request for comments, which was published in the **Federal Register** on Wednesday, January 14, 1998 (63 FR 2300). This notice relates to the Department of the Treasury's invitation to the general public to submit public comments on proposed and/or continuing information collections for Form 8859 as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

FOR FURTHER INFORMATION CONTACT: Carol Savage, (202) 622-3945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The notice and request for comments that is the subject of these corrections is under section 6103 of the Internal Revenue Code.

Need for Correction

As published, the comment request for Form 8859 contain errors which may prove to be misleading and are in the need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for Form 8859, which was the subject of FR Doc. 98-798, is corrected as follows:

1. On page 2300, column 3, in the heading, the language "Request for Form 8559" is corrected to read "Request for Form 8859"

2. On page 2300, column 3, under the caption **SUMMARY**, second line from the bottom of the paragraph, the language "8559, District of Columbia First-Time" is corrected to read "8859, District of Columbia First-Time".

3. On page 2301, column 1, under the caption **SUPPLEMENTARY INFORMATION**:, line 4, the language "Form Number: Form 8559." is corrected to read "Form Number: Form 8859.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98-5642 Filed 3-4-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98-25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98-25, Automatic Data Processing.

DATES: Written comments should be received on or before May 4, 1998 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 revenue procedure should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Data Processing.

OMB Number: 1545-1595.

Revenue Procedure Number: Revenue Procedure 98-25.

Abstract: Revenue Procedure 98-25 provides taxpayers with comprehensive guidance on requirements for keeping and providing IRS access to electronic tax records. The revenue procedure requires taxpayers to retain electronic, or "machine-sensible" records, "so long as their contents may become material to the administration of the internal revenue laws." Such materiality would continue, according to IRS, at least until the period of limitations, including extensions, expires for each tax year.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 120,000.

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: March 2, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98-5742 Filed 3-4-98; 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 to be included in the exhibit "Gifts of the Nile: Ancient Egyptian

Faience" (see list,¹ imported from various foreign lenders for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the

¹ A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 202/619-5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547-0001.

foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio from on or about May 10, 1998, to on or about July 5, 1998, and Museum of Art, Rhode Island School of Design, Providence, Rhode Island from on or about August 24, 1998, to on or about January 3, 1999, and Kimbell Art Museum, Fort Worth, Texas from on or about January 31,

1999, to on or about April 25, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: February 28, 1998.

Les Jin,

General Counsel.

[FR Doc. 98-5652 Filed 3-4-98; 8:45 am]

BILLING CODE 8230-01-M

Final Rule

Thursday
March 5, 1998

Part II

**Department of the
Treasury**

Customs Service

**19 CFR Part 7, et al.
Drawback; Final Rule**

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PARTS 7, 10, 145, 173, 174, 178, 181, 191

[T.D. 98-16]

RIN 1515-AB95

Drawback**AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Final rule.

SUMMARY: This document revises the Customs Regulations regarding drawback. The document revises the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; to change some administrative procedures involving manufacturing and unused merchandise drawback, for the purpose of expediting the filing and processing of drawback claims thereunder, while maintaining effective Customs enforcement and control over the drawback program; and to generally simplify and improve the editorial clarity of the regulations.

EFFECTIVE DATE: April 6, 1998.**FOR FURTHER INFORMATION CONTACT:**

Operational aspects: Maryanne Carney, Chief, Drawback and Records Branch, New York, (212-466-4575).

Legal aspects: Paul Hegland, Office of Regulations and Rulings, (202-927-1172).

SUPPLEMENTARY INFORMATION:**Background**

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. The statute providing for specific types of drawback is 19 U.S.C. 1313, the implementing regulations for which are contained in part 191, Customs Regulations (19 CFR part 191).

The North American Free Trade Agreement Implementation Act, Public Law 103-182 (December 8, 1993), specifically Title VI thereof, popularly known as the Customs Modernization Act, significantly amended certain Customs laws. In particular, § 632 of Title VI effected extensive and major amendments to the drawback law, 19 U.S.C. 1313. Also, § 622 of Title VI authorized the establishment of a "Drawback Compliance Program" as well as specific civil monetary penalties for false drawback claims.

Public Law 103-182 also approved and implemented the North American Free Trade Agreement (NAFTA). Section 203 of the Public Law provides special drawback provisions for exports to NAFTA countries. NAFTA drawback is separately provided for in part 181 of the Customs Regulations (19 CFR part 181). Drawback and other duty-deferral programs are addressed in subpart E of part 181. General drawback provisions under part 191 and the NAFTA drawback regulations in part 181 contain substantial differences (e.g., the "lesser of" calculation versus full drawback, same condition versus unused merchandise drawback, etc.) Separate claims are required for drawback claims governed by NAFTA (see 19 CFR 181.46 and 191.0a).

By a document published in the **Federal Register** on January 21, 1997 (62 FR 3082), Customs proposed regulatory revisions principally to part 191 in implementation of the statutory changes. In addition, the document proposed to generally rearrange and revise part 191 largely in an effort to further simplify and improve the editorial clarity of those regulatory procedures primarily dealing with the manufacturing and unused merchandise provisions, these being the most commonly used types of drawback. Several administrative changes were proposed as well with respect to the regulatory procedures governing these provisions, for the purpose of expediting the filing and processing of drawback claims thereunder, while ensuring that Customs has the necessary enforcement information to maintain effective administrative oversight over the drawback program. Also, minor conforming changes occasioned by the general reorganization of part 191 were proposed with respect to other parts of the Customs Regulations (19 CFR parts 7, 10, 145, 173, 174 and 181).

In formulating the notice of proposed rulemaking, as noted therein, Customs consulted extensively with the drawback trade community. In particular, in the summer of 1995, Customs initiated informal rulemaking consultations in a series of meetings with various trade groups.

Numerous comments from the public were received in response to the publication of the notice of proposed rulemaking. A description, together with Customs analysis, of the comments that were submitted is set forth below.

Discussion of Comments**General**

Comment: Many views were expressed about the process of informal

consultations that were effected through a series of meetings initiated by Customs with various trade groups, most of these commenters variously observing that this process was instrumental and effective in assisting Customs in the preparation of a notice of proposed rulemaking which would fairly and accurately implement the drawback and related laws, and their underlying Congressional intent, as well as better reflect current industry practices and expectations.

Customs Response: Customs agrees that this final rule, based on the notice of proposed rulemaking which was developed through the innovative process described, correctly reflects the intent of the drawback law, as well as current industry concerns, and will improve drawback processing efficiency.

Comment: It was stated that the paperwork burden which would be generated by the proposed regulations was underestimated, due in part to the need to obtain certification in the drawback compliance program, and to provide Harmonized Tariff Schedule numbers in certain instances.

Customs Response: It should be noted that the information collection and recordkeeping burden in question contained in the proposed rule represents an estimated average annual burden. Customs, in accordance with the Paperwork Reduction Act of 1995, periodically reviews the accuracy of the information collection estimates required for compliance with its regulatory provisions. In the course of such review, changes to an estimated information collection burden will be made as appropriate.

Comment: The concern was expressed about the new Customs Forms that would be issued for drawback; it was asked that Customs work closely with the trade in the development of such forms, with one comment suggesting that the forms be finalized and included in the final drawback regulations herein.

Customs Response: Customs has worked closely with the public in developing new Customs Forms for drawback. The new drawback forms are: "Drawback Entry" (Customs Form 7551), "Delivery Certificate for Purposes of Drawback" (Customs Form 7552), and "Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback" (Customs Form 7553). The titles and numbers of the new forms are inserted where appropriate in the regulations.

Comment: Questions were raised about the nature and intent underlying the information contained in the

“BACKGROUND” section of the proposed rule.

Customs Response: The “BACKGROUND” section of a rulemaking document presents its regulatory history. The information in this section is intended to give the specific detail necessary to explain the basis and purpose of the subject regulatory provisions and to furnish adequate notice of the issues to be commented on, as required by the Administrative Procedure Act. This enables a reviewing body, such as a court of law, to be aware of the legal and factual framework underlying an agency’s action (see, e.g., *American Standard, Inc., v. United States*, 602 F. 2d 256, 269 (Ct. Cl. 1979)).

Comment: A comment noted that some general drawback contracts were not included in Appendix A to part 191 in the proposed rule, along with the other general contracts.

Customs Response: The comment has merit. Four of the general manufacturing drawback rulings, as they are now considered, specifically T.D.s 83–53, 83–77, 83–80, and 83–84, were inadvertently omitted from Appendix A. They are now included therein. Also, T.D. 84–49, which required Customs Headquarters approval to obtain petroleum drawback under 19 U.S.C. 1313(b), was thus included in Appendix B as “Format for 1313(b) Petroleum Drawback Application”. However, T.D. 84–49 is now included among the general manufacturing drawback rulings for which a letter of notification of intent to operate must be submitted to a drawback field office.

Comment: A statement was desired in the “BACKGROUND” section of the final rule that certain existing rulings concerning what constituted a manufacture or production for drawback purposes would remain in effect.

Customs Response: No change as to what constitutes a manufacture or production is intended by these regulations. As to non-revoked rulings generally, to the extent that such rulings do not materially conflict with the statute and these regulations, they remain in effect and may be relied upon to the extent provided in 19 U.S.C. 1625 and 19 CFR part 177.

It is also pointed out that any changes made to the rulings published in the Appendix to part 191 in this final rule are merely conforming to these regulations and do not adversely affect the public.

Comment: An objection was made about the planned transfer of drawback claims from the Customs field office where filed to another such office having more expertise in the handling of

the particular claims, as was mentioned in the “BACKGROUND” section of the proposed rule.

Customs Response: Customs believes that the planned redistribution of drawback workload, as described, which, as observed in the proposed rule, is an internal work management issue not requiring regulatory action, will result in quicker, more efficient, and more accurate processing of drawback claims.

Comment: Changes were requested in the drawback and duty-deferral provisions, related primarily to inventory management procedures and accounting, that were promulgated in part 181, Customs Regulations (19 CFR part 181) pursuant to the North American Free Trade Agreement (NAFTA).

Customs Response: The provision in part 181 for accounting for fungible goods in inventory which are to be exported to Canada or Mexico in the same condition as imported and for which drawback is claimed under 19 U.S.C. 1313(j)(1) is modified consistent with the changes to accounting methods for drawback in part 191 (see § 191.14). Under the amended provision, if all of the goods in a particular inventory are non-originating goods, the identification of the goods for purposes of designation for drawback shall be on the basis of one of the accounting methods authorized in 19 CFR 191.14, as authorized therein, including first-in first-out (FIFO), last-in, first out (LIFO), low-to-high (ordinary, with established average inventory turn-over period, and blanket methods), and average. Fungible originating and non-originating goods still may be commingled in inventory. When such originating and non-originating goods are commingled, the origin of the goods would continue to be determined according to the inventory methods provided for in the appendix to part 181, see 19 U.S.C. 3333(a)(2)(B). In this situation (i.e., when originating and non-originating fungible goods are commingled in inventory), the identification of the goods for purposes of designation for drawback must also be on the basis of the inventory method from the appendix to part 181. The reason that one of the accounting methods authorized in § 191.14 may not be used in the latter instance is that to do so would make so complicated area that verification by Customs would be an extreme administrative burden.

Subpart A, Part 191

Comment: It was asked that definitions for “merchandise”, “articles”, “perfecting”, “restructuring”, and “stay” be added to proposed

§ 191.2. It was requested that a definition be included for the term “operator” as used in Appendix A, while another comment suggested adding a definition for the term “records”.

Customs Response: Customs concludes that definitions for “merchandise” and “articles” are unnecessary and could prove confusing, inasmuch as these general terms have different meanings depending on the particular type of drawback involved. Also, Customs finds that the terms “perfecting”, “restructuring”, and “stay” are already adequately explained in the specific regulatory sections in which they appear. Furthermore, no definition of “operator” is added, but any confusion caused by the use of this term in the general manufacturing drawback rulings in Appendix A is removed by substituting “Manufacturer or Producer” therefor.

Customs has, however, determined to include a definition in § 191.2 for the term “records” based on the definition of this term appearing in 19 U.S.C. 1508. In addition, a definition of “filing”, based in part on the definition of that term in 19 CFR 141.0a for purposes of the entry of merchandise, is included in § 191.2 to implement 19 U.S.C. 1313(l), which authorizes regulations which may include, but need not be limited to, the electronic submission of drawback entries. These definitions are added to § 191.2 in appropriate alphabetical order.

Comment: It was suggested that proposed § 191.2(a) defining the term “abstract” be clarified by stating that a certificate of manufacture and delivery when properly completed may serve as an abstract.

Customs Response: Customs finds that this is unnecessary. No reference is made in these regulations to an “abstract of manufacturing records”, which is how the term “abstract” was apparently viewed. As used herein, an abstract is simply one of two methods (the other being the schedule method) by which a manufacturer may show the amount of merchandise used or appearing in the exported article. To make this clear, a paragraph (d) is included in § 191.23.

Comment: The definition for a certificate of delivery in proposed § 191.2(b) was addressed, with the suggestion being made that the definition provide for the delivery of the qualified or substituted article under 19 U.S.C. 1313(p) dealing with the substitution of finished petroleum products. It was further recommended that the definition be made consistent with proposed § 191.10, in particular by

providing that a certificate of delivery was also used to document intermediate transfers of merchandise or product.

Customs Response: These comments have merit. The transfer of a qualified article from a manufacturer, producer or importer, under 19 U.S.C. 1313(p), is added to the definition of a certificate of delivery in § 191.2(c), as redesignated, and this definition is made consistent with the meaning and purpose of a certificate of delivery as set forth in § 191.10.

In the case of certificates of delivery for transfers under 19 U.S.C. 1313(p), a certificate of delivery would be required for a transfer of the qualified article from the importer to the exporter and for all intermediate transfers of the qualified article from the importer to the exporter (§§ 1313(p)(2)(A)(iv), 1313(p)(2)(F)). Similarly, a certificate of manufacture and delivery would be required for a transfer of the qualified article from the manufacturer or producer to the exporter (intermediate transfers of the qualified article would require a certificate of delivery) (§§ 1313(p)(2)(A)(ii), 1313(p)(2)(F)). Because the exporter of the exported (substituted) article must itself either have manufactured or produced or imported the qualified article or have purchased or exchanged, directly or indirectly, the qualified article from the manufacturer or producer or the importer (§ 1313(p)(2)(A)(i), (ii), (iii), and (iv)), no certificate of delivery would be used for the substituted exported article under 19 U.S.C. 1313(p), (i.e., because the exporter would not transfer the exported article and issue a certificate of delivery to itself).

Also, proposed § 191.2(d) defining the term "Act" is redesignated as § 191.2(b).

Comment: It was requested that the definition for a certificate of manufacture and delivery in proposed § 191.2(c) be changed to make it consistent with proposed § 191.24.

Customs Response: Customs agrees and has modified the definition of a certificate of manufacture and delivery in § 191.2(d), as redesignated, to be consistent with the information for this certificate as set forth in § 191.24. Also, § 191.2(d) adds a cross-reference to § 191.24.

Comment: The recommendation was made that the definition for commercially interchangeable merchandise in proposed § 191.2(e) include a reference to proposed § 191.32(c) dealing with determinations of commercial interchangeability under the substitution unused merchandise drawback law. A comment urged that proposed § 191.32(c) be changed to

declare that commercial interchangeability existed if the governing criteria in this regard were substantially rather than completely met.

Customs Response: A cross reference to § 191.32(c) is added to § 191.2(e). However, Customs cannot change § 191.32(c) as requested. The criteria employed in determining commercial interchangeability is adopted from the legislative history of the substitution unused merchandise drawback law. However, to better implement legislative intent in this regard, § 191.32(c) is changed to provide that in determining commercial interchangeability, Customs will evaluate the critical properties of the substituted merchandise. It is noted that procedures for contesting specific rulings on commercial interchangeability are found in 19 U.S.C. 1625 and 19 CFR part 177.

Comment: It was observed that the definition of designated merchandise appearing in proposed § 191.2(f) to include drawback products could be misleading in relation to proposed § 191.26(b)(3) which provided for exportation or destruction "within 5 years of the importation of the designated merchandise", the concern apparently being that drawback products would not be imported.

Customs Response: Customs agrees, and has appropriately modified § 191.27(b)(3) as redesignated. No change to the definition of designated merchandise in § 191.2(f) is warranted.

Comment: It was variously contended that the definition of destruction in proposed § 191.2(g) should provide for the allowance of drawback when merchandise was not completely destroyed, had value, and was partially recovered or recycled.

Customs Response: It is Customs position that the proposal to allow drawback when complete destruction does not occur (and the resulting scrap has value) is not within Customs authority to implement by regulations.

Comment: A suggestion was made that the definition for direct identification drawback reflect that such identification could be effected using an approved accounting method provided for in proposed § 191.14.

Customs Response: Customs agrees. Section 191.2(h) is modified accordingly.

Comment: A request was made that the definition of drawback in proposed § 191.2(i) state the amount of the drawback refund and include a cross reference to proposed § 191.3 concerning the types of duty which could be the subject of drawback recovery.

Customs Response: A reference to § 191.3 is added to § 191.2(i). However, the measure of the drawback refund is not warranted. Customs has reviewed each kind of drawback to ensure that in situations in which the amount of drawback recovery is 100%, the applicable regulation specifically so states.

Comment: It was remarked, with respect to the definition for drawback product in proposed § 191.2(l), that such a product need not be "wholly" manufactured in the United States.

Customs Response: This comment has merit. The reference to a drawback product as being wholly manufactured in the United States is deleted.

Comment: The suggestion was put forth that the definition of exportation in proposed § 191.2(m) be revised to make provision for the lading of goods on qualifying vessels and aircraft under 19 U.S.C. 1309.

Customs Response: Customs agrees. Section 191.2(m) is revised consistent with 19 U.S.C. 1309 and reference to 19 CFR 10.59 through 10.65 is added. Also, as already noted, a definition of "exporter" is added to this provision, consistent with the definition of this term in the regulations of the Bureau of Export Administration, Department of Commerce (15 CFR part 772).

Consistent with the definition of "exportation", the definition of "exporter" provides that for "deemed exportations" the exporter is the person who as the principal party in interest in the transaction deemed to be an exportation has the power and responsibility for determining and controlling the transaction (e.g., in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the supplies on the qualifying aircraft or vessel). Thus, if an aircraft or vessel operator has such power and responsibility, that aircraft or vessel operator is the exporter and is entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party (see § 191.82). If another party (e.g., a fuel supply company) has such power and responsibility, that party is the exporter and is entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party. This will enable the public, and Customs, to identify with greater certainty the party responsible for keeping records of exportation and the party who may claim drawback.

Comment: It was recommended that the term "general manufacturing drawback ruling" in proposed § 191.2(o) be changed to "general drawback

statement". It was asked that any new general rulings be published first as Treasury Decisions (T.D.s) and thereafter included in Appendix A to part 191.

Customs Response: Customs hereby affirms the change from drawback "contracts" to "rulings", which was occasioned only after thorough review and consideration, as noted in the proposed rule (see 62 FR 3086). The reasons for this change were thoroughly described in the proposed rule (see 62 FR 3083 and 3096-3087).

The comment suggesting that new general rulings should first be published as T.D.s and subsequently added to the Appendix has merit and is adopted. To this end, the definition for general manufacturing drawback rulings now appearing in § 191.2(p), as redesignated, is changed to note that such rulings will be published as T.D.s and in Appendix A of part 191. This change is also effected in greater detail in § 191.7 dealing with the procedures for general manufacturing drawback rulings.

Additionally, the explanation in the definition stating when a manufacturer or producer may operate under a general manufacturing drawback ruling and describing the procedures for such rulings is removed as unnecessary and not a part of the definition. The removed material is instead provided for in § 191.7.

Comment: The question was asked as to whether the definition of manufacture or production in proposed § 191.2(p) was intended in any way to undermine existing precedential rulings or decisions in this connection.

Customs Response: There is no intent to change the existing definition of manufacture or production for drawback purposes (now redesignated as § 191.2(q)). This was made clear in the proposed rule.

Comment: It was asked that the term "possession" in proposed § 191.2(q) be further defined and explained.

Customs Response: Customs believes that the definition of possession (now redesignated as § 191.2(s)), which is based on the language of the statute (19 U.S.C. 1313(j)(2)), is sufficiently clear as is.

Comment: With respect to proposed § 191.2(r) defining relative value in situations where multiple products concurrently result in manufacture, it was suggested that a definition be included in proposed § 191.2 for multiple products.

Customs Response: Customs agrees. A definition for multiple products as "two or more products produced concurrently by a manufacture or production operation or operations" is

added in appropriate alphabetical order to § 191.2. The definition for relative value is redesignated as § 191.2(u), and the reference to by-product appearing therein is removed.

Comment: Changes were suggested to the definition for substituted merchandise in proposed § 191.2(s) to provide, respectively, for substitution under 19 U.S.C. 1313(b), 1313(j)(2), and 1313(p). Also, it was suggested that this definition be placed in alphabetical order in proposed § 191.2.

Another comment requested that Customs provide guidance to the trade as to what constituted a substantial change in manufacture or production, which would preclude merchandise from being of the "same kind and quality" under 19 U.S.C. 1313(b), the criterion for permitting substitution for drawback purposes thereunder. This comment asked that merchandise falling under the same 8-digit harmonized tariff schedule (HTS) number be accepted as being of the same kind and quality.

Customs Response: Customs has revised the definition for substituted merchandise under § 191.2(x), as redesignated, so as to simplify it. Also, the definitions in § 191.2 have been placed in alphabetical order.

However, the comment suggesting the inclusion of an explanation as to what constitutes a substantial change in manufacture or production which would preclude a finding of same kind and quality under 19 U.S.C. 1313(b) is not adopted, inasmuch as Customs believes that such determinations are better made on a case-by-case basis. While the use of the HTS number is expressly recognized for this purpose under 19 U.S.C. 1313(p), no such provision to this effect exists in § 1313(b).

Comment: Various concerns were expressed over the definition of a specific manufacturing drawback ruling under proposed § 191.2(u); it was generally desired that the term "ruling" be changed to "statement", which would occasion the removal of the reference to the applicability of 19 CFR part 177 to such rulings. Since a ruling under part 177 applied to prospective transactions, it was principally asked whether drawback claims could still be filed prior to issuance of a general or specific manufacturing drawback ruling, and what type of confidential treatment would be accorded the manufacturing drawback ruling request.

Customs Response: As already noted, Customs has determined to retain the term "ruling" in § 191.2(w), as redesignated, rather than the term "contract" or "statement", for the reasons amply explained in the

proposed rule. In any event, § 191.27(c) as redesignated makes it clear that drawback claims may continue to be filed before a letter of notification of intent to operate under a general manufacturing drawback ruling is acknowledged or a specific manufacturing drawback ruling is approved.

Also, the applicability of 19 U.S.C. 1625 and 19 CFR part 177 to a drawback ruling hereunder will not affect the confidentiality otherwise accorded under the Freedom of Information Act either to an application for a specific manufacturing drawback ruling, or to a letter of intent to operate under a general manufacturing drawback ruling. That is, the general "ruling" is the published T.D. appearing in Appendix A to part 191. In the case of a specific manufacturing drawback ruling, the "ruling" is the letter of approval issued by Customs, which would be published as a synopsis in the Customs Bulletin. Section 191.2(w) as redesignated is changed to clarify this.

Comment: With respect to proposed § 191.3(a), clarity was requested regarding the payment of drawback on voluntary tenders made in connection with notices of prior disclosure pursuant to 19 U.S.C. 1592(c). Also, it was advocated that proposed § 191.3(a)(1)(iii) set forth a definition of what comprised voluntary tenders subject to drawback, in order to avoid confusion.

It was suggested that proposed § 191.3(a)(1) (ii), (iii) and (iv) be changed to simply reference proposed § 191.81 which would contain the substantive requirement pertaining to the provisions that a written request be submitted for the payment of drawback, along with a waiver of payment under any other provision of law. It was also suggested that proposed § 191.3(a)(1)(iii) be changed to indicate that any waiver be conditioned on the refund being received as drawback and not subject to repayment. A comment asked with reference to proposed § 191.3(a) (and proposed § 191.81) that the filing of the written request waiver be allowed at any time prior to final liquidation of the drawback entry.

In addition, in proposed § 191.3(a)(1) (iii) and (iv), a question was presented as to the need for a waiver of payment in the case of warehouse withdrawals whose liquidation had become final.

It was also noted that the references in proposed § 191.3(a)(1) (ii), (iii), and (iv) to § 191.82 (b) and (c) should be instead to proposed § 191.81 (b) and (c).

Customs Response: The erroneous citations are duly corrected.

The comment suggesting a clear definition of "voluntary tenders" has merit and is adopted. "Voluntary tenders" are thus defined in § 191.3(a)(1)(iii) for purposes of § 191.3, as a payment of duties on imported merchandise in excess of the amount of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions in the provision and § 191.81 are met.

In response to the comment about what must be waived, it is any claim to payment or refund limited to the drawback granted. However, this is provided for in § 191.81(c), not in § 191.3. Also in this regard, the comment that the written request and waiver may be filed at any time prior to final liquidation of the drawback entry requires no change to § 191.81(c) because there is no time limit provided therein.

The comment suggesting inclusion of tenders made in connection with a notice of prior disclosure pursuant to 19 U.S.C. 1592 has merit and is adopted. The adoption of this suggestion is implemented by combining § 191.3(a)(1)(iii) and (iv), and adding to it tenders of duty made in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4), so that there is now one provision (§ 191.3(a)(1)(iii)) providing that duties subject to drawback include tenders of duties after liquidation has become final, such tenders to include voluntary tenders, including tenders of duty in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4), and duties restored under 19 U.S.C. 1592(d).

Insofar as the comment suggesting the removal to § 191.81 of the requirement for filing a written request and waiver is concerned, this comment has merit. The provision is being changed to refer to § 191.81, which will contain the substantive requirement for a written request and waiver. In answer to the question of why a waiver would be needed for warehouse withdrawals, the reason such a waiver would be needed is that the warehouse withdrawal for consumption would have been liquidated, and liquidation would have become final, after which the tender upon which drawback is claimed would have been made, so that a waiver would be desirable to ensure that Customs would not pay *both* drawback and a refund of the tender under some other provision of law.

Comment: The assertion was made, with respect to proposed § 191.3(b), that harbor maintenance fees should be subject to drawback. Also, a comment

wanted drawback payable on interest paid pursuant to post-entry assessments.

Customs Response: Customs disagrees that harbor maintenance fees should be subject to drawback, inasmuch as such fees are imposed in connection with part use, not importation of merchandise (within the legal meanings of 19 U.S.C. 1313 and 26 U.S.C. 4462). Likewise, drawback is not payable on interest.

Comment: A comment asserted that proposed § 191.3(c) needed to be revised specifically to make clear that products falling within the tariff-rate quota (but not payable at the over-quota rate of duty) were eligible for all types of drawback, while products assessed the over-quota rates of duty were eligible only under 19 U.S.C. 1313(j)(1), with tobacco being eligible under both 19 U.S.C. 1313(j)(1) and 1313(a).

Customs Response: This comment has merit and is adopted. The provision is re-drafted accordingly.

Comment: One comment suggested that, in proposed § 191.4(b), the word "was" be changed to "is".

Customs Response: The comment has merit and is adopted.

Comment: It was contended that proposed § 191.6 concerning who may sign drawback documents was in contradiction to proposed § 191.8 dealing with specific manufacturing drawback rulings, as well as 19 CFR part 177 regarding the submission of requests for rulings. One such comment noted that the list of persons did not include attorneys who should have signing authority for their clients at least with respect to applications for drawback rulings.

Customs Response: These comments have merit, insofar as they raise questions regarding the applicability of the limitations on who may conduct "Customs business" under 19 U.S.C. 1641 and 19 CFR part 111. The comments are adopted, and § 191.6 is appropriately redrafted to add a new paragraph (c), so that the persons listed in paragraph (a) are the only persons who may sign any of the documents listed in paragraph (b).

Under new paragraph (c), letters of notification of intent to operate under a general manufacturing drawback ruling (§ 191.7(b)) and applications for a specific manufacturing drawback ruling (§ 191.8), as well as requests for nonbinding predeterminations of commercial interchangeability (§ 191.32(c)(2)), applications for waiver of prior notice (§ 191.91), applications for accelerated payment (§ 191.92), and applications for participation in the drawback compliance program (subpart S) may be signed by any of the persons

listed in paragraph (a), or any other individual legally authorized to bind the person (or entity).

Comment: Referring to proposed § 191.6(a)(1), a question was raised as to who specifically would be "any other individual legally authorized to bind the corporation".

Customs Response: The comment has merit. The word "individual" therein is changed to "employee".

Comment: With respect to proposed § 191.6(a)(4), it was suggested that any employee of "a" business entity be changed to "the" business entity.

Customs Response: The comment has merit and is adopted.

Comment: One comment expressed concern that the authority of an individual acting on his or her own behalf, as set forth in proposed § 191.6(a)(5), implied that an unlicensed person might be permitted to conduct Customs business.

Customs Response: This provision is intended to provide for a situation in which an individual (e.g., an individual drawback claimant or exporter) signs documents in his or her own capacity. Since the provision contains the modifier "acting on his or her own behalf", Customs does not believe that this provision could be interpreted to allow an unlicensed person to conduct Customs business on behalf of another (see 19 U.S.C. 1641(a)(2)).

Comment: A question was presented as to whether proposed § 191.6(b) should include a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

Customs Response: The suggestion that Notices of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback should be listed as one of the documents that can be signed by the persons in § 191.6(a) has merit and is adopted.

Comment: A concern was raised about "endorsements" of exporters on bills of lading or evidence of exportation in proposed § 191.6(b)(6).

Customs Response: The comment appears to be concerned that the practice of permitting blanket letters of endorsement (which should be blanket certifications) be provided for in the regulations. This comment has merit and is adopted; the reference to "Endorsements" is changed to "Certifications", and citations to §§ 191.28 (as redesignated from proposed § 191.27) and 191.82 are added in § 191.6(b)(5), as redesignated (proposed § 191.6(b)(7) is also redesignated as § 191.6(b)(6)). It is noted that §§ 191.28 as redesignated and 191.82 are modified to provide for "blanket" certifications.

Comment: As to proposed § 191.7 dealing with general manufacturing drawback rulings, the recommendation was made in connection with proposed § 191.2(o) that the term “rulings” be changed to “statements”.

It was asked that general drawback rulings be published first as T.D.s, and then subsequently be included in Appendix A to part 191. Another comment asked how the general rulings in Appendix A would be identified.

A comment wanted Customs to acknowledge requests for general rulings within 30 days.

It was stated that approved letters of intent should receive a unique computer-generated ruling number.

The question was asked as to how modifications of letters of intent to operate under a general ruling would be handled; a comment wanted provisions included in proposed § 191.7 concerning the use of accounting procedures and tradeoff; another comment stated that there was no provision for transferring a general ruling to another drawback office.

Customs Response: In regard to the comment suggesting that new general rulings should first be published as T.D.s and subsequently added to the Appendix, this comment has merit and is adopted in § 191.7(b)(1). Furthermore, the general manufacturing drawback rulings in Appendix A are being identified by their T.D. numbers.

In regard to the change in nomenclature (from “rulings”), these comments are not adopted, as previously discussed in reference to proposed § 191.2(o).

In regard to the suggestion that there should be a time limitation on acknowledgments by drawback offices of applications and that the time should be 30 days, Customs is not adopting this suggestion, as such, but is adding in § 191.7(c) that Customs is required to act “promptly” on applications. Because drawback claims may be filed pending acknowledgment of a letter of notification of intent to operate under a general drawback ruling or before approval of a specific manufacturing drawback ruling (see § 191.27(c) as redesignated), it is Customs’ position that a time limit for action is not necessary.

In regard to the comment suggesting a unique electronic ruling number for each general manufacturing drawback ruling, this comment has merit and is also added in § 191.7(c).

In regard to the comment asking how modifications to letters of intent are to be made, because letters of notification of intent are relatively short and simple, no provision like that appearing in

§ 191.8(g) is provided. When the information included in a letter of notification of intent changes, a new letter of notification of intent must be filed.

The suggestion relating to a statement regarding the use of a particular accounting method and the use of tradeoff under the general manufacturing drawback ruling is not adopted (because application of those provisions is provided for in the applicable regulations).

In regard to the comment that the regulation does not address how a change in the drawback office where claims will be filed may be made, no provision such as that added to § 191.8 is being provided for in this section (because, as is true of modifications, letters of intent are relatively short and simple). When the person who submitted the letter of intent wishes to add a different drawback office, a new letter of intent (to that drawback office) must be filed.

Comment: The observation was made that the identification of the general manufacturing drawback rulings was potentially confusing. It was suggested that the precise general manufacturing drawback ruling under which the manufacturer proposed to operate should be listed as one of the requirements in proposed § 191.7(b)(3) and that the general manufacturing drawback rulings in Appendix A should be identified by their Treasury Decision numbers (or some other Customs-assigned number).

Customs Response: This comment has merit and is adopted. Section 191.7 is revised to include a paragraph (b)(3)(iv) to this effect, with redesignation accordingly. As already noted, the T.D. numbers of the respective general manufacturing drawback rulings have been included in Appendix A.

Comment: A comment, with respect to proposed § 191.7(b)(2), stated that the number of copies of letters of intent required to be submitted should be limited to only one copy per drawback office.

Customs Response: This comment has merit and is adopted.

Comment: Concerning proposed § 191.7(b)(3)(iv), one comment asked that a description of the merchandise and articles be included in the letter of intent under a general ruling, while another comment wanted to require a description of the manufacturing process. A third comment asked about the processing of a letter of intent under proposed § 191.7(c).

Customs Response: Section 191.7(b)(3)(v), as redesignated from proposed § 191.7(b)(3)(iv), requires that

merchandise and articles be described unless specifically described in the letter of notification (instead of “letter of notification”, this should have read “general manufacturing drawback ruling” and is changed accordingly). There are instances in which the merchandise and articles are specifically so described (e.g., orange juice (T.D. 85–110, raw sugar (T.D. 83–59)) and it is in these situations that the merchandise and articles do not have to be described (because they are already described in the general manufacturing drawback ruling).

As for the second comment, § 191.7 is changed by adding a paragraph (b)(3)(vi) (with redesignation accordingly), to provide that a letter of notification of intent to operate under a general manufacturing drawback ruling must include a description of the manufacture, if such a description is not already described in the general manufacturing drawback ruling.

Additionally, § 191.7(c) is changed to provide that the drawback office will acknowledge the letter of intent if: (1) the letter of notification of intent is complete; (2) the general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process described; (3) the general manufacturing drawback ruling is followed without variation; and (4) the manufacturing or production process described meets the definition of a manufacture or production under § 191.2(q) (as redesignated).

In this latter regard, as further provided in § 191.7(c), the letter of acknowledgment from the drawback office will contain specific authorization to operate under the general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations.

In addition, § 191.7(c) is revised to require that the manufacturer or producer be advised, in writing, if the letter of intent cannot be acknowledged. To this end, if the letter of notification of intent to operate under a general manufacturing drawback ruling includes conditions or terms varying from the general manufacturing drawback ruling published as a T.D. or in Appendix A, the drawback office may not acknowledge the letter and will return it to the manufacturer or producer for modification and resubmission or for submission to Customs Headquarters as a specific manufacturing drawback ruling.

Comment: It was commented, with respect to proposed § 191.7(b)(3)(vi),

that the requirement of a suffix to the IRS number should be included.

Customs Response: The comment that a suffix to the IRS number should be stated has merit and is adopted. This provision is redesignated as § 191.7(b)(3)(viii).

Comment: A comment requested that, rather than terminating a ruling automatically after 5 years of non-use, proposed § 191.7(d) be changed to permit a manufacturer a period of time, such as 60 days, within which to request Customs not to revoke the ruling.

Customs Response: This request is not adopted. This suggestion would add unnecessarily to the administrative burden of processing drawback. If a claimant is inactive for 5 years and notice of termination is published, the claimant may, under the very simple procedures provided in § 191.7, submit a new notification of intent to operate under the general manufacturing drawback ruling.

Comment: The statement was made, in relation to proposed § 191.8 addressing the procedures for specific manufacturing drawback rulings, that the term be changed from "rulings" to "statements", and that requests for manufacturing contracts under 19 U.S.C. 1313(a) should continue to be approvable by local drawback offices.

Customs Response: As already averred, Customs has determined to retain the change from drawback "contracts" or "statements" to "rulings". Drawback offices would, as proposed and as in this final rule, acknowledge receipt of letters of notification of intent to operate under a general manufacturing drawback ruling under 19 U.S.C. 1313(a) (unless the proposal varied from the general manufacturing drawback ruling, in which case Headquarters approval would be necessary.) An application for a specific manufacturing drawback ruling under § 191.8(d) must be submitted to Customs Headquarters.

Comment: A comment suggested that the IRS number required in the application for a specific ruling in proposed § 191.8(c)(2), include the suffix.

Customs Response: This comment has merit and is adopted.

Comment: A comment with respect to proposed § 191.8(e)(1) questioned the use of T.D.s under which to publish approved drawback rulings. It was noted that the term "contract" was inadvertently used in this provision. Another comment suggested that the Headquarters approval letter should include the computer-generated ruling number.

Customs Response: Customs is not prepared at this time to eliminate the use of T.D.s for this purpose. The comment noting the misuse of the term "contract" in this provision is correct; the provision is changed. The comment that the Headquarters approval letters should include the computer-generated number has merit and is adopted.

In addition, consistent with the comment and response for § 191.7(b)(2), only 1 copy of the approved application for the specific manufacturing drawback ruling is forwarded to the appropriate drawback office(s). A change to this same effect is made in § 191.8(d).

Comment: A comment on proposed § 191.8(e)(2) stated that, for consistency, the notification to an applicant that the application could not be approved should be in writing. Another comment suggested that the term "promptly" (within which to notify the applicant that the application could not be approved) should be specifically defined.

Customs Response: The comment suggestion that the notice of disapproval be in writing has merit and is adopted. However, the suggestion that "promptly" be specifically defined is not adopted.

Comment: Concerning the modification of specific manufacturing drawback rulings in proposed § 191.8(g), it was variously asked if changes in corporate officers, changes in factory locations, changes in the basis of claim, changes in filing location, and changes in brokers could also be handled by the limited modification procedure, set forth in proposed § 191.8(g)(2), or were they intended to be made through Headquarters, as provided in proposed § 191.8(g)(1) which required the filing of a supplemental application in the form of the original application.

Another comment asked for which limited modification should the drawback office notify Headquarters, for which limited modification should the drawback office notify the claimant in writing of receipt, and for which limited modification should the ACS (Automated Commercial Systems) drawback database ruling be revoked and reissued, and when would an amendment be appropriate.

Customs Response: These comments have some merit and, to the extent necessary, are adopted in § 191.8(g)(2). It is noted that changes in factory locations are already covered in § 191.8(g)(2)(i)(A), and changes in corporate officers and brokers are covered by the provision for those persons who will sign drawback documents in § 191.8(g)(2)(i)(D)

(corporate officers are no longer required).

Changes in the basis of claim are added in § 191.8(g)(2)(i), as are changes in the filing location. In addition, changes in the decision to use or not to use an agent for drawback purposes, and the identity of an agent if one is used, are made subject to the limited modification procedures.

In the case of changes in the filing location, Customs is adding to the regulation a provision (§ 191.8(g)(2)(iii)), based on current practice as shown by a letter of October 19, 1960 (published as Customs Information Exchange letter (CIE) 1454/60), which permits the change of the drawback office where claims will be filed.

Under the foregoing provision in § 191.8(g)(2)(iii), the claimant files, with the new drawback office, a written application to file claims at that office, with a copy of the application and approval letter from the drawback office where claims are currently filed. The claimant is required to provide a copy to the latter drawback office of the written application to the new drawback office.

Also, § 191.8(g)(2)(ii) is revised to specifically provide detailed procedures for handling limited modifications (the drawback office is given notice by the manufacturer or producer operating under a specific manufacturing drawback ruling, with a copy to Customs Headquarters, and the drawback office acknowledges acceptance of the limited modification in writing to the manufacturer or producer (with a copy to Customs Headquarters) and makes corresponding changes to the ACS drawback database, as necessary (the latter (changes to the ACS drawback database) is not provided for in the regulations, as this is an internal administrative procedure). No revocation in the ACS drawback database is necessary.

Furthermore, to simplify the process and limit the administrative burden, the provision for supplemental application procedures in § 191.8(g)(1) is changed to provide that, at the discretion of the manufacturer or producer, a supplemental application may be in the form of an original application or it may include only the provisions in the specific manufacturing drawback ruling application that are sought to be modified, and the unchanged provisions, in an existing approved specific manufacturing drawback ruling, may be incorporated by reference to the approved ruling.

Comment: It was desired that a successorship under 19 U.S.C. 1313(s) be handled under the limited

modification procedure of proposed § 191.8(g)(2).

Customs Response: This comment is not adopted. Successorships under § 1313(s) are subject to the supplemental application procedures. However, it is noted here that the supplemental application procedures of § 191.8(g)(1) have been simplified.

Comment: A change was requested in the duration of the approval of a specific drawback ruling in proposed § 191.8(h). A comment asked about the effect of these final regulations on existing drawback contracts.

Customs Response: The comment suggesting a change to the duration of the approval of a drawback ruling is not adopted. Customs believes that this suggestion would add unnecessarily to the administrative burden of processing drawback.

As for the comment questioning the effect of these regulations on existing drawback "contracts" under the prior subparts B and D of part 191, such existing drawback "contracts" may continue to be relied upon by the manufacturer or producer who applied for or adhered to the "contract", *provided that such existing drawback "contracts" do not materially conflict with the statute or these regulations.* Existing drawback "contracts" which materially conflict with the statute or these regulations are superseded by the statute or these regulations effective as follows. A drawback entry based upon existing drawback "contract" which materially conflicts with these regulations and for which exportation is before the effective date of these regulations is governed by the existing drawback "contract", unless there is also a necessary material conflict with the amendments to the statute (19 U.S.C. 1313) made by the NAFTA Implementation Act (Public Law 103-182, § 632), in which case the effective date of § 632 of that Act controls.

It is further noted, with respect to § 191.8(h), that the reference to part 177 in this provision is modified to include a reference as well to 19 U.S.C. 1625.

Comment: With reference to proposed § 191.9 dealing with the principal-agent procedure in drawback, one comment opposed limiting the principal-agent procedure exclusively to substitution manufacturing drawback under 19 U.S.C. 1313(b), stating that the procedure should be available as well under 19 U.S.C. 1313(a).

It was said that the terms "owner", "principal", "agent", "use" and "manufacture", as employed therein, should be more clearly defined. It was also remarked that the specific provisions required in the contract

between the principal and agent in proposed § 191.9(c) should be deleted, particularly if such a contract was required to be in force before there was any transfer of merchandise. The provision, if retained, should allow for oral contracts. It was also contended here that legal or equitable title, but not both, to the merchandise in question should be enough to establish principal status under the contract.

It was contended that the requirement that the agent provide a certificate of manufacture and delivery to the principal should be eliminated or be allowed to be waived in appropriate circumstances.

Customs Response: The intent was to limit this provision to drawback under 19 U.S.C. 1313(b) where the imported merchandise was used in manufacture or production by the principal or an agent and the exported article or drawback product was respectively manufactured or produced by an agent or the principal, or the imported merchandise was used in manufacture or production and the exported article or drawback product was manufactured or produced by different agents.

After further consideration and consistent with Customs current practice, Customs is now taking the position that the application of drawback principal-agent principles need not be so limited. The provision applies to drawback under 19 U.S.C. 1313(b) and 1313(a) and may be used regardless of whether different parties (agent-principal, principal-agent, or two agents) are involved. To this end, § 191.9(a) as proposed is deleted, with the succeeding paragraphs redesignated accordingly Section 191.9(a), as thus redesignated from proposed § 191.9(b), is revised as described.

As much as possible, the terms questioned (owner, principal, agent, and use in manufacture or production) are clarified in § 191.9(a) and (c) as thus redesignated.

The provision in § 191.9(b), as redesignated from proposed § 191.9(c), for what the contract (between principal and agent) must provide, is retained, to provide notice to persons using this provision of what is required, but rather than mandating that the requirements be "specified", the requirements are to be "included" in the contract.

As for the comment that a contract should not be required to have been in force before there was a transfer of merchandise, § 191.6(b) as redesignated provides the requirements for a principal-agent drawback relationship. To use the principal-agent procedures in drawback, these requirements must be met (*i.e.*, for the principal to be deemed

the manufacturer or producer when the agent does the physical manufacturing or production, the requirements (including those for a contract) must be met, although there is no requirement that the contract be in writing).

Regarding the comment that the provision should specifically authorize oral contracts, redesignated § 191.9(b) does not require the form that the contract must take; it requires that there be a contract and what the contract must contain.

As for the comment referring to legal and/or equitable title, the basic requirement in redesignated § 191.9(b) for assertion of the principal-agent relationship under the provision is that the principal be "[a]n owner" of the merchandise. It is Customs position here that the requirement for both legal and equitable title is consistent with the requirements for assertion of the principal-agent relationship for drawback purposes.

Consistent with the purpose of a certificate of manufacture and delivery and with the treatment of the owner-principal as the manufacturer or producer when an agent performs the manufacturing or production operations for the principal, no certificate of manufacture and delivery is required from the agent to the principal. Hence, § 191.9(d) as redesignated from proposed § 191.9(e) is revised as described. As such, the comment regarding waiver of the requirement for certificate of manufacture and delivery from the agent to the principal is moot.

However, to ensure compliance with the drawback law, while simplifying drawback procedures where possible, a principal using the principal-agent procedures for drawback is required to attach to its drawback entries, or certificates of manufacture and delivery, a certificate certifying that it can establish certain specific facts, upon request by Customs. The principal must certify that it can establish the information that would have otherwise been required in a certificate of manufacture and delivery. The certificate and information are specifically provided to be subject to the recordkeeping requirements in § 191.26 as redesignated (including the requirement for maintenance of records 3 years from the date of payment of a drawback claim). Provision is also made for the certificate to be in "blanket" form, covering a particular kind and quality of merchandise for a stated period.

Comment: In proposed § 191.10, it was asked that transfers under 19 U.S.C. 1313(p) included among the purposes

for which a certificate of delivery may be used.

It was also suggested that the word "exists" instead of "has attached" be used in proposed § 191.10(a)(2). In addition, it was stated that the term "if applicable" should be used for the information required in proposed § 191.10(b)(3), (7), and (8). It was also said that it was unclear when the HTSUS would be required for merchandise under proposed § 191.10(b)(10).

The requirement in proposed § 191.10(b)(5) that the total duty paid be shown on the certificate of delivery was opposed. It was advocated that Customs, with its computer access, should itself be able to identify the duties paid on the imported merchandise on which drawback was claimed.

It was also contended that certificates of manufacture and delivery (as opposed to certificates of delivery) should be used in all cases where the transferred article was manufactured under drawback conditions, and, as such, that proposed § 191.10(c)(2) be eliminated. It was suggested that there be a clarification as to the requirement for a certificate of delivery to transfer articles received by an intermediate party from a drawback manufacturer or producer.

One comment asked that the recordkeeping requirement in proposed § 191.10(d) be eliminated. Another comment suggested that a citation to 19 U.S.C. 1508(c) be added to this provision, indicating the statutory basis for the record retention requirement here.

With regard to proposed § 191.10(e) relating to the submission of a certificate of delivery to Customs, concerns were raised about the language of this provision. In particular, it was stated that the certificate was not "part" of a drawback claim, but that it "supported" the claim; and that the claim submitted without the certificate should not be "rejected", but would be "denied".

Customs Response: The comment relating to inclusion of transfers under 19 U.S.C. 1313(p) among the purposes for which a certificate of delivery may be used is adopted, to the extent provided therein (see CUSTOMS RESPONSE to the comment on the definition of certificate of delivery, in proposed § 191.2(b) redesignated as § 191.2(c), above).

In regard to the comment that the three effects of certificates of delivery should be included in the regulation, this has been provided for in § 191.2(c) as redesignated.

The suggestion that the term "exists" be used in place of "has attached" in § 191.10(a)(2) is adopted.

As for the requirement in § 191.10(b)(5) that total duty paid be stated on a certificate of delivery, Customs believes this information is no more sensitive than other information required on the certificate (e.g., the HTSUS number and entry number with the person from whom the merchandise was received (usually the importer)). The procedure suggested by the comment would be effective in the verification stage, but would create an untenable administrative burden in Customs processing of drawback claims and of accelerated payment claims.

The comment that "if applicable" should be included for § 191.10(b)(3), (7), and (8) (information required on a certificate of delivery includes import entry number, date of importation, and port where import entry filed), is also not adopted. The requirement for this information is applicable for all certificates of delivery (there is always an import number, date of importation, and port of import entry filing for a drawback claim).

The comment questioning when HTSUS numbers are required for certificates of delivery has merit, in that it points out a lack of clarity in the regulation. The provision is modified, by adding § 191.10(b)(11) and (12), to make it clear that the HTSUS number (to at least 6 digits) is always required for the designated imported merchandise on a certificate of delivery and, additionally, when the certificate of delivery transfers merchandise substituted under 19 U.S.C. 1313(j)(2) for the designated imported merchandise, the HTSUS number or Schedule B commodity number (to at least 6 digits) is likewise required for the substituted merchandise. Otherwise (e.g., if what is transferred is an article manufactured under 19 U.S.C. 1313(a) or (b) from a party who received the article from the manufacturer or producer), no such number is required for the article transferred.

In any event, although only the 6-digit HTSUS or Schedule B commodity number is required on the certificate of delivery for the transfer of substituted merchandise under 19 U.S.C. 1313(j)(2), full tariff classification is required to establish commercial interchangeability under 19 U.S.C. 1313(j)(2) (see § 191.32(c)).

The comment that certificates of manufacture and delivery should be used in all cases where a manufactured article is being delivered is inconsistent with the purposes of the two kinds of certificates (of delivery and of

manufacture and delivery). The former is used when the deliverer did not manufacture or produce the merchandise or article transferred and the latter is used when the deliverer did manufacture or produce the article transferred. It is Customs position that this provision is the most simple for the public to follow and the most simple for Customs to administer. This comment is not adopted.

The comment suggesting clarification of the requirement for a certificate of delivery to transfer articles received by an intermediate party from a manufacturer or producer (under 19 U.S.C. 1313(a) or (b)) has some merit. Section 191.10(c)(2) is changed to make it clear that the manufacturer or producer transfers the manufactured or produced article on a certificate of manufacture and delivery and subsequent non-manufacturers or producers who are intermediate parties transfer the article on a certificate of delivery (as already stated, the certificate of delivery for such a transfer would not require the 6-digit HTSUS number for the transferred article).

The requirement for retention of records supporting the information on certificates of delivery for 3 years after payment of a drawback claim is statutorily required (see 19 U.S.C. 1508(c)(3)). The comment suggesting inclusion in the regulation of a citation to 19 U.S.C. 1508(c)(3) has merit and is adopted. In addition, to alert the public to the general applicability to drawback of the statutory recordkeeping requirements in 19 U.S.C. 1508, a new § 191.15, based on § 1508, is added stating those general requirements.

The comment concerning the particular language used in § 191.10(e) has merit and is adopted. Consistent with § 191.51, certificates of delivery are not "part" of claims but support claims, so that if Customs requests a certificate of delivery upon which a drawback claim is dependent and the certificate is not provided, the claim is not rejected but, instead, is denied.

Since a certificate of delivery is not "part" of a complete claim (as the regulation is modified), providing a certificate of delivery upon Customs request is in the nature of "perfecting" a claim (see § 191.52 (note the addition of this as one of the instances of perfection provided in § 191.52(b))) and may be done outside the 3-year time for filing a complete claim. Denial of a drawback claim for failure to supply, in response to Customs request, a certificate of delivery upon which a portion of the claim is dependent is limited to denial of that portion of the claim dependent on the certificate of

delivery which is not supplied. The provision is changed to make this clear.

Also, pursuant to changes to other sections (see §§ 191.51(a) and 191.52(b)), certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate was delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for "perfecting" a claim.

Comment: With respect to proposed § 191.11(a), it was requested that the words "or drawback product" be included in the tradeoff provision. A Customs ruling was cited in support of this request. With respect to proposed § 191.11(b), it was asserted that additional payments, including payments in kind, in relation to the exchanged merchandise, should be permitted. In regard to the problem of how much drawback should be allowed (when additional payments in kind are made), it was suggested that language could be inserted to limit drawback to the amount of duty paid on the imported barrels.

Customs Response: The statute involved (19 U.S.C. 1313(k)) expressly provides only for the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality. The Customs ruling cited by the comments held that a drawback claimant may identify a commercial lot of imported duty-paid merchandise as domestic merchandise for purposes of substitution drawback, 19 U.S.C. 1313(b), which is the provision interpreted in the ruling. This was adopted by Public Law 103-182, for purposes of § 1313(j) (by providing for the substitution of any other merchandise (whether imported or domestic) instead of duty-free or domestic merchandise). No similar change was made to § 1313(k), however. Accordingly, Customs concludes that no such interpretation was intended.

The comment relating to § 191.11(b) has merit and is adopted, in part. Customs must ensure that no more drawback than that attributable to the imported merchandise may be allowed. Also, the merchandise which is to be treated as the imported merchandise must be identified.

Accordingly, the second sentence of § 191.11(b) is changed to provide that the quantity of imported merchandise and domestic merchandise exchanged under this provision need not be the same, but that if the quantities are different, the lesser quantity shall be the quantity available for drawback. If a greater quantity of domestic

merchandise than that of imported merchandise is received, the quantity identified for drawback shall be the quantity first received.

The restriction on payments other than payments in kind under § 191.11(b), however, is retained. Section 1313(k) provides for the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality, not for the use of domestic merchandise acquired for imported merchandise *and* a payment of something other than domestic merchandise of the same kind and quality.

Further, the use of the term "exchange" indicates an intent to provide for exchange of merchandise only (if the statutory provision was intended to provide for the "purchase or exchange" of the imported merchandise of the same kind and quality, Congress could have explicitly so provided (see, e.g., 19 U.S.C. 1313(p)(2)(A)(ii) and (iv))).

Comment: With reference to proposed § 191.12 dealing with a claim filed under the wrong subsection of the drawback statute, it was advocated that this provision be rewritten to require Customs to notify the claimant as expeditiously as possible that the claim was filed under the wrong provision; it was also remarked that proposed § 191.12 was wrong in requiring a drawback claim to have to meet all the legal requirements of an alternative subsection of the drawback statute.

It was also pointed out that § 7 of Public Law 104-295, adding 19 U.S.C. 1313(r)(3) to the drawback law, allowing an extension of time for filing a drawback claim in the case of a major disaster, was not provided for in the proposed drawback regulations.

Customs Response: The legislative history to the statutory provision (19 U.S.C. 1313(r)(2)) is that the provision does not impose a requirement on Customs to investigate all alternatives in addition to the claimed basis before liquidating a drawback claim as presented (see H. Rep. 103-361, 103d Cong., 1st Sess. (1993), part I, at 131; Sen. Rep. 103-189, 103d Cong., 1st Sess. (1993), at 84). Accordingly to the Senate Report, § 1313(r)(2) was intended to allow a claimant to raise the alternative subsections by protest under 19 U.S.C. 1514. If an alternative provision of the drawback law is applicable, and the claimed provision is not applicable, it is clearly within the claimant's self-interest to bring to the attention of Customs the alternative provision (i.e., so that the claimant may be paid drawback). Therefore, and consistent with the legislative intent stated in the

Senate Report (see above) for § 1313(f)(2), § 191.12 is modified by the addition of a statement that the claimant may raise alternative provisions prior to liquidation or by protest. (It is in the interest of Customs and the public to provide that a claimant may raise alternative provisions prior to liquidation, as well as by protest, because this simplifies administration of the provision (by not requiring the filing and processing of a protest when the alternative provisions can be raised prior to liquidation).)

As the background to the proposed rule clearly stated, a claimant seeking to take advantage of this provision must qualify under the alternative subsection (see the example given in the background to the proposed rule). Customs may not waive the statutory requirement that a complete claim be filed within 3 years of export. Compliance with the alternative subsection is a statutory requirement (see 19 U.S.C. 1313(r)(2)).

It is recommended that claimants who are unsure of the correct subsection under which to claim drawback should ensure that their claims are filed promptly to allow compliance with the possible alternatives, and they should ensure that their claims comply with the possible alternatives.

Additionally, the comment pointing out that § 7 of Public Law 104-295, adding 19 U.S.C. 1313(r)(3) to the drawback law, is not implemented in the regulations has merit and is adopted, although in § 191.51(e)(2), and not in § 191.12.

Comment: It was suggested that proposed § 191.13 relating to packaging material be revised to make clear that all information required by the particular drawback provision under which the packaging material was being claimed had to be furnished for such material.

Customs Response: This suggestion has merit and is adopted, with the last sentence in § 191.13 being changed with the addition of the following at the end thereof: "and all other information and documents required for the particular drawback provision under which the claim is made shall be provided for the packaging material".

Comment: Regarding proposed § 191.14(a), the issue was variously raised about the applicability of the accounting procedures included in this section to merchandise exported to Canada or Mexico under the North American Free Trade Agreement (NAFTA), when the merchandise was exported in the same condition as imported. It was also requested that proposed § 191.14(a) make clear that the accounting procedures of this section

were not applicable in cases where the drawback law specifically authorized substitution. It was further asked that a cross reference to proposed § 191.2(h) defining direct identification drawback be included in proposed § 191.14(a).

Customs Response: The concerns presented regarding § 191.14(a) raise questions on the applicability of the accounting procedures provided for in § 191.14 to exportations to Canada or Mexico, given the enactment and implementation of NAFTA. In order to avoid confusion in this matter, the last sentence of § 191.14(a) as proposed, regarding the applicability of § 191.14 to exportations to Canada or Mexico under the NAFTA, is deleted. Applicability to such exportations will be governed by the law (see 19 U.S.C. 3333) and regulations promulgated thereunder.

The comment that the statement as to when this section is applicable (not in cases where substitution is permitted, citing specific subsections of 19 U.S.C. 1313) may be misinterpreted has merit and is adopted. The third sentence of § 191.14(a) is modified to make clear that § 191.14 is inapplicable in those situations in the cited subsections where substitution is allowed, but that the section does apply to situations in those subsections in which substitution is not allowed.

As for the comment suggesting a cross-reference to § 191.2(h), this comment has merit and is adopted. The second sentence of § 191.14(a) is modified accordingly. Additionally, a cross-reference to § 191.14 is added to § 191.2(h).

Comment: One comment asked that the words "is established" appearing in the last sentence of proposed § 191.14(b)(2) be modified to read "can be established". Otherwise, according to the comment, the provision might be read that each claimant had to seek a ruling establishing the inventory requirements contained therein.

Customs Response: The comment requesting the change of language in § 191.14(b)(2) has merit. However, instead of making the modification to the last sentence, the first sentence is modified to provide that "[t]he person using the identification method must be able to establish * * *". The language in the provision following this first sentence is interpretive and the described change to the first sentence resolves the problem raised by the comment.

Comment: It was recommended that the parenthetical language appearing in proposed § 191.14(b)(3) be revised or removed.

Customs Response: Customs agrees. The parenthetical appearing in § 191.14(b)(3) is deleted as unnecessary.

Comment: As to proposed § 191.14(b)(4), it was asserted that if the verification of inventory records supporting a drawback identification method required the ability of the inventory system to include drawback per unit, this requirement should be removed from the regulation. It was further declared that this provision presumed that all acceptable identification methods required accounting for all inputs and withdrawals from inventory, which was not true.

Customs Response: Regarding the requirement in § 191.14(b)(4) that the records supporting any identification method employed are subject to Customs verification, the intent of this requirement is to provide that the person using the identification method must be able to demonstrate how the records account for the drawback per unit of each receipt and withdrawal (in addition to the other things the records must account for). It is not required that the records themselves account for, or state, drawback per unit; rather that the person using the records must be able to demonstrate how drawback per unit can be established from the records.

It is correct that the low-to-high method with inventory turnover and the low-to-high blanket method may be used without accounting for domestic withdrawals; however if the method is subject to verification by Customs, the person using the method must be able to demonstrate, under generally accepted accounting procedures, how the records account for the required elements (including *all* withdrawals). That is, the integrity of the accounting method, as used by the person involved, is subject to verification. It is Customs position that no change to this provision is necessary.

Comment: Concerning proposed § 191.14(c) (1) and (2) addressing the first-in, first-out (FIFO), and last-in, first out (LIFO) accounting methods, it was recommended that after the word "identified" in each paragraph, the words "by recordkeeping" be added.

Customs Response: The recommendation that the words "by recordkeeping" be added after "identified" is adopted for § 191.14(c) (1) and (2), and in § 191.14(c) (3) and (4) as well. Additionally, examples are provided for each of the methods set forth therein.

Comment: With reference to proposed § 191.14(c)(3), it was declared that other accounting methods approved under

other Customs rulings could be used if applicable.

One comment believed that direct identification under the unused merchandise drawback law, 19 U.S.C. 1313(j)(1), was a fiction; that the law did not require the type of accounting methods that were provided in this proposed section; and that, at the very least, high-to-low accounting as allowed in C.S.D. 84-82 should be reinstated.

Another comment suggested that Customs permit industries to submit proposals for acceptable accounting methods.

It was further asked that accounting methods in addition to low-to-high with inventory turnover (LIFO and FIFO) permit the claimant to omit accounting for domestic withdrawals when all receipts into inventory were of foreign origin.

Customs Response: Section 191.14 is intended to establish the accounting methods which may be used to identify merchandise or articles for drawback purposes, and is intended to be consistent with T.D. 95-61. Rulings issued prior to the effective date of these regulations may not be resorted to unless consistent with § 191.14 and T.D. 95-61. However, in order to make available to the public as many options for identification by recordkeeping as possible, while adhering to the principles of T.D. 95-61, § 191.14(c)(3) is modified by the addition of the so-called "blanket" low-to-high accounting method.

Under this long-established and used method (see, *e.g.*, 19 CFR 22.4(f) (1982 Customs Regulations) and C.S.D. 80-132), commingled merchandise or articles are identified first from the lot or lots of merchandise or articles with the lowest drawback attributable, then from the lot or lots with the next higher drawback attributable, and so on from lower to higher until all lots have been accounted for. The period from which withdrawals for export are identified is the statutory period for export under the kind of drawback involved (*e.g.*, 180 days under 19 U.S.C. 1313(p), 3 years under 19 U.S.C. 1313(c) and 1313(j), and 5 years otherwise under 19 U.S.C. 1313(i)). Thus, this method is similar to the low-to-high method with inventory turn-over method, except that instead of identifying the merchandise or articles with the lowest drawback attributable in the established average inventory period, merchandise or articles with the lowest drawback attributable in the statutory period for export are identified.

Members of the public should be aware that drawback requirements are applicable to withdrawn merchandise or

articles as identified (for example, if the merchandise or articles identified were attributable to merchandise which had been imported 2 years, 11 months prior to withdrawal and export or destruction did not occur until 2 months later, drawback under 19 U.S.C. 1313(j) would be denied (because that provision requires export or destruction within 3 years of import)).

Additionally, language is added to make it clear that, once a withdrawal for export is made and accounted for under the low-to-high method with established average inventory turn-over period, or under the "blanket" method, the merchandise or articles so withdrawn are no longer available for identification under the method.

Also, new examples, more clearly illustrative of the low-to-high methods (ordinary, with average inventory turn-over period, and blanket), and comparing the results of those methods, are added to § 191.14(c)(3).

Customs does have procedures under which industries may obtain from Customs a ruling, or an approved manufacturing drawback ruling, upon which it may rely (see 19 CFR part 177, for rulings, and the sample formats for specific manufacturing drawback rulings in Appendix B).

Regarding the suggestion that the "high-to-low" accounting method should be reinstated as a drawback accounting method, that would be inconsistent with T.D. 95-61, which revoked the published Customs ruling (C.S.D 84-82) permitting use of that method.

The requirement in certain of the drawback identification procedures for accounting for domestic withdrawals (with the exceptions described) is consistent with T.D. 95-61, in which Customs and Treasury stated the criteria for accounting methods used for identification of merchandise or articles for drawback purposes, and it is consistent with generally accepted accounting procedures.

As for the comment that the description of drawback under 19 U.S.C. 1313(j)(1) as direct identification drawback is a fiction, Customs disagrees. Under the plain language of this law, the imported merchandise must be exported or destroyed and drawback is payable on the amount of duty specifically paid thereon.

Comment: With specific regard to proposed § 191.14(c)(3)(i) describing the low-to-high inventory accounting method, it was reiterated that domestic (or nondrawback) input and domestic sales from inventory should not have to be taken into consideration.

Customs Response: As made clear in the modified regulation, all receipts and all withdrawals (including domestic withdrawals) must be accounted for when using the "ordinary" low-to-high method (low-to-high without an established average inventory turn-over period and not under the "blanket" method). Under the low-to-high method with average inventory turn-over period and the low-to-high blanket method all receipts into and all withdrawals for export are recorded in the accounting record and accounted for and domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available (under the methods) units of merchandise or articles.

Comment: With specific regard to proposed § 191.14(c)(3)(ii)(B) concerning the use of low-to-high accounting with an inventory turn-over period, it was stated that rather than providing that "the longest average turn-over period * * * may be used", this should provide instead that it "must" be used, and asked in this connection whether users of this method would have an option to choose periods.

Customs Response: This comment has merit and is adopted (although instead of the change proposed, the provision as redesignated (§ 191.14(c)(3)(iii)(C)) is modified by the addition of a parenthetical statement to make it clear that users of this method will have the option of using either the properly established average turn-over period for the merchandise or articles to be identified, or, if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the properly established average turn-over period which is longest).

Comment: With respect to proposed § 191.14(c)(4) concerning the average inventory method, a question was raised about the requirement that claimants wishing to use this inventory method obtain a ruling under 19 CFR part 177. In particular, it was remarked in this regard that the use of a weighted average as set forth therein was an officially recognized method of inventory management. Another comment asked that a practical example of how this inventory method would work be included under this provision.

Customs Response: The comment questioning why a ruling is needed for use of the average method and/or asking that an illustration of the average method be included in the regulations has merit and is adopted in § 191.14(c)(4). An example of an average method and provision for use of the average method, if in compliance with

the applicable requirements of § 191.14 and the example, are included in the section.

When the average method is used the ratio of each receipt in inventory to all merchandise in the inventory at the time of the withdrawal is applied to the withdrawal, so that the withdrawal is comprised of proportionate quantities of each receipt and each receipt is correspondingly decremented. The reference to "weighted averaging" is removed, because weighting is unnecessary in this method.

As with other methods, when a person proposes a method which diverts from the methods as provided for in the regulations, a ruling must be obtained from Headquarters, or approval may be obtained in a specific manufacturing drawback ruling (see § 191.8 and Appendix B).

Comment: One comment asserted that the requirement in proposed § 191.14(d)(2)(i) that any accounting system approved by Customs be "either revenue neutral or favorable to the Government" was imprecise, and recommended the addition of the words, "when compared to the method of separate storage and specific identification" following the word "Government" in this provision.

Customs Response: Customs disagrees. The phrase, "either revenue neutral or favorable to the Government", was approved after notice and comment procedures pursuant to T.D. 95-61. The intent here is that the accounting methods for the identification of merchandise or articles for drawback purposes must meet the requirements in § 191.14(d)(2), as demonstrated by the methods provided for in § 191.14 (which now includes much more illustrative examples).

Subpart B

Comment: It was asked that a reference to drawback products be included in proposed § 191.21 concerning direct identification drawback, 19 U.S.C. 1313(a).

Customs Response: This request has merit and is adopted.

Comment: It was stated that proposed § 191.22(d) fell under the heading of substitution drawback and discussed designation by a successor; it was stated that this gave the impression that designations by successors were restricted to substitution claims.

Customs Response: This provision deals with successorship under 19 U.S.C. 1313(s), which concerns only substitution drawback under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2). The concern raised here is addressed by making reference in this provision to

successorship under § 1313(s). Notably, the same change is also made with respect to § 191.32(f).

Comment: With respect to proposed § 191.22(e), concerning multiple products, it was advocated that Customs approval should not be required for manufacturing periods longer than a month. It was also stated that the use of an alternative to market value in determining the relative value of multiple products was unnecessary.

Customs Response: These comments are not adopted. As to the length of the manufacturing period, the provision follows current practice and provides for "specific approval of Customs" for a longer period.

With respect to the determination of relative value, it is provided in § 191.2(u) (as redesignated) that relative value is based on the market value of the products, or an alternative value approved by Customs. In other words, the default value is market value and if another value is to be used, Customs is to be advised (and such advice to Customs would be in the specific manufacturing drawback ruling of the company involved). Otherwise, a claimant would have to establish by its records that the value used is proper.

It is noted that consistent with the comments and response for proposed § 191.2(r), the heading for this paragraph is changed from "By-products" to "Multiple products".

Comment: As to proposed § 191.23(d)(1), it was asserted that the reference to the "market value of the merchandise or products used in manufacture" was not clear. A clarification of this language was requested.

Customs Response: The provision is modified to require records to show the market value of the merchandise or drawback products used to manufacture the exported or destroyed article, consistent with § 191.23(c).

It is also noted that a new § 191.23(d) is added providing for use of the "abstract" or "schedule" method of showing the quantity of material used or appearing in the exported or destroyed article. Thus, § 191.23(d) as proposed is renumbered as § 191.23(e).

Comment: It was requested that proposed § 191.24(a) concerning the certificate of manufacture and delivery be revised to make clear that such a certificate was required for each delivery of an article which had been manufactured or produced.

Customs Response: A certificate of manufacture and delivery is required for each delivery of an article which has been manufactured or produced (as defined in § 191.2(q), as redesignated)

(this would be so whether the article has been subject to one or more than one manufacturing or production operations). The section is modified to make this clear.

Comment: It was believed that paragraphs (a) and (d) of proposed § 191.24 were in conflict (one required physical delivery, the other did not). It was suggested the provisions be reworded for consistency.

Customs Response: This comment has merit and is adopted. Section 191.24 (a) and (d) are revised accordingly.

Comment: Concerning the information required on a certificate of manufacture and delivery in proposed § 191.24(b), it was asked that the identity of the transferee and transferor, IRS number, and unique electronic number assigned to the manufacturing ruling be added.

Customs Response: The identity of the transferee and transferor is added, consistent with § 191.10, as § 191.24 (b)(1) and (b)(14), respectively. The comment as to the unique electronic number assigned to the manufacturing drawback ruling is also adopted in § 191.24(b)(2), although either the unique electronic number or the T.D. number may be provided (the latter, if the manufacturer or producer is operating under a specific manufacturing drawback ruling). The paragraphs of § 191.24(b) are renumbered accordingly.

Comment: It was stated, with respect to proposed § 191.24(b)(2), that the section inferred that the HTSUS numbers for designated merchandise from one certificate of manufacture and delivery should be transferred to a second certificate of manufacture and delivery. It was further stated here that, even if known, it would be a useless gesture to repeat import HTSUS numbers on the second certificate of manufacture and delivery, as they would not relate to the merchandise designated on the second certificate. It was asked that the provision clearly state that HTSUS numbers were not required on a second certificate of manufacture and delivery.

It was also noted that the language therein to the effect, "* * * and applicable duty amounts, if applicable" appeared redundant.

Customs Response: The reference to the redundancy of "if applicable" has merit. The second "if applicable" is deleted from this provision.

The concerns expressed in relation to HTSUS numbers have merit (in that the section does not make it clear that the HTSUS numbers required are those for the imported merchandise, and not for

the manufactured or produced merchandise).

Insofar as the comment suggesting that import HTSUS numbers should not be repeated on a second certificate of manufacture and delivery, this comment is not adopted because in many cases involving more than one certificate of manufacture and delivery for sequential manufacturing or production operations, the merchandise and/or drawback products covered by one certificate may not be completely covered by the other certificate(s).

Comment: It was observed that, in proposed § 191.24(b) (3) and (4), the words "if applicable" did not pertain to this information; the dates received and used in manufacture should always be supplied.

Customs Response: This comment has merit and is adopted. Customs is aware of no situation in which the information provided for in the subsections would not be applicable (particularly in view of the changes made to the requirement for a certificate of manufacture and delivery in the principal-agent situation).

Comment: It was stated that proposed § 191.24(c) was unclear insofar as it required the filing of a certificate of delivery with the drawback claim unless such certificate was "previously filed". The phrase "previously filed" was found to be vague. The previous filing may be at a different port. It was recommended that information as to the port and date of filing along with a copy of the certificate be submitted therewith, if the original certificate was not filed with the claim.

Customs Response: This comment has merit and is adopted (although it is adopted in § 191.51(a)(2), and not in this provision).

Comment: With respect to proposed § 191.24(d) concerning the effect of a certificate of manufacture and delivery, it was asked whether there would be a place on the certificate of manufacture and delivery to indicate whether drawback rights were being transferred and, if not, how an issuer would so indicate on the certificate. It was also stated that this section should address the "effect" of internal certificates of manufacture and delivery in order to document multiple manufacturing processes performed by one manufacturer.

Customs Response: The comment regarding the effect of certificates of manufacture and delivery is addressed by the changes made to the requirements for a certificate of manufacture and delivery (i.e., such a certificate is only used when drawback rights are transferred and is not used in

a transfer from an agent to the principal).

Therefore, the provision is modified accordingly (i.e., a certificate of manufacture and delivery establishes the transfer of an article manufactured or produced under 19 U.S.C. 1313 (a) or (b), identifies that article as an article to which a potential right to drawback exists, and assigns the drawback rights for the article from the transferor to the transferee). For the same reason, the example referring to principal-agency is removed.

The comment stating that the provision should address the "effect" of internal certificates of manufacture and delivery (internal to the company involved) is not adopted; since certificates of manufacture and delivery always transfer drawback rights, a certificate of manufacture and delivery would not be appropriate in such a situation (because the same legal person transfers and receives the merchandise).

Comment: With respect to proposed § 191.25(a), it was asked what would happen if the manufacturer did not want to divulge the abstract details to the claimant. It was recommended here that the current practice be followed—i.e., the manufacturer would file the certificate of manufacture and delivery and advise the claimant of the certificate number and the port where filed and the claimant could designate against the certificate.

Customs Response: This comment is not adopted. The procedure suggested by the comment would create an untenable administrative burden in Customs processing of drawback claims and of accelerated payment claims.

(It is noted that § 191.25 as proposed is now redesignated as § 191.26, due to the addition of a new § 191.25 covering the destruction of articles manufactured or produced for drawback; and, as such, §§ 191.26 and 191.27 as proposed are redesignated as §§ 191.27 and 191.28, respectively.)

Comment: Regarding proposed § 191.25(b) addressing recordkeeping requirements for substitution manufacturing drawback, it was stated that the requirement that a manufacturer claiming drawback under 19 U.S.C. 1313(b) establish the facts in proposed § 191.25(a)(1) (ii) and (iii) was incorrect, since under substitution, the manufacturer only had to provide the quantity and kind of merchandise used or appearing in the manufactured articles. It was observed that proposed § 191.25(a)(1) (ii) and (iii) related specifically to drawback under 19 U.S.C. 1313(a), and should be removed from the reference in proposed § 191.25(b).

Customs Response: This request has merit and is adopted.

Comment: It was observed that the words "or destroyed" should be inserted between the words "exported" and "articles" in proposed § 191.25(b)(2). Also, it was noted therein that the term "(or appearance in)" should be "or appearing in".

Customs Response: This comment has merit and is adopted.

Comment: Regarding proposed § 191.25(c) dealing with valuable waste, it was asserted that the statement that "the quantity of merchandise identified or designated * * * shall be based on the quantity of merchandise actually used * * * reduced by the amount of merchandise which the value of the waste would replace" was incorrect and misleading, in that a claimant might think that it need only designate the reduced quantity (after the waste replacement). It was recommended that this language be revised.

It was also suggested that it be clarified as to which merchandise value was subject to reporting and recordkeeping with regard to 19 U.S.C. 1313(a) versus 19 U.S.C. 1313(b).

Customs Response: These comments have merit and are adopted. Section 191.26(c) as redesignated is revised accordingly.

Comment: Concerning the requirement in proposed § 191.25(e) that the claimant retain the certificate of delivery if the related merchandise was not imported by the manufacturer, it was asserted that this provision would be impossible for the claimant to comply with if the claimant was a party other than the manufacturer and the manufacturer was a party other than the importer because the claimant would never have received the certificate of delivery (the certificate would be from the importer to the manufacturer). An objection was also raised here as to the use of the word "designated" in the phrase "designated on a certificate of delivery for manufacturing drawback" because designation inferred substitution. It was advocated that proposed § 191.25(e) either be deleted or revised.

Customs Response: The assertion that this provision would be impossible to comply with when the claimant is a party other than the manufacturer, and the manufacturer a party other than the importer, raises a valid concern. The provision is deleted, consistent with the changes to §§ 191.10 (c) and (e), 191.51(a), and 191.52(b).

Under the previously cited provisions, certificates of delivery are required to be in the possession of the party to whom the merchandise covered

in the certificate is delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for "perfecting" a claim.

With the deletion of paragraph (e) of § 191.26 as redesignated, paragraphs (f) and (g) thereof are themselves redesignated as paragraphs (e) and (f), respectively. Also, the example in § 191.26(e)(1), as redesignated, is modified, consistent with the restriction in 19 U.S.C. 1313 (a) and (b) on the use in the United States after manufacture of articles manufactured or produced under those provisions.

Comment: In regard to proposed § 191.25(f)(2)(iii) dealing with the export summary procedure, it was recommended that the clause "if known at the time of entry" be added at the end of the requirement that "[e]ach claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback". It was observed here that one claimant might be unaware of other claimants and to which component part they could claim.

Customs Response: The request has merit and is adopted.

Comment: With reference to proposed § 191.25(g) dealing with recordkeeping requirements for manufacturing drawback, it was observed that this section provided a reasonable reflection of the various records required to establish entitlement to the kinds of drawback involved.

However, the concern was expressed about the possible confusion resulting from the 3-year (from date of payment) record-retention period for drawback and the general 5-year record retention period for other Customs purposes. It was suggested that greater clarity was needed here, because a drawback claimant could think it could dispose of records after the 3-year period and be subject to penalties for disposing of them before the termination of the 5-year general period (if the records were also subject to the 5-year record retention period).

It was further recommended that the final rule here should expressly state whether all drawback-related records had to be retained for a minimum of 5 years from the date of entry of the imported merchandise, or 3 years from the date of payment of the related drawback claim, or, alternatively, a detailed, comprehensive list of records and the time periods for retaining each one should be provided.

It was also noted that in the background of the proposed rule,

Customs had stated that drawback records ought to be maintained until the liquidation of the drawback entry became final. It was asserted in this regard that if more than 3 years had passed since payment, but the subject drawback claim was still not finally liquidated, and a question regarding documents arose, Customs should presume that the claimant satisfied the drawback documentation requirements as long as the claimant had been approved under the drawback compliance program.

Furthermore, it was suggested that, in the case of an audit commenced more than 3 years after payment of a drawback claim, Customs should not be able to recover any drawback paid, if a relevant supporting record was no longer in existence.

It was additionally asked that a claimant be permitted to maintain the required documentation in paper or electronic form, either of which could be used to satisfy the recordkeeping requirements, and where a party was unable to produce necessary documentation, including records that were in the possession of another party or an original signature from a carrier, Customs should allow that party to present alternative documentation.

It was stated that a reference to 19 U.S.C. 1508(c)(3) should be included in proposed § 191.25(g) concerning the time period for the retention of records.

Customs Response: The comment suggesting more clarity as to the time period for keeping drawback records (3 years from payment) versus other records provided for in 19 U.S.C. 1508, which are generally required to be retained for 5 years from the date of entry, filing of a reconciliation, or exportation, as appropriate, is adopted. Paragraph (g) of § 191.25, as proposed (now redesignated as § 191.26(f)), is modified to clarify that the 3-year time period provided for therein is for drawback purposes, and that the same records may be required, for other purposes (with a citation to 19 U.S.C. 1508), to be retained for a different time period.

In reference to the statement in the background that drawback records ought to be maintained until liquidation of the drawback entry becomes final, the comment is correct that the applicable statutory provision (as well as the regulations based thereon) require retention for 3 years from the date of payment.

It is Customs position that the effect of a claimant not having records prior to final liquidation but after termination of the 3-year period, as well as the effect of an audit commenced after

termination of this period, must be determined on a case-by-case basis.

In regard to the comment that a claimant be permitted to maintain the required documentation in paper or electronic form, a definition of "records" has been added to § 191.2, to the effect that records include electronically generated or machine readable data normally kept in the ordinary course of business.

A reference to 19 U.S.C. 1508(c)(3) is added to § 191.26(f) as thus redesignated.

Comment: It was believed that a conflict was apparent in proposed § 191.26(b)(3) regarding the phrase "importation of the designated merchandise". It was remarked that there was no date of importation for a drawback product, which could also be designated for drawback.

Customs Response: The comment has merit. The following phrase is added at the end of paragraph (b)(3) of this section (§ 191.27 as redesignated): "or within 5 years of the earliest date of importation associated with a drawback product".

Comment: It was asked if the exporter could waive its right to drawback in proposed § 191.27 by means of a blanket letter covering extended time frames.

Customs Response: The comment referring to a "blanket" letter for certification by the exporter (or destroyer) assigning drawback rights has merit. Section 191.28 as thus redesignated is revised accordingly.

Subpart C

Comment: In proposed § 191.31(c), relating to when merchandise would be considered to be used for purposes of the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), it was variously recommended that the words "In general" be deleted from the beginning of the first sentence thereof, and that the sentence be revised to be more specific, or be deleted entirely.

Customs Response: The comment concerning the use of the phrase "In general" at the beginning of the first sentence of § 191.31(c) is addressed by changing the heading of the provision to read "Operations performed on imported merchandise.", by deleting the first sentence, and by adding to the second sentence as proposed the phrase, "In cases in which an operation or operations is or are performed on the imported merchandise.". Notably, the same changes are also made with respect to § 191.32(e).

Further definition of the restriction on "use" in 19 U.S.C. 1313(j) will be addressed on a case-by-case basis by ruling.

Comment: In proposed § 191.32(c), concerns were raised essentially as to how Customs would interpret and apply the four criteria listed therein in making commercial interchangeability determinations.

It was stated that by listing the four factors to be used in making such determinations, Customs was creating a "bright line" test in contravention of the legislative intent underlying the statute.

Customs Response: The criteria used by Customs in making commercial interchangeability determinations are adopted from the legislative history of 19 U.S.C. 1313(j)(2). In order to better implement legislative intent, § 191.32(c) is modified to provide that in determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise, and, pursuant to that evaluation, Customs consideration will include, but not be limited to, the factors listed in the legislative history.

Further definition of commercial interchangeability will be on a case-by-case basis, by obtaining a determination as provided in § 191.32(c). Procedures for contesting specific rulings are found in 19 U.S.C. 1625 and 19 CFR part 177.

Section 191.32(c) is modified to make it clear that the determination of commercial interchangeability may be obtained by a formal ruling or submission of all required documentation with each individual claim, while the nonbinding predetermination is just that, nonbinding and a pre-determination, and, therefore, is not sufficient to obtain a *determination* of commercial interchangeability. Required documentation for commercial interchangeability determinations includes competent evidence of the basis on which the merchandise is claimed to be exchanged.

For example, if merchandise meeting a range of criteria is claimed to be exchanged in the industry, contracts evidencing that fact should be provided.

Comment: As concerns the person entitled to claim drawback set forth in proposed § 191.33(a), it was suggested that the waiver of drawback by the exporter be permitted by a blanket letter.

Customs Response: The suggestion regarding a blanket certification by the exporter (or destroyer) assigning drawback rights is adopted. Section 191.33(a)(2) is revised accordingly. In addition, § 191.33(a)(2) is changed to provide that the certification must be filed at the time of, or prior to, filing of the claim(s) covered by the certification.

Comment: It was requested, under proposed § 191.33(b)(2), that blanket waiver letters also be authorized.

Customs Response: Customs agrees. Section 191.33(b)(2) is revised accordingly. Furthermore, § 191.33(a)(2) is changed to provide that the certification must be filed at the time of, or prior to, filing of the claim(s) covered by the certification.

Comment: In the context of proposed § 191.33(b), it was extensively argued, citing the statute, its legislative history, as well as case law, that multiple substitutions of merchandise were permissible under the substitution unused merchandise drawback provision, 19 U.S.C. 1313(j)(2). It was contended that, by permitting an intermediate party to claim drawback in proposed § 191.33(b), Customs itself provided for multiple substitutions. It was asserted that multiple substitutions were allowable under § 1313(j)(2), in the case of a successorship thereunder, pursuant to 19 U.S.C. 1313(s). One comment said that the matter of multiple substitutions under § 1313(j)(2) should be specifically addressed in the regulations.

Customs Response: Customs is bound by the current statutory language in 19 U.S.C. 1313(j)(2). Under the current statute (19 U.S.C. 1313(j)(2)), the other (substituted merchandise) must be commercially interchangeable with the imported merchandise, exported or destroyed within 3 years after import of the imported merchandise, and before exportation or destruction, not be used in the United States and be in the possession of the drawback claimant.

The drawback claimant (under § 1313(j)(2)(C)(ii)) must be the importer of the imported merchandise or have received from the importer (and person who paid any duty) a certificate of delivery transferring to the claimant the imported merchandise, commercially interchangeable merchandise, or any combination thereof (and the transferred merchandise will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise), and upon exportation or destruction of the other merchandise, drawback shall be refunded.

In the first case (when the claimant is the importer of the imported merchandise), no multiple substitutions are authorized by the statute, since the other merchandise must be in the possession of the claimant, and it (the other merchandise) must be exported (*i.e.*, no matter how many transfers or substitutions of the merchandise which becomes the “other” merchandise occur prior to receipt by the claimant of the merchandise, what is required to be

exported is the “other” merchandise which the claimant must have possessed).

In the second case (when the claimant receives from the importer and duty payer a certificate of delivery), no multiple substitutions are authorized by the statute since the other merchandise must be in the possession of the claimant and it (the other merchandise) must be exported (*i.e.*, if the “other” merchandise is treated as the imported merchandise, so that it, or commercially interchangeable merchandise, could be transferred to another party, the transferor would not be the importer and duty payer, as required by the statute).

Customs position in this regard is consistent with the legislative history of the statute (see also Senate Report 103–189, page 182, declaring that § 1313(j)(2) would allow exporters to claim drawback on imported merchandise, or other domestic or imported merchandise that is substituted *for the imported merchandise*).

As for the contention that Customs, in the proposed provision, by permitting an intermediate party to claim drawback under § 1313(j)(2), provides for multiple substitutions, Customs disagrees. Customs proposed interpretation of the statute, authorizing multiple transfers and claims by intermediate parties (under the waiver and assignment, and certification procedures) is based on the provision in § 1313(j)(1) as to who may claim drawback (the exporter (or destroyer) or, with endorsement, the importer or *any intermediate party*), and the legislative history (H. Rep. 103–361, 103d Cong., 1st Sess. (1993), part I, at 129; Sen. Rep. 103–189, 103d Cong., 1st Sess. (1993), at 82, noting that, due to a recent court decision, the provision also permitted an exporter or destroyer to endorse the right to claim drawback to the importer or any intermediate party).

Section 1313(j)(2) does not specifically authorize the delivery “directly or indirectly” of the certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof, so the proposed construction of the statute, based on the allowance in the regulations for an intermediate party to claim drawback (with the required waiver and assignment, and certification) must fail.

As for the comment that 19 U.S.C. 1313(s) permits multiple substitutions under § 1313(j)(2), Customs disagrees. Under § 1313(s), in pertinent part, a drawback successor (meeting the requirements of that section) may designate as the basis for drawback on

merchandise possessed by the drawback successor after the date of succession imported merchandise, commercially interchangeable merchandise, or any combination thereof for which the predecessor received, before the date of succession, from the importer and duty payer a certificate of delivery transferring to the predecessor such merchandise.

In other words, under § 1313(s), the predecessor receives a certificate of delivery for the “other” merchandise and the successor possesses the merchandise. Section 1313(j)(2) requires the party claiming drawback to both possess the “other” merchandise and to have received from the importer and duty payer a certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof. Thus, § 1313(s) allows drawback when these parties are different and a permitted succession occurs, it does not allow a further substitution, nor does the legislative history have any indication of an intent to add such substantive rights in the successorship situation.

The comment that the restriction on multiple substitutions should be provided for in the regulations themselves has merit and is adopted. Section 191.33(b)(1)(iii) is revised accordingly.

Comment: It was suggested, with respect to proposed § 191.33(b)(1)(ii), that the words “or destroys” should be inserted following the phrase, “commercially interchangeable merchandise, and exports” and before the phrase, “such transferred merchandise”, and the words “or destroyer” should be inserted following the phrase, “that exporter”, and before the phrase, “shall be entitled to claim drawback”.

Customs Response: The comment has merit and is adopted.

Comment: It was recommended, in proposed § 191.34(a)(1), that instead of certifying on the certificate of delivery that the party did not use “the exported or destroyed merchandise”, the requirement should be for a certificate that the party did not use “the transferred merchandise”. It was noted that the merchandise, at the time of the certification, would not yet be exported or destroyed.

Customs Response: The comment has merit and is adopted.

Comment: With respect to proposed § 191.34(a)(2), it was stated that instead of requiring the drawback claimant to “retain the certificate for submission to Customs as part of the claim, if requested”, the requirement should be

to "retain the certificate for submission to Customs when requested".

Customs Response: Consistent with § 191.51, certificates of delivery are not "part" of claims but support claims, so that if Customs requests a certificate of delivery upon which a drawback claim is dependent and the certificate is not provided, the claim is not rejected but, instead, is denied. Since a certificate of delivery is not "part" of a complete claim (as the regulation is modified), providing a certificate of delivery upon Customs request is in the nature of "perfecting" a claim. Notably, this is added as one of the instances of perfection provided in § 191.52(b), and may be done outside the 3-year time for filing a complete claim.

The denial of a drawback claim for failure to supply, in response to Customs request, a certificate of delivery upon which part of the claim is dependent is limited to denial of that portion of the claim dependent on the certificate of delivery which is not supplied. The provision is changed to make this clear.

Also, pursuant to changes to other sections (see §§ 191.51(a) and 191.52(b)), certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate was delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for "perfecting" a claim. The provision is changed to make this clear.

Comment: With respect to proposed § 191.34 (a) and (b) generally, it was contended that these provisions imply that a certificate of delivery which directly identified imported merchandise could not be used to transfer merchandise to a party who claimed drawback under 19 U.S.C. 1313(j)(2). It was asserted that the opposite was true, and that proposed § 191.34(a) should specifically state that a directly identified certificate of delivery to a party may be subject to a § 1313(j)(1) or 1313(j)(2) claim by that party.

Customs Response: The intent of these provisions is to make clear the requirements for and effect of certificates of delivery. Section 191.34(a) does not preclude the use of a certificate of delivery for the imported merchandise (and not substituted merchandise) which then may be the subject of a further delivery (under substitution procedures under 19 U.S.C. 1313(j)(2)), nor does § 191.34(b) preclude transfers (but not substitutions) before and/or after the

substitution-transfer. The provisions are changed to make this clearer.

Further, the provisions are changed to reflect that the certificate of delivery is required to be retained by the person to whom the merchandise was delivered (and is not a "part" of a drawback claim), and must be provided to Customs by the claimant upon a request to "perfect" the claim.

Comment: It was observed that proposed § 191.34(b) did not contain a provision dealing with intermediate transfers.

Customs Response: The comment has merit and is adopted. A sentence similar to the last sentence of § 191.34(a) is added to § 191.34(b).

Further, in the penultimate sentence of § 191.34(b) as proposed, the words "as imported merchandise for the purpose of manufacturing drawback" are deleted and replaced with "for any other drawback purposes".

Comment: It was requested that the procedures for the waiver of prior notice set forth in proposed § 191.35 for purposes of 19 U.S.C. 1313(j) also be employed for purposes of drawback under 19 U.S.C. 1313(c). It was further suggested that the form referred to here and in other sections as "Notice of Intent to Export" or "Notice of Intent to Export or Destroy" be renamed as the "Notice of Intent to Export, Destroy or Return Merchandise to Customs Custody".

Customs Response: The comment, suggesting that the provision for waiver of prior notice should be extended to drawback under 19 U.S.C. 1313(c), is not adopted. The statutory provisions are different. Under § 1313(c) the merchandise is required to be returned to Customs custody for exportation or destruction under Customs supervision; there is no such requirement in 19 U.S.C. 1313(j) for the return to Customs custody. The form for export or destruction or return to Customs custody, however, is renamed, as stated above.

Comment: It was recommended that the information required on the notice of intent in proposed § 191.35(b) include, in addition to the name and telephone number of a contact person, the mailing address, fax number and, if available, the e-mail address.

Also, it was stated that the phrase, "* * * the bill of lading number, if known", as set forth therein, was unnecessary, since the bill of lading number would not be known prior to export of the merchandise (the bill of lading is numbered upon preparation of the Outward Manifest).

Customs Response: The recommendation that other information

regarding the contact person should be stated has merit and is adopted. The comment suggesting deletion of the requirement for the bill of lading number, if known, is not adopted (*i.e.*, the requirement is subject to the caveat "if known").

Comment: It was stated, with respect to proposed § 191.35(c) that the regulations on the process of filing the notice of intent to export should provide the ability to file notice to Customs electronically. Furthermore, it was contended that Customs should be required to notify the party named in proposed § 191.35(b) by telephone, within 2 working days, and that a telephone contact should be required as well.

Customs Response: The comment that the regulations should provide for electronic filing of the "Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback" has merit and is adopted. This is accomplished by the addition of a definition of "filing" in § 191.2. The comment (that the party should be notified by telephone) is not adopted. Customs believes that the existing requirements in § 191.35(c) are adequate as regards the examination of merchandise to be exported or destroyed.

Comment: Referring to the time and place of examination in proposed § 191.35(d), it was mentioned that, for consistency, the notice of the decision to examine provided for in this provision should be "in writing".

Customs Response: The suggestion that notice of the decision to examine should be in writing has merit, although the requirement for notice in this regard is in § 191.35(c), not (d). Thus, the requested modification is made to § 191.35(c).

Comment: It was observed that inclusion of a requirement in proposed § 191.36(a)(1)(i) for the estimated number of claims to be filed under this procedure, and when they would be filed, would assist Customs in maintaining control over the filing of the claims under this provision.

Customs Response: A requirement to this effect is included in § 191.36(a)(1)(i).

Comment: It was stated that the IRS number (9-digit number plus two character suffix) was needed in proposed § 191.36(a)(1)(i) (A) and (B).

Customs Response: The comment has merit and is adopted.

Comment: A question was presented as to the meaning of the phrase, "Export period covered by this application" appearing in proposed § 191.36(a)(1)(i)(C). It was asked

whether the term "export period" included past as well as future export activity.

Customs Response: "Export period covered by this application", as used in § 191.36(a)(1)(i)(C), means the time beginning with the first export for which prior notice was not given and ending with the time of the last export for which such notice was not given. Section 191.36 deals with merchandise which has been exported without the filing of a notice of intent to do so. This provision, therefore, covers past transactions.

Comment: There was a recommendation that the words "and/or" be added to proposed § 191.36(a)(1)(iii)(A) (1) and (2), on the basis that a claimant might not have "laboratory records" as such.

Customs Response: The comment has merit and is adopted, with the additional statement that the requirements for the records are "as applicable".

Comment: It was contended that the restriction, in proposed § 191.36(a)(2), of retroactivity for waivers of prior notice to a "one-time" use by the claimant was unfair and might not be legal.

It was also stated that the one-time restriction should be on a product basis, because, with the diversification of business today, a firm could have several business areas that operated independently and could discover retroactive unused merchandise drawback scenarios at different times. It was further observed that the phrase "unless good cause is shown" afforded Customs too much discretion and could lead to capricious judgments.

Customs Response: The one-time restriction is retained in § 191.36(a)(2). Because this provision may be used for all exports occurring prior to approval by Customs of the application, a reasonably prudent drawback claimant should not be harmed (*i.e.*, once aware of the requirement for prior notice of intent to export or destroy, such notice should be given, and under this procedure past exports may qualify for drawback).

It is Customs position that the phrase "unless good cause is shown" as used in § 191.36(a)(2) gives proper discretion to the Customs officers responsible for administering the provision.

Comment: In relation to proposed § 191.36(c), the suggestion was made that the words "receipt of the application of" should be inserted immediately after the words "within 90 days of", so that the provision did not require Customs to make its decision to approve or deny and then inform the applicant within 90 days of that

decision. It was further stated in this regard that Customs should have to justify and state its reasons for the "inability to approve, deny or act on the application". It was observed that this could be accomplished by the addition of "and the reason thereof" at the end of this section.

Customs Response: The comments have merit and are adopted.

Comment: It was asserted that the second sentence in proposed § 191.36(e) should be: "If the applicant seeks waiver of prior notice under 191.91, reference should be included that application was submitted under this section and whether or not it was approved."

Customs Response: The comment has merit and is adopted (but by a change to § 191.91(b)(2)(ii) stating that the statement as to action on previous waiver requests includes one-time waivers under § 191.36).

Comment: It was believed that proposed § 191.37 provided no guidance as to the specific document type and format that the claimant or other recordkeeper had to maintain.

Concern was also expressed here that possible confusion could result from the 3-year (from date of payment) record-retention period for drawback, and the general 5-year record retention period for other Customs purposes. More clarity was requested.

It was further stated that if more than 3 years had passed since payment but a drawback claim was not finally liquidated and a question regarding documents arose, Customs should presume that the claimant had satisfied the drawback documentation requirements as long as the claimant was approved under the drawback compliance program.

It was additionally suggested that a claimant should be permitted to maintain the required documentation in paper or electronic form.

Customs Response: Customs plans to make available to the public, from the field drawback offices, descriptions, with examples, of the documents referred to in this section (now redesignated as § 191.38, due to the addition of a § 191.37 regarding destruction).

Section 191.38(a) as redesignated is also modified to make it clear that the 3-year time period provided for therein is for drawback purposes, and that the same records may be required, for other purposes, to be retained for a different time period. To this end, a citation to 19 U.S.C. 1508 is also added to redesignated § 191.38(a).

While records must be retained for 3 years from the date of payment of a

drawback claim, it is Customs position, as previously stated, that the effect of a claimant no longer having records following this period must be determined on a case-by-case basis, when the related drawback claim has not yet been finally liquidated.

Concerning the particular format in which records may be kept, as also previously noted, Customs has determined to include a definition in § 191.2 for the term "records" based on the definition of this term appearing in 19 U.S.C. 1508.

Comment: It was observed that a reference to the destruction of merchandise should be included in proposed § 191.37(b)(2), and that a section should be added to subpart C addressing the destruction of merchandise.

Customs Response: The comment that § 191.38(b)(2) as redesignated should also include a reference to destruction has merit and is adopted. Also, as already noted, a new § 191.37 is added to subpart C addressing the destruction of unused merchandise under Customs supervision. A similar section regarding destruction for manufacturing drawback has likewise been included in subpart B.

Subpart D

Comment: It was asked, with reference to proposed § 191.41, whether taxes or fees are eligible for drawback on rejected merchandise under 19 U.S.C. 1313(c).

Customs Response: Section 1313(c) authorizes drawback on "duties". However, this comment indirectly raises the question of the applicability of 26 U.S.C. 5062(c) (drawback on distilled spirits, wines, or beer, which are unmerchandise or do not conform to sample or specifications). To alert the public to the possible application of that provision, a parenthetical reference to subpart P dealing with that type of drawback is added to § 191.41.

Comment: It was observed that a close reading of proposed § 191.42(c), (e), and (f) revealed that the "Notice of Intent to Export/Destroy" form was to be used not only as a notice of intent to export or destroy merchandise, but also as a notice of intent to return merchandise to Customs custody. As such, it was suggested that the form be appropriately renamed.

It was further stated that, by providing, in proposed § 191.42(e) and (f), certain situations in which merchandise would "be deemed" to have been returned to Customs custody, these provisions indicated that the merchandise might not actually have been returned to Customs custody. It was advocated that this should be

reconciled with the wording in proposed § 191.42(a) providing that the claimant had to return the merchandise to Customs custody.

In addition, for consistency, it was requested here that each time the terms "exported" or "exportations" were used in proposed § 191.42, the terms "destroyed" and "destructions" should be added.

Customs Response: The request regarding the use of "destroyed" or "destruction" with the corresponding exportation terms has merit and is adopted, and, as previously noted, the form is re-named.

Customs, however, sees no need for any change to § 191.42(a). Since § 191.42(e) and (f) provide that merchandise is "deemed" to have been returned to Customs custody in the situations provided for, the requirement for return to Customs custody in § 191.42(a) is met.

Comment: It was requested that the waiver of prior notice and the one-time retroactive claim procedures provided for unused merchandise in proposed § 191.36 be made available for drawback under 19 U.S.C. 1313(c) and for destroyed merchandise, and that if this were done, merchandise exported or destroyed under these procedures should be "deemed" to be "returned to Customs custody" or destroyed "under Customs supervision".

Customs Response: The comment suggesting that waiver of prior notice and the one-time waiver procedures be made available for drawback under 19 U.S.C. 1313(c) is not adopted. In particular, as previously pointed out, 19 U.S.C. 1313(c) and 1313(j) are different statutory provisions. Under § 1313(c), there must be a return to Customs custody for exportation. There is no such requirement in § 1313(j).

Comment: It was recommended that the information required in the notice under proposed § 191.42(d) should include, in addition to the name and telephone number of a contact person, the mailing address, fax number and, if available, the e-mail address.

Customs Response: Customs agrees, and § 191.42(d) is changed to provide for this additional information.

Comment: It was asked that the notification given by Customs to examine merchandise under the first sentence in proposed § 191.42(e) be in writing.

Customs Response: This comment has merit and is adopted.

Comment: A concern was expressed in relation to proposed § 191.42(i), in that the provision appeared to require the exportation of rejected merchandise under Customs supervision.

Customs Response: The comment raises a valid concern. The statute does not require exportation to be under Customs supervision. The phrase, "under Customs supervision", is thus deleted from this section. Also, a parenthetical reference to subpart G is added to § 191.42(i).

Comment: In proposed § 191.44, it was suggested that the reference to "§ 191.71(a)" be changed to "191.71".

Customs Response: This comment has merit and is adopted.

Subpart E

Comment: It was asserted that, in proposed § 191.51, a complete claim should contain a calculation sheet.

Customs Response: The provision in § 191.51(b) does require the correct calculation of drawback due, under which claims exceeding 99% of the duties will not be paid until corrected, and claims for less than 99% will be paid as filed, unless the claimant amends the claim. This provision is modified to provide for those situations when drawback is 100% of duties.

In addition, it is noted that the provision on the time for filing a complete claim (in proposed § 191.52(a)(2)) is moved to § 191.51, as paragraph (e), and titled "Time of filing". The provision in 19 U.S.C. 1313(r)(3), providing for an extension to the time for filing a drawback claim when a claimant establishes that it was unable to file the drawback claim because of a major disaster is also included in § 191.51(e).

Comment: A question was posed, in connection with proposed § 191.51(a)(1), as to why drawback offices still required a coding sheet for disk/electronic filings, and would those offices be informed to eliminate this requirement.

Customs Response: As set forth in § 191.51(a)(1), a coding sheet is required, unless the data is filed electronically.

Comment: Concern was expressed about the requirement in proposed § 191.51(a)(2) that certificates of delivery be in the possession of the claimant at the time of filing the claim.

Customs Response: Certificates of delivery must be in possession of the party to whom the merchandise is delivered. Section 191.51(a)(2) is changed to so state.

Comment: A question was presented regarding the statement in proposed § 191.51(b) that claims for less than 99 percent would be paid as filed, unless the claimant amended the claim. It was advocated that Customs make an additional refund in such cases on its own.

Customs Response: Customs recognizes the interest of a claimant in being able to exercise caution by under-claiming. Also, adoption of the procedure suggested by the comment would create an untenable administrative burden for Customs in its processing of drawback claims.

Comment: With respect to proposed § 191.51(c), it was suggested that the effective dates for providing HTSUS numbers on drawback claims be included in the regulations themselves. It was also contended that if a certificate of manufacture and delivery was identified or designated, the claimant should be exempt from providing the HTSUS numbers on the related claim. As such, it was requested that the phrase, "and/or the certificate of manufacture and delivery", be deleted from proposed § 191.51(c).

A concern was also expressed that proposed § 191.51(c) might imply that for exports, if Schedule B commodity numbers were used, the entire ten-digit number would be required. It was advocated that it should be specified here that the Schedule B number was limited to 6-digits.

A question was raised as to what the effect of incorrect HTSUS numbers or Schedule B commodity numbers would be when those numbers were incorrect on the entry documentation or Shipper's Export Declarations (SEDs) from which they were derived. It was suggested that "good faith effort" language, as discussed in prior consultations, should be incorporated within proposed § 191.51. It was further suggested that if drawback claims were required to provide the SED tariff number to the 6-digit level for exports, they should also be permitted to provide a statement as to any discrepancy between that number and the actual number that would be reported to Customs at entry if the merchandise had been imported.

In addition, with reference to the provision in proposed § 191.51(c) that claimants using certificates of manufacture and delivery could meet the requirement with the HTSUS number on such a certificate, it was asked if this meant the HTSUS number of the imported designated merchandise, or the manufactured article, since the claimant might be using the previously manufactured article to make a second product for export.

Customs Response: The comment that the effective dates for when HTSUS numbers or Schedule B commodity numbers are required should be included in the regulations has merit and is adopted. Section 191.51(c) adds a provision in this regard.

As for the second comment suggesting deletion of the reference to a certificate of manufacture and delivery, this comment points out a lack of clarity in the regulation. The provision is modified to make it clear that the 6-digit HTSUS number is always required for the designated imported merchandise, and that this number shall be provided from the entry documentation when the claimant is the importer of record and from the certificate of delivery and/or certificate of manufacture and delivery when the claimant is not the importer of record. Because the certificate of manufacture and delivery is part of a drawback claim, manufacturing drawback claimants filing claims for which such a certificate or certificates is or are parts may meet the requirement for providing the HTSUS number for the imported merchandise with the HTSUS number(s) on such certificate(s).

In the case of exports, the HTSUS number(s) or Schedule B commodity number(s) (to the 6-digit level in each instance) are also always required, and they shall be from the Shipper's Export Declaration(s) when required, or if not required, the numbers shall be the numbers that the exporter would have set forth on the SED(s), but for the exemption from the requirement for an SED.

As provided in §§ 191.10(b)(12) and 191.24(b), HTSUS numbers and/or Schedule B commodity number(s) are not required to be included for the transferred merchandise on certificates of delivery or certificates of manufacture and delivery unless the transferred merchandise is the designated imported merchandise or merchandise substituted therefor under 19 U.S.C. 1313(j)(2).

The comment regarding the possible implication that the 10-digit HTSUS number is required for Schedule B numbers from an SED is addressed by making clear in § 191.51(c) that the 6-digit limitation applies to both HTSUS numbers and/or Schedule B numbers.

As for the comment regarding the effect on drawback of the use of incorrect HTSUS numbers or Schedule B commodity numbers, when those numbers were incorrect on the entry documentation and/or SEDs from which they were derived, the requirement is that the HTSUS numbers for the designated imported merchandise be from the entry summary and other entry documentation (§§ 191.51(c), 191.10(b)(11), 191.24(b)(4)) and that the HTSUS numbers or Schedule B commodity numbers for the exported merchandise or articles be from the SED or, if no SED is required, the numbers that would have been on an SED if required. Thus, in each instance (except

in the case of substituted merchandise under 19 U.S.C. 1313(j)(2), in which, according to the legislative history (see above), classification is one of the criteria on which commercial interchangeability is based), the HTSUS or Schedule B commodity numbers are derived from other documents. That is, no independent classification is required.

It is true that earlier consultations discussed a "good faith effort" in the HTSUS or Schedule B commodity numbers to be used on drawback entries and certificates. As stated in the background to the proposed regulations, the intent of the requirement for HTSUS or Schedule B commodity numbers was to enable Customs to ensure greater compliance through the use of enhanced penalty and automated drawback selectivity programs (62 FR 3090). The change from earlier discussions under which, instead of requiring independent classification for drawback, the HTSUS or Schedule B commodity numbers to be provided on drawback entries and certificates are those already required (except in the case of substitution under 19 U.S.C. 1313(j)(2), see above), simplifies drawback procedures in this regard. As stated above, all that is required is that the HTSUS numbers or Schedule B commodity numbers from the entry summary and other entry documentation or the SED be provided.

In view of these changes, Customs sees no need, benefit, or purpose to be served by some sort of "good faith effort" requirement. However, the current requirement, which merely provides for the source of the classification number for exports, does not preclude a claimant from explaining any discrepancy in this number for other drawback purposes (e.g., commercial interchangeability under 19 U.S.C. 1313(j)(2) or same kind and quality under 19 U.S.C. 1313(p)).

The comment questioning whether the HTSUS number on a certificate of manufacture and delivery is that for the imported designated merchandise or the manufactured article raises a valid concern and is addressed by further clarifying § 191.51(c) in this respect.

Comment: A definition of the term "perfecting" was requested in proposed § 191.52. It was also requested that Customs develop a formal procedure for tolling or suspending the 3-year claim completion period during an audit, internal advice request, or other action initiated by Customs regarding a drawback claim.

It was observed that copies of export bills of lading were requested in proposed § 191.52(b)(1), but that in

proposed § 191.72(a), the original was required.

It was also asked whether protesting a drawback claim gave the right to amend the claim even though the 3-year period may have passed.

Customs Response: Customs believes that a specific definition of the term "perfecting" in § 191.52 is unnecessary. The comment that procedures should be provided for tolling or suspending the 3-year period for completion of a claim is also not adopted. It is the claimant's responsibility to file a complete claim; a prudent claimant would ensure timely filing of a complete claim for all possible applicable provisions.

The comment regarding copies or originals of bills of lading, in § 191.52(b)(1), raises a valid concern. Modifications, consistent § 191.72(a), are made here.

In response to the question of whether protesting a claim may allow a claimant to amend a claim outside the 3-year time period, the 3-year time period is statutory, and may not be extended unless specifically provided for in the statute. As part of protest procedures, a claim may be perfected, but it may not be amended (insofar as amendment would result in a complete claim not being filed within the 3-year time limit).

It is noted that the heading of § 191.52 is changed to "Rejecting, perfecting or amending claims", and the heading of paragraph (a) thereof is changed to "Rejecting the claim".

Comment: It was believed that, for consistency, the notification to the applicant provided for in proposed § 191.52(a)(1) should be "in writing."

Customs Response: This comment has merit and is adopted.

Comment: It was asserted that proposed § 191.52(a)(2) failed to recognize the retroactive application of 19 U.S.C. 1313(p), in that the restriction in 19 U.S.C. 1313(r)(1) did not apply to claims under § 1313(p).

Customs Response: As for the retroactive application of 19 U.S.C. 1313(p), it is Customs position that resolution of the applicability of § 1313(p) to past drawback claims will be resolved on a case-by-case basis.

In addition, a reference to 19 U.S.C. 1313(r)(3) is included in § 191.51(a)(2) as proposed, which, as noted, is redesignated as § 191.51(e). Additionally, § 191.51(e), as thus redesignated, which provides the time for filing a completed claim, is further modified by the addition of the statutory provision that claims not completed within the 3-year period (unless specifically exempted) shall be considered abandoned.

Comment: With reference to proposed § 191.52(b), it was thought that a new paragraph should be added to include certificates of delivery requested by Customs among the additional evidence or information that could be filed more than 3 years after the date of exportation. It was also suggested that a new paragraph be added to provide for the submission of other alternative information as approved by the drawback office, in lieu of that set forth in proposed § 191.52(b)(1)–(3). In addition, it was mentioned that provision should be made for a situation when the drawback office decides after receipt of the claim that the claimant should have its own filer code. Furthermore, it was recommended that, for consistency, the notification to the applicant provided for in this provision should be in writing.

Customs Response: The comment suggesting the inclusion of requested certificates of delivery to perfect a drawback claim has merit and is adopted. The comment regarding the addition of a paragraph providing for other alternative information is not adopted, as not necessary. Section § 191.52(b) already provides that the information described therein may include, but not be limited to, the information set forth in paragraphs (b)(1)–(3) thereof, as modified. The comment regarding a claimant's filer code is not adopted, as unnecessary. The comment that, for consistency, the notification to the filer should be "in writing" has merit and is adopted.

Comment: It was observed, with respect to proposed § 191.52(b)(2), that if the drawback claimant was not also the importer, the requirement that the import entry and invoice be submitted would be difficult to meet. The comment suggests that providing the entry number and a full description of the imported merchandise (but not the total duty paid or total value and volume of the import) should be sufficient for Customs.

Customs Response: Customs believes that the total duty paid is no more sensitive than the other information required under § 191.52(b). This comment is not adopted.

Comment: It was suggested that it be specifically set forth in proposed § 191.52(b)(2) and (3) that other types of data, in lieu of invoices, would be acceptable.

Customs Response: Customs believes that this is unnecessary. As previously noted, § 191.52(b) already provides that the information required may include, but is not limited to, that specifically set forth thereunder.

Comment: Regarding proposed § 191.52(c), the request was made that the word "original" be added before "drawback claim" to avoid confusion.

Customs Response: The comment that "original" should be added before "drawback claim" has merit and is adopted.

Comment: A question was raised about the need for proposed § 191.53, concerning the "restructuring" of claims; it was asked that this term be defined. The concern was also expressed that drawback offices might not fairly exercise the discretionary authority given to them in this section.

Customs Response: The procedures in § 191.53 permit Customs to require claimants to restructure their drawback claims so as to foster Customs administrative efficiency, subject to consideration by Customs of relevant factors (as listed in the provision). To protect the interests of claimants, a claimant may demonstrate an inability or impracticability in restructuring, with the criteria for so demonstrating specifically provided, and may propose a mutually acceptable alternative. Customs plans to provide training on the restructuring procedures to the field drawback offices.

Subpart F

Comment: A recommendation was made that a provision be added to proposed § 191.61 for the amendment of a claimant's specific or general manufacturing drawback ruling, if verification revealed errors or deficiencies with respect thereto. Current § 191.10(e) was referred to here.

Customs Response: Regarding amendments to correct errors or deficiencies found in verification, Customs agrees that § 191.61 should be appropriately changed to deal with this matter, although not with inclusion of all of the material currently in § 191.10(e). In this connection, with the change in terminology from drawback "contracts" to specific and general manufacturing drawback rulings, modification of the rulings and the effect thereof are governed by 19 U.S.C. 1625 and 19 CFR part 177.

As changed, § 191.61 adds a new paragraph (d), to provide that Customs Headquarters shall be promptly informed of any errors or deficiencies in a specific manufacturing drawback ruling or a general manufacturing drawback ruling, the letter of notification of intent to operate under a general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, and that Customs Headquarters shall take appropriate

action (with a citation to 19 U.S.C. 1625 and 19 CFR part 177).

Comment: It was stated that proposed § 191.61(b) appeared to be limited to manufacturing claims, and recommended that the language be expanded to cover the verification of all types of claims.

Customs Response: Customs agrees. Section 191.61 is modified accordingly.

Comment: With reference to proposed § 191.61(c), even though firm deadlines were not able to be established in the absence of "deemed liquidated" language, it was asked that Customs indicate the maximum time period it planned to use to liquidate a drawback entry.

Customs Response: This comment is not adopted. It is Customs position that, as previously set forth, no such time period must be specified, but claimants can avail themselves of accelerated drawback provisions to obtain early payment secured by a bond.

Comment: The suggestion was made that if the technical definition of "falsification", as used in proposed § 191.62, meant or implied fraudulent activity to the exclusion of negligent activity, then, in order to clarify the subject matter thereof (which included both fraud and negligence), the title of proposed § 191.62 should be changed. It was also observed here that a negligent violation was not necessarily a falsification.

Customs Response: The heading of § 191.62 is changed to "Penalties".

Comment: The question was raised in relation to proposed § 191.62(a) as to why criminal penalties were included therein. It was believed that Customs had agreed to eliminate the criminal provisions if civil penalties were included in the Customs Modernization Act.

Customs Response: Neither the statute nor the legislative history thereto contains any such provision.

Subpart G

Comment: It was believed that the phrase, "after receipt", should be added after "4 working days" in proposed § 191.71(a).

Customs Response: Customs agrees. The provision is changed accordingly.

Comment: For consistency, it was recommended that advising the filer, as provided in proposed § 191.71(a), be "in writing". It was also stated that the 7-day period for notice before the intended date of destruction was too long and that the same 2-day period used for notice of export should be used.

Customs Response: Customs agrees that advising the filer should be in

writing, and this provision is changed accordingly. However, Customs disagrees that a change in the applicable time period is needed. Customs does not anticipate undue confusion resulting from the different time frames for different purposes.

Comment: The view was expressed that proposed § 191.71(b) failed to provide for the evidence required when the merchandise was destroyed, in those cases where Customs did not notify the filer within the time in proposed § 191.71(a). It was believed that the wording of this provision should be changed from, "When Customs declines the opportunity to attend", to: "When Customs does not attend (or witness) the destruction".

Customs Response: This comment has merit and is adopted, although the modification of the wording, by the addition of "(or witness)" is not made, as unnecessary. Evidence of destruction must be provided whether or not Customs declines the opportunity to attend the destruction, or Customs decides to witness the destruction but does not do so.

Comment: A rewording of proposed § 191.71(c) was recommended, concerning the submission of evidence of destruction.

Customs Response: Customs agrees. After destruction the claimant must provide either the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, certified by the Customs officer attending the destruction, or, if Customs has not witnessed the destruction, the evidence that destruction took place in accordance with the approved Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback. The provision is changed accordingly.

In addition, the heading of subpart G is changed from "Evidence of Exportation and Destruction" to "Exportation and Destruction" because the subpart contains export and destruction provisions on procedures as well as evidence.

Comment: It was stated that the list of documentation for establishing exportation in proposed § 191.72(a) through (e) is not all inclusive. A suggestion was put forth here that the introductory text of proposed § 191.72 preceding paragraphs (a) through (e) should be revised to read: "The procedures for establishing exportation outlined by this section include, but are not limited to:". It was further recommended that the word "Alternative" should be removed from the heading and introductory text. It was also suggested that the word "time"

of exportation in the introductory text be replaced with "date" of exportation.

Customs Response: The comment that "include, but are not limited to" should be inserted is adopted. The use of the word "alternative" in the heading and introductory text of § 191.72 is superfluous, as this section contains the exportation procedures in question. The heading is changed to "Exportation procedures". Also, the word "time" appearing in the introductory text is changed to "date".

Comment: The requirement in proposed § 191.72(a) for an original bill of lading was said to be inconsistent with industry practice. The elimination of this requirement was requested.

Customs Response: Customs agrees that the requirement for "the original" bill of lading or other document is inconsistent with actual practice. The provision is thus changed to provide for "an originally signed bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or copies thereof certified by the exporting carrier or holder of the original, issued by the exporting carrier". This is consistent with C.S.D. 82-59.

Comment: The recommendation was made that a separate column be added in the sample format for the export summary procedure in proposed § 191.73, to indicate the exporter's name, if different from the claimant. Additionally, it was asked if this procedure could be used for transfers to a foreign trade zone.

It was also noted that the capitalization of Chronological Export Summary was inconsistent in this provision.

Customs Response: A column is added to the sample format in § 191.73 to indicate the exporter's name if different from the claimant. In addition, a change is made to subpart R to include language making the export summary procedure applicable to transfers to foreign trade zones of merchandise placed in zone-restricted status (see 19 CFR 146.44). Also, § 191.73 is changed to consistently capitalize "Chronological Summary of Exports" throughout. Also, export identification is provided for "deemed" exports under subpart K.

Comment: In proposed § 191.73(b), it was said that the number sign ("#") after the word "destination" appeared to be a "typo"

Customs Response: Customs agrees, and the number sign "#" is deleted.

Comment: It was asked that a requirement be added to proposed § 191.73(c), specifying that the claimant, if not the exporter, would have to have

an endorsement from the exporter to order to claim drawback.

Customs Response: The comment is correct. However, this is now provided for in § 191.82.

Comment: A recommendation was made that the word "proof" appearing in proposed § 191.73(c)(1) be changed to "evidence". It was also suggested that the last sentence thereof should be amended consistent with proposed § 191.72(a), which would prevent a filer from claiming that a copy or unsigned duplicate original was satisfactory.

Customs Response: These proposals have merit and are adopted. In § 191.73(c)(1), the word "proof" is changed to "evidence", and a reference is made to the actual evidence provided for in § 191.72(a).

Comment: The deletion of the last sentence in proposed § 191.73(c)(2) was requested.

Customs Response: Customs agrees. The last sentence in § 191.73(c)(2) is removed, and the second sentence is modified by the addition, at the end thereof, of the phrase ", and such records are subject to review by Customs".

Comment: It was asked whether the reference in proposed § 191.75(a) and (b) to "§ 191.73" should instead be to "191.72".

Customs Response: The comment has merit. However, reference to both §§ 191.72 and 191.73 is intended. The provision is changed accordingly.

Comment: A question was raised as to the meaning of the statement in proposed § 191.75(a) that no bond would be required when the U.S. Government claimed drawback.

Customs Response: This comment raises a valid concern. The quoted statement, in § 191.75(a) as proposed, is of general application and is incorporated, as a separate paragraph, in § 191.4, which is revised accordingly.

Comment: In proposed § 191.75(b), it was believed that a reference to § 191.4(b) was needed.

Customs Responses: The comment has merit and is adopted.

Subpart H

Comment: With reference to proposed § 191.81, the comment was made that nowhere did Customs discuss the actual determination of drawback due.

It was also suggested that the regulations include a provision encouraging the timely and expeditious payment and liquidation of drawback claims.

Customs Response: Section 191.51(b) addresses the determination of drawback due. Also, the suggested inclusion of a provision encouraging

timely and expeditious payment of drawback and liquidation of drawback entries is not adopted. The accelerated payment procedure provides for expeditious payment of drawback. As previously noted, Customs takes the position that a categorical time limit regarding liquidation of drawback entries will not be set out, but claimants can avail themselves of accelerated drawback provision to obtain early payment secured by a bond.

Comment: A comment suggested that the following be added at the end of the first sentence of proposed § 191.81(b)(1): "only to the extent the merchandise in the quantities identified or designated is subject to a drawback claim".

Customs Response: Customs agrees. To this end, the phrase, "to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph.", is added at the end of the first sentence of § 191.81(b)(1).

It is also pointed out here that in identifying, to the best of its knowledge, each import entry on a drawback claim that has been protested or that is the subject of a request for reliquidation, as required under § 191.81(b), the drawback claimant must use reasonable care (see 19 U.S.C. 1593a).

Comment: A clear definition of what constituted a voluntary tender was recommended in relation to proposed § 191.81(c), as well as a corresponding change to the waiver language in proposed § 191.81(c)(3). In this latter regard, it was asked what exactly was meant by the phrase in proposed § 191.81(c)(3), "waiving any right to payment or refund under other provisions of law".

Customs Response: A definition of voluntary tenders is added in § 191.3(a)(1)(iii). In addition, for purposes of clarification, proposed § 191.81(c)(3) is modified in the same manner as § 191.81(b)(1). It is also noted that proposed § 191.81(c)(1) and (2) are combined and redesignated as § 191.81(c)(1), and proposed § 191.81(c)(3) is redesignated as § 191.81(c)(2).

Comment: It was suggested that the heading in proposed § 191.81(f) be changed to "By-products". It was further suggested that the term "Relative values" be added there as well.

Customs Response: In view of the changes made in § 191.2(u) as redesignated, the heading of § 191.81(f) is changed to read "Relative value; multiple products".

Comment: Noting that specific reference was made in proposed

§ 191.82 as to the party who could claim drawback under 19 U.S.C. 1313(j)(1), it was suggested that specific reference also be provided in this section for § 1313(j)(2). Also, based on the second sentence of proposed § 191.175(a), Customs was urged to adopt a similar provision to apply to claims for all other types of drawback.

It was further asked whether the "certification" referred to in this section had to be executed on a new Customs Form or whether it could be done on company letterhead; whether it had to be submitted as part of the claim; and whether the manufacturer would have to issue a certificate of manufacture and delivery to the exporter who would then issue a certification back to the manufacturer allowing the manufacturer to file and claim drawback.

Customs Response: A reference to § 191.33(b) is included in § 191.82, for parties who may claim under 19 U.S.C. 1313(j)(2).

The comment that a provision such as in § 191.175(a) be added to § 191.82 is not adopted. The authority for the provision in § 191.175(a) is specifically provided in 19 U.S.C. 1313(p)(3)(C), but such a provision is not specifically provided for other subsections of the drawback law.

The certification may be executed on company letterhead as in current practice; it need not be submitted as part of a claim (although it must be filed at the time of, or prior to, the filing of the claim). Furthermore, in the situation covered by this provision, a certificate of manufacture and delivery is not required from the manufacturer to the exporter, nor is a certificate required from the exporter back to the manufacturer (see § 191.25). Also, provision is made for the filing of a "blanket" certification for a specified period, under this provision, consistent with similar provisions elsewhere in the regulations (see §§ 191.28, 191.33(a), 191.33(b)).

Subpart I

Comment: In proposed §§ 191.91 and 191.92, it was advocated that a successor be allowed to assume a predecessor's approvals for waiver of prior notice and accelerated payment, on the basis of the language in 19 U.S.C. 1313(s)(3)(A) providing for drawback successorship when an entity had transferred to another entity all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor.

It was suggested in this regard that such an assumption would be effective for one year from the date of succession. Within that year, the successor

corporation would have to re-apply for the privilege. If the successor company applied within one year, then the privilege would remain in force until the new application was acted upon by Customs.

The suggestion was also put forth that the effect of existing waiver of prior notice and accelerated payment approvals, and requirements for reapplication, be included in the regulations themselves.

Customs Response: The assumption of waiver of prior notice and accelerated payment approvals by a successor has some merit, although Customs must ensure the protection of the revenue. Therefore, the provisions (§§ 191.91 and 191.92) are modified to provide for the limited, temporary assumption by a successor of waiver of prior notice of intent to export and accelerated payment approvals in a successorship such as that described in 19 U.S.C. 1313(s)(3)(A).

Unlimited assumption by the successor, however, is not provided for in a successorship such as that described in 19 U.S.C. 1313(s)(3)(B) (transfer of the assets and other business interests of a division, plant, or other business unit of the predecessor, under certain conditions).

The assumption by the successor of waiver of prior notice and accelerated payment approvals provided for will be effective for 1 year from the date of succession. Within that year, the successor must re-apply following the application procedures in § 191.91 and/or 191.92, as appropriate, and if the successor applies within 1 year, the approval of waiver of prior notice or accelerated payment remains in force until the new application is acted upon by Customs.

Furthermore, the request that provision for existing waiver of prior notice and accelerated payment approvals and requirements for re-applications be included in the regulations themselves has merit and is adopted.

In addition, all references to "privileges" are eliminated from subpart I and throughout part 191, and the references are replaced by reference to the particular procedure involved (either waiver of prior notice of intent to export or accelerated payment).

Comment: It was observed in relation to proposed § 191.91(b)(1) that the procedures for waiver of prior notice should also be extended to applicants who might wish to apply under 19 U.S.C. 1313(c).

Customs Response: This comment is not adopted. The waiver of the notice of intent to export applies under 19 U.S.C.

1313(j), which is a different statutory provision than 19 U.S.C. 1313(c). Under 19 U.S.C. 1313(c), the merchandise is required to be returned to Customs custody for exportation. No such requirement exists with respect to 19 U.S.C. 1313(j).

Comment: The observation was made that the nine-digit suffix, plus two-character suffix, should be required in proposed § 191.91(b)(2)(i)(A) and (B). Also, with reference to proposed § 191.91(b)(2)(i)(B), it was noted that the name, address, and identification number of current exporters, if the applicant was not the exporter, would be of minimal value, since it would be an extensive list and the exporters would be constantly changing.

Customs Response: Paragraphs (b)(2)(i)(A) and (B) of § 191.91 are modified to require the suffix in question; and paragraph (b)(2)(i)(B) thereof is further modified to require only the 3 most frequently used exporters, if there are multiple exporters, to appear in the application.

Comment: The question was asked as to what was meant by the term "export period", in proposed § 191.91(b)(2)(i)(C). It was further asserted in this connection that it was unnecessary to require applicants to provide the "export period covered", except in cases where the application was intended to cover other than prospective transactions.

Customs Response: The export period covered by the application means the period during which exports are made for which waiver of prior notice is requested (the period may be indefinite beginning with a stated date; or it may be a period with specified beginning and ending dates); it is Customs position that this information is necessary.

Comment: In proposed § 191.91(b)(2)(i)(F), (G), and (H), it was recommended that the reference to the "next 12-month period" be changed to refer to the next calendar year; it was asked what other requirements were referred to in proposed § 191.91(b)(2)(iii)(B); and it was suggested that a statement be required in proposed § 191.91(b)(2)(ii) as to whether an applicant was previously denied or had been approved for the one-time waiver procedure.

Customs Response: The "12-month period" referred to in § 191.91(b)(2)(F), (G), and (H) is changed to make it clear that the period covered is the next calendar year; § 191.91(b)(2)(ii) is changed to include a statement of whether the applicant was previously denied or had approved a 1-time waiver of prior notice under § 191.36; and the

evidence referred to in § 191.91(b)(2)(iii)(B) is "any other" evidence, and the provision is changed by the addition of this modifier.

Comment: The suggestion was made that the words "and/or" be added for proposed § 191.91(b)(2)(iii)(A)(1) and (2), on the ground that a claimant may not have laboratory records as such.

Customs Response: This comment has merit and is adopted, with the additional statement that the requirements for the records are "as applicable".

Comment: It was remarked that Customs should justify and state its reason for the "inability to * * * act on the application", as set forth in proposed § 191.91(c)(1). It was further observed in this connection that the last sentence should add the language, "but are not limited to". It was stated here that the proposal was too restrictive, and that it would require granting of a waiver if the applicant had a history of bad exams.

Customs Response: The comment that Customs must justify and state its reason for the inability to act on the application has merit and is adopted. Customs will endeavor to meet a directory 90-day time limit in this regard. The comment requesting the addition of "but are not limited to" is also adopted, for the reason given.

Comment: In proposed § 191.91(c)(2), it was contended that Customs did not have the right to limit future filings for waiver of prior notice (and it was contended that Customs could not limit retroactive waivers of prior notice). It was asked that if the waiver could only be "prospective" as used in proposed § 191.91(c)(2), it be from the date of the application for waiver, not the waiver approval. In this regard, it was noted that proposed § 191.36 provided for claims that were filed pending disposition of application. The question was put as to what an applicant was supposed to do between filing its request for waiver of notice of intent to export and receiving approval of the request.

Customs Response: These comments are not adopted. The elimination of unlimited retroactive waivers of prior notice meets the interest of eliminating a significant internal control weakness reported by the Treasury Inspector General; while the provision for a one-time opportunity for drawback claims under 19 U.S.C. 1313(j), without having provided Customs with prior notice, meets the interest of claimants who may not have known of the requirement for prior notice of intent to export before the exports occurred.

Approvals of waiver of prior notice are effective for exportations occurring after the date of approval. Between the time of filing a request for waiver of prior notice and approval of the waiver, applicants should provide prior notice of export as provided in § 191.35.

Comment: With reference to proposed § 191.91(d), it was contended that a "stay" without cause could become too burdensome to the drawback community. It was urged that the provision be eliminated entirely or changed to allow Customs to inspect a few export transactions during a specified period of time. If Customs wanted to "stay" waiver of prior notice altogether, then there should be a "good cause" requirement for staying waiver of prior notice, for any duration of time. In this latter connection, it was asked that a stay be specifically limited, such as for 30 days.

It was also observed that under proposed § 191.91(d), a "stay" would take effect on the date of the agency's letter of notification, even though such a letter would be received after the date thereon. It was requested here that a privilege holder be afforded a reasonable period after the date of Customs letter of notification of a "stay".

In addition, a suggestion was made that the last sentence of proposed § 191.91(d) make clear that, upon reinstatement, the waiver of prior notice would apply to exports occurring on or after the date of such reinstatement. Also, an editorial comment recommended that the word "agency" appearing several times in the provision be replaced with other terminology.

Customs Response: The stay procedure for waiver of prior notice is retained in § 191.91(d). The waiver of prior notice procedure has been identified as a significant weakness in Customs administration of drawback. As explained in the BACKGROUND" section of the proposed rule, the stay procedure would not be an adverse action, suspension, or other form of sanction against the person for whom the privilege is approved; rather it is a limitation on what is being granted in the approval itself, there being no statutory entitlement to this procedure. Customs continues to believe that this limitation would best protect the revenue and the public interest in sound administration of the drawback program.

However, the time within which a stay goes into effect, that is, before the person received notice of the stay, raises concerns. The provision is accordingly changed to provide that written notice of a stay be given to the person for

whom waiver of prior notice was approved, and that such written notice shall be by registered or certified mail. The stay will take effect two working days after the date the person signs the return post office receipt for the registered mail. The delay of two business days is required by 19 CFR § 191.35(a) (i.e., notice of intent to export at least 2 working days prior to the date of intended export).

The comment stating that "good cause" or similar language be added in proposed § 191.91(d) governing the implementation of a stay is not adopted. Once Customs has waived the requirement for prior notice of intent to export, Customs has no way of ensuring, before the fact, that the exported merchandise is the merchandise claimed and meets the requirements of the drawback law. Thus, it continues to be Customs position that an approval of waiver of prior notice may be stayed, should Customs for any reason desire to examine the subject merchandise prior to its exportation, for purposes of verification. However, the provision is modified to provide that in its letter notifying the person to whom approval of waiver of prior notice has been granted Customs must specify the reason(s) for the stay.

In regard to the comment asking that the period for a stay be limited to a specific period, such as 30 days, this comment is also not adopted. The period for a stay remains "a specified reasonable period". The reason that the time-period may not be specified is that the time will vary from case to case (e.g., one person for whom waiver of prior notice has been approved may have many exports within a month and another may have only a few exports in a year; thus it could be that sufficient exports for Customs to verify compliance with the drawback laws occur in less than a month or no exports occur within several months).

The editorial comment (noting the frequency of use of the term "agency") is addressed. Also, § 191.91(d) is further modified by the addition of the phrase, "for exports occurring on or after the date of reinstitution" after the word "resume" in the last sentence of this section.

Comment: A question was raised as to the meaning of the phrase "proposed revocation" as used in proposed § 191.91(e). Clarification was also urged here as to when such a revocation would take effect.

Customs Response: To address the commenter's inquiry, a proposed revocation does not immediately deprive the person of waiver of prior notice procedures, unless it is

accompanied by a notice of stay under § 191.91(d), under which the stay is effective two working days after the date the person signs the return post office receipt for the registered mail. The provision is changed to make that clear. Otherwise, proposed revocation will become effective 30 days after written notice thereof, unless the proposed revocation is timely challenged under § 191.91(g). If challenged, the procedures in § 191.91(g) apply to the proposed revocation.

In addition, because it is anticipated that many claimants will have approval of waiver of prior notice, approval of accelerated payment of drawback (under § 191.92), and certification in the drawback compliance program (under subpart S), in the interest of administrative efficiency, therefore, the same delay procedures (except for the stay, which is only potentially applicable to waiver of prior notice) are provided for revocation of accelerated payment and certification in the drawback compliance program.

As a result, claimants with approval for more than one of these procedures and/or certification (see §§ 191.93 and 191.195) could be notified in one written notice of the proposed revocation of the procedure[s] and/or certification, if applicable.

Comment: It was stated that, in proposed § 191.91(f), the claim should also be flagged to indicate that it was the first claim filed with waiver of prior notice, to reduce the possibility of the drawback office's failure to record that the claimant had waiver of prior notice.

Customs Response: This comment has merit and is adopted, the last sentence in the section being changed to provide that in addition to submitting a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, reference shall be made to the approval of waiver of prior notice in the first drawback claim filed after approval in the approving drawback office.

Comment: The contention was made that the requirements for accelerated payment of drawback in proposed § 191.92 were virtually identical to the requirements for participation in the drawback compliance program. The accelerated payment requirements were said to be quite onerous, and would be time consuming and costly.

Customs Response: Customs disagrees. It is Customs position that the criteria for approval for accelerated payment and certification for participation in the drawback compliance program are not identical. The criteria for each were developed

with specific regard for each of the programs and criteria.

Comment: It was advocated that accelerated payment of drawback should be available under 19 U.S.C. 1313(d).

Customs Response: This comment has merit and is adopted (consistent with current practice). Section 191.92(a) is modified to provide that accelerated payment of drawback is available for all kinds of drawback claims, unless specifically excepted.

Additionally, accelerated payment of drawback is defined as the payment of estimated drawback before liquidation of the drawback entry. Also, this provision is modified to make it clear that, consistent with current practice, accelerated payment of drawback is only available when Customs review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with, the requirements of the drawback law and part 191. A reference to subpart E is also added to this provision, to make it clear to the public that, at a minimum, a complete drawback claim meeting the requirements in that subpart is required for accelerated drawback.

Comment: It was believed that the IRS number (9 digits, plus 2 character suffix) was needed in proposed § 191.92(b)(1)(ii).

Customs Response: This comment has merit and is adopted.

Comment: A requirement should be added to proposed § 191.92(e)(2) that Customs justify its reasons for being unable to act on the application within 90 days.

Customs Response: This request has merit and is adopted.

Comment: Opposition was expressed to the requirement in proposed § 191.92(e) that approval of accelerated payment operated only prospectively. This was said to be counter to past administrative practices. Past drawback claims could be bonded by single transaction bonds.

Customs Response: Customs agrees. Consistent with current practice, accelerated payment, following its approval, will be available for claims filed prior thereto, but such claims must be covered by a single transaction bond. Section 191.92(e) is so modified.

Comment: The need for a stay of the privilege of accelerated payment was questioned, in proposed § 191.92(f).

Customs Response: The provision for a "stay" is removed for approvals of accelerated payment because, in the case of that procedure, there are procedures protecting the revenue (the requirement for a bond in an amount sufficient to cover the estimated amount

of drawback to be claimed during the term of the bond (§§ 191.92(b)(1)(iv)(A) through (C) and 191.92(d)), and Customs may determine whether to grant accelerated payment for a claim before the fact (distinguished from waiver of prior notice, in which case the exportation has occurred and Customs has no before-the-fact opportunity for review). Section 191.92 is changed accordingly; paragraph (f) thereof is removed, and the succeeding paragraphs duly redesignated.

Comment: The meaning of “proposed revocation” in proposed § 191.92(g) was questioned, as well as when the notice thereof would take effect.

Customs Response: Section 191.92(f) as thus redesignated from proposed § 191.92(g) is revised, consistent with the changes made in § 191.91(e).

Comment: With reference to proposed § 191.92(h), it was advised that the first claim should be flagged to reduce the possibility of the drawback office’s failure to record that the claimant had approval of accelerated payment.

Customs Response: Customs agrees. Section 191.92(g) as redesignated from proposed § 191.92(h) is revised, consistent with the changes made in § 191.91(f).

Comment: In proposed § 191.92(j), it was requested that Customs address the circumstance when accelerated payment was less than the actual refund entitlement.

A request was also made here that the requirement for certifying the drawback claim for payment within 3 weeks after filing should be changed to 3 weeks after filing a complete and accurate claim or, alternatively, the term “filing” should be clearly defined as requiring filing a complete and accurate claim, not simple presentation. Furthermore, it was asserted that the parenthetical in proposed § 191.92(j) appeared to contradict proposed paragraph (h) thereof, by restricting accelerated payment to the office where the privilege was approved.

Customs Response: Customs disagrees that it should address the situation where a party claims less drawback than entitled. Customs recognizes the interest of a claimant in exercising caution by under-claiming, as well as its own interest in not assuming the administrative burden of correcting such claims.

Also, § 191.92(a) has been modified to make it clear that, consistent with current practice, accelerated payment of drawback under § 191.92 is only available when Customs review of the request for accelerated payment does not find omissions from, or inconsistencies with, the requirements

of the drawback law and part 191. In this regard, a parenthetical reference to subpart E is added to § 191.92(a).

The comment that this provision may be inconsistent with proposed § 191.92(h) (now redesignated as § 191.92(g)), permitting accelerated payment to be applied for at a drawback office other than the approving office, has merit. The first sentence of § 191.92(i) as redesignated from proposed § 191.92(j) is modified, by deleting the parenthetical therefrom, in order to make it clear that the drawback office where the request for accelerated payment is made is responsible for certifying the claim for payment.

Comment: It was suggested that proposed § 191.93, relating to combined applications, be revised to more closely parallel § 191.195, concerning the drawback compliance program.

Customs Response: This comment has merit in that it raises the concern that § 191.93 does not refer to the drawback compliance program, which may also be applied for in a combined application for waiver of prior notice and approval of accelerated payment of drawback. The provision is modified by the addition of a parenthetical citation to § 191.195.

Subpart K

Comment: The requirement in proposed § 191.112(h) that the drawback office certify the Customs Form 7514 after the vessel or aircraft had cleared from the port of entry, and return a copy to the exporter, was said to be unnecessary. The deletion of this requirement was advised.

Customs Response: Customs agrees. The certification is deleted therefrom. Also, if the export summary procedure is used under this subpart, the requirements for a notice of lading in § 191.112(d)(1) and declaration in § 191.112(f)(1) must be met.

Subpart M

Comment: A question was raised as to the requirement in proposed § 191.133(a) that 19 U.S.C. 1313(g) applied only to materials used in the “original” construction and equipment of vessels or aircraft. An objection was also raised about the reference therein to § 1313(g) not applying to material not required for the safe operation of a vessel or aircraft.

Customs Response: A similar comment was made when the same provision was added to the current regulations (see T.D. 83–212). Customs position at that time was that this restriction followed the intent of Congress. If an article is not attached to, or made a part of, a vessel, or is merely

placed aboard the vessel and not required for safe operation of the vessel or safety of the crew, Congress did not intend that it be the subject of drawback. Customs position here has not changed.

However, the comment does raise a valid concern. The statute (19 U.S.C. 1313(g)) provides for drawback on materials imported and used in the construction and equipment of the covered vessels. The statute does not directly address the precise question of whether the materials have to be imported and used in original construction and equipment of vessels and aircraft.

Accordingly, § 191.133(a) is modified to provide that 19 U.S.C. 1313(g) applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a “major conversion” of a vessel or aircraft. “Major conversion” has the same meaning as in 46 U.S.C. 2101(14a) (a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by Customs).

In either instance, the restriction against materials used for alteration or repair, or against materials not required for safe operation of the vessel or aircraft, continues in effect (except to the extent that a qualifying “major conversion” could be considered an alteration).

Subpart O

Comment: A comment with reference to proposed § 191.152(c) suggested the use of “evidence of destruction” instead of “proof of destruction”.

Customs Response: This comment has merit and is adopted.

Subpart P

Comment: The comment was made that the phrase “any additional proof” in proposed § 191.163(b) be changed to “any additional evidence”.

Customs Response: This comment has merit and is adopted.

Subpart Q

Comment: It was requested that Customs implement in proposed § 191.175(b) certain interim procedures relating to certificates of manufacture and delivery and certificates of delivery, as set forth in a Customs issuance dated September 2, 1994 (although referred to in the comment as being dated September 14, 1994).

Customs Response: The provision implements the statutory language (see §§ 191.173(c)(1) and (2), and 191.174(c)(1) and (2)). Further, it is not inconsistent with the cited interim procedures which, in any case, are superseded by these regulations.

Comment: It was requested, in connection with proposed § 191.176, that Customs allow drawback claimants a certain period of time in which to file new drawback claims, or amend previously filed claims, that satisfy the requirements of 19 U.S.C. 1313(p), without regard to the requirement that drawback claims would have to be completed within 3 years after the date of exportation.

Customs Response: As previously stated, it is Customs position that the applicability of 19 U.S.C. 1313(p) to past drawback claims will be resolved on a case-by-case basis.

Subpart R

Comment: It was suggested that the phrase, "Proof of export", in proposed § 191.183(b)(1), be changed to "Evidence of export".

Customs Response: This comment has merit and is adopted.

Comment: A comment suggested adoption of Customs Form 214 for drawback in proposed § 191.183(b), and that the functions that proposed § 191.183(c) required to be performed by drawback offices should be removed.

Customs Response: Customs agrees. The Customs Form for transfers to a foreign trade zone of zone restricted merchandise (Customs Form 214) is used for notice of transfer instead of Customs Form 7514. Section 191.183(b) is revised accordingly, and § 191.183(c) is deleted, as unnecessary.

Subpart S

Comment: It was asked how Customs intended to inform the public of its obligations to drawback, pursuant to proposed § 191.191.

Customs Response: The statute and the regulations inform the public of its obligations and responsibilities for drawback purposes. As a matter of outreach and to enhance understanding thereof, Customs is developing and will make available, from field drawback offices, materials to help inform the public of its obligations and responsibilities for drawback purposes. This material will be available to the public in paper form and electronically.

Comment: Regarding the individuals authorized to sign an application for the drawback compliance program, in proposed § 191.193(c), it was suggested that this matter be reviewed in

connection with parts 111, 177, and 191 of the Customs Regulations.

Customs Response: The concerns expressed in this comment have already been addressed by the changes made to § 191.6.

Comment: It was recommended that proposed § 191.193(c)(1) include the 9-digit IRS number, plus two character suffix, as being required to be used on drawback claims.

Customs Response: This comment has merit and is adopted.

Comment: It was requested that the term "subcontractor" in proposed § 191.193(c)(2) be defined. It was noted that "agent" in proposed § 191.9(d)(2) was defined, but not "subcontractor".

Customs Response: The concerns raised here are addressed by changes made in §§ 191.9, 191.10, and 191.26 (§ 191.25 as proposed).

Comment: The recommendation was made that the oversight responsibilities of the official described in proposed § 191.193(d)(1) be specifically shown, and that proposed § 191.193(d)(1) be further amended to require the name, title, and telephone number of the individual(s) responsible for the actual maintenance of the drawback program.

Customs Response: This comment has merit and is adopted in part; provision is made for the inclusion of the individual(s) responsible for the actual maintenance of the drawback program (as opposed to supervisory responsibility), if different from the person responsible for oversight of the drawback program. Additionally, the reference therein to "claimant's" is changed to "applicant's" because applicants for participation in the drawback compliance program may be other than claimants.

Comment: It was recommended, with respect to proposed § 191.193(d)(2), that if a drawback manufacturing ruling or acknowledgment had been previously issued under § 191.8 or 191.7, a copy or statement of that fact with the date and place of issue be submitted.

Customs Response: This comment has merit and is adopted.

Comment: It was stated that proposed § 191.194 had a paragraph (c)(1) but no paragraph (c)(2).

Customs Response: Section 191.194(c) is revised accordingly.

Comment: A question arose as to the meaning of "proposed revocation" in proposed § 191.194(e), and it was further asked when such a revocation would take effect. It was also suggested that the words "drawback compliance" be inserted after the word "negotiated" and before the words "alternative program" therein.

Customs Response: Section 191.194(e) is changed, consistent with the changes made in §§ 191.91(e) and 191.92(g). Also, the editorial comment that "drawback compliance" should be inserted between "negotiated alternative" and "program" has merit and is adopted.

Appendix A

Comment: It was asked why a detailed format for the drawback compliance program was not included as an appendix to proposed part 191.

Customs Response: The material referred to by the comment was determined to be appropriate for publication as part of the regulations or an appendix thereto. The material, and other similar material, will, when satisfactorily developed, be made available to the public both in paper form (from the field drawback offices) and electronically.

Comment: A comment was made that the general manufacturing drawback rulings in Appendix A should be identified by their Treasury Decision (T.D.) numbers (or some other Customs-assigned number).

Customs Response: The comment has merit and is adopted; the general manufacturing drawback rulings are identified by their T.D. numbers. Additionally, to provide easier access to the public and to simplify use of the appendices, a table of contents is added to each Appendix listing each of the general and specific manufacturing drawback rulings, the general manufacturing drawback rulings are set forth in alphabetical order in Appendix A, and the specific manufacturing drawback rulings are set forth in numerical order in Appendix B.

Comment: It was observed with respect to Appendix A that "I.A." (General Instructions) did not include the basis of claim for drawback as one of the items; that "operator" was used instead of "claimant"; that "I.A.3." should be explained better and reference made to proposed § 191.6; that "I.B." indicated old general T.D. numbers were superseded, but did not include T.D.s 83-53, 83-8, 83-77, and 83-80; that the meaning of "privileges" in the last sentence of "I.B." was unclear; that Ruling "III." needed an explanatory paragraph as to when this Ruling would apply (it was also asked if the reference therein to T.D.s 55027(2) and 55207(1) could be removed).

Customs Response: The basis of claim is added to the information that the applicant must provide in "I.A." (General Instructions) in Appendix A; the word "operator" therein is changed to "manufacturer or producer";

reference is added to § 191.6; the T.D.s not included in the proposed rule are added; to avoid confusion the phrase, "including all privileges of the previous 'contract'", is deleted from the last sentence of "I.B." of the General Instructions in Appendix A.

The comment on Ruling "III." (agent's general ruling) is addressed by changes to § 191.9, making clear that principal-agency drawback principles may be used for both 19 U.S.C. 1313(a) and 1313(b), and are not limited to situations with multiple manufacturers or producers. The introductory sentence for "III." is changed to read:

"Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2), 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 191 (see particularly, § 191.9).". Also, a new paragraph "C." (General Statement) concerning principal-agency is added to Ruling "II.", and the succeeding paragraphs are redesignated accordingly.

Comment: The following was also stated with respect to "I.A." and "I.B." of the General Instructions to proposed Appendix A: the IRS number with suffix should be included; the General Instructions should not omit any information, or applicants should be directed to § 191.7 for complete information; and in "I.B.", the list of general Treasury Decisions appeared to omit T.D. 84-49, and T.D. 83-123 for Relative Values was not described in full, even though listed.

Customs Response: The IRS number with suffix is added in "I.A."; the general requirements are changed to require all necessary information, and reference to § 191.7 is added.

T.D. 83-123 is combined with T.D. 81-234 to cover manufacturing or producing under 19 U.S.C. 1313(a), with or without multiple products. It is Customs position that all necessary components from these T.D.s were included (except for the sentences in the Procedures and Records Maintained section that "The records of the manufacturer or producer establishing compliance with these requirements will be available for audit by Customs during business hours.", and "Drawback is not payable without proof of compliance.", both of which are now added to that section, consistent with the other general manufacturing drawback rulings).

Although included in the specific rulings in proposed Appendix B (consistent with current practice), T.D. 84-49 is now added to Appendix A as a general manufacturing drawback ruling.

Comment: It was suggested that the passage under "II.C." of Appendix A should instead read: "The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with 19 CFR 191.2(p)". Similar changes in all of the general rulings.

Customs Response: This comment has merit and is adopted, although proposed "II.C." is redesignated as "II.D.", and proposed § 191.2(p) is redesignated as § 191.2(q). Similar changes as requested by the comment are made throughout the Appendices.

Comment: The suggestion was made that "II.D.1." and "II.D.2." should use the term "multiple products" instead of "by products", and that similar changes should be made to all of the general rulings.

Customs Response: This comment has merit and is adopted. Similar changes are made throughout the Appendices. It is noted that "II.D." is redesignated as "II.E.".

Comment: It is asserted, with respect to "II.F.", that the term "operator" should be replaced by "manufacturer or producer", and that similar changes should be made to all of the general and specific rulings.

Customs Response: This comment has merit and is adopted. Similar changes are made throughout the Appendices. It is noted that "II.F." is redesignated as "II.G.".

Comment: A comment was made that, in "II.L.4.", the phrase, "or other persons legally authorized to bind the corporation", should be added after "corporate officers" to be consistent with "I.A.3." (General Instructions).

Customs Response: This comment has merit; the provision is changed to be consistent with the cited reference and §§ 191.6 and 191.7; further, in the interest of simplicity, the provision is changed to require the reporting of any changes in the information required in the letter of notification, as well as any changes in the corporate name or corporate organization by succession or reincorporation. It is also noted that proposed "II.L." is redesignated as "II.M.".

Comment: The general ruling for agents in "III.", it was noted, did not include provision for "Waste" or "Stock in Process". It was further noted that proposed paragraph "D." thereof appeared to imply that only agents performing operations under proposed § 191.2(p)(1) could use the general agents' ruling (and not those performing operations under proposed § 191.2(p)(2)). With reference to proposed paragraph "E." thereof providing that records would be

maintained to establish certain dates, it was believed that the "month" was sufficient for this purpose, but that this was not clear from this general ruling.

Customs Response: "Waste" and "Stock in Process" sections are not required in this general manufacturing drawback ruling; if applicable, such sections would be included in the principal's manufacturing drawback ruling.

The change to manufacturing or production (referring to proposed § 191.2(p), now redesignated as § 191.2(q)), addresses this issue; actual dates of receipt of merchandise, dates of use in manufacture or production, and dates of return to the principal are required (except that manufacturing or production periods (for a period of a month unless Customs specifically approves a different period) may be used). If a manufacturing period is used, receipt of all of the merchandise must be before the beginning of the month and the date of return to the principal must be after the end of the month.

It is also noted that proposed paragraphs "B." and "C." of "III." (general ruling for agents) are deleted, with the succeeding paragraphs thereof redesignated accordingly. To this end, paragraphs "D." and "E." thereof, as proposed, are redesignated as paragraphs "B." and "C.", respectively. In addition, the section on procedures and records maintained of this general ruling for agents (paragraph "E.", now redesignated as paragraph "C.", as indicated) is modified to be consistent with § 191.10(e), in requiring the same information provided for in that section.

Comment: An editorial point was raised in the proposed component parts general ruling, "IV.", paragraph "J.", that "Eligible components that appears in" should be "Eligible components that appear in".

Customs Response: This comment has merit and is adopted. It is also noted that this general ruling is redesignated as "V." in Appendix A., due to the addition of the other general rulings, and the repositioning thereof in alphabetical order, as already mentioned.

Comment: In proposed "V.", the general ruling for orange juice, it was stated that proposed paragraph "G." appeared twice, once for "Procedures and Records Maintained" and again for "Inventory".

Customs Response: This comment is incorrect, due probably to an error in the electronic version not occurring in the **Federal Register** version. It is also noted that this general ruling is redesignated as "VIII.".

Comment: It was also advised that the general ruling for orange juice in proposed paragraph "H." should not, as it did, omit the wording "and will show what components were blended with concentrated orange juice for manufacturing", which was important for liquidation and compliance purposes (to know what components were utilized).

Customs Response: This comment has merit and is adopted.

Comment: It was observed that the general ruling for piece goods in proposed "VI." deviated from T.D. 83-73 in that "appearing in" and "used in" were permitted as a basis of claim. The "appearing in" basis, it was said, appeared to conflict with the paragraphs on Waste and Shrinkage, Gain and Spoilage, in terms of recordkeeping.

Customs Response: This comment raises a valid concern. The paragraphs on Waste and Shrinkage, and Gain and Spoilage in this general ruling, now redesignated as "X.", are modified to provide that records thereof need not be kept if the appearing in method is used (if necessary to establish the quantity of merchandise eligible piece goods appearing in the exported articles, of course, such records would have to be kept).

Comment: The paragraphs "N.", "O.", "R.", and "S." in the proposed general ruling for raw sugar ("IX.") referred specifically to the forms in the previous T.D. 83-59; it was recommended that these forms should be reproduced and made part of the Appendix.

Customs Response: The comment suggesting inclusion in the general ruling of the forms in T.D. 83-59 is adopted (by, as appropriate, a description of the forms or a sample form). This general ruling is redesignated as "XIII.".

Appendix B

Comment: In Appendix B, it was suggested that provision be made for review of proposals for specific manufacturing drawback rulings by the appropriate regulatory audit office of Customs, if requested by a claimant.

Customs Response: Customs disagrees. The matter commented on is a matter for Customs internal administration of the drawback program.

Comment: It was recommended, with respect to the sample formats for the specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and for 19 U.S.C. 1313(b), that, under the respective sections on Process of Manufacture or Production, the reference to the court cases was unnecessary, that the "new and different article" language should

be removed, and a reference to the definition of manufacture or production in proposed § 191.2(p) should be added.

Customs Response: This recommendation is adopted, except the "new and different article" language is not removed, as it is part of the definition in § 191.2(q), as thus redesignated, which reflects long-standing administration of manufacturing drawback.

Comment: Under the format for the specific ruling for 19 U.S.C. 1313(b), in the Waste section, it was disagreed that the determination of whether waste was valuable should be based on industry practice.

Customs Response: The treatment of waste described is consistent with Customs current practice.

Comment: It was suggested that the Inventory Procedures section for the formats for specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), be modified as concerns the maintenance of waste records thereunder.

Customs Response: The second sentence under Inventory Procedures is modified by the insertion after the words "following areas" of the phrase "as applicable,".

Comment: The Stock In Process sections in the formats for specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), were said to need clarification.

Customs Response: Customs finds that the Stock In Process sections in both Appendices A and B are confusing. The Stock In Process paragraphs are modified.

Comment: It was advocated that the petroleum general ruling be treated like all other general rulings, in that applications for general rulings for petroleum drawback should be filed with a local drawback office and moved from Appendix B to Appendix A. In Exhibit C, the labels for the columns were said to be transposed. It was suggested that Exhibits D and E be changed to reflect that all petroleum claims were now filed preliminarily in the form of certificates of manufacture (CM) (i.e., instead of "amount of drawback claim" in Exhibit D, the reference should be to "amount of CM"; Exhibit E was always a combination of drawback deliveries and exported quantities; the quantities indicated on Exhibit E combination did not reflect the numbers within Exhibit C, as it related to exports (i.e., residual oils category)—these Exhibits should be changed to reflect this practice)).

Customs Response: The comment that the petroleum general ruling should be treated like all other general

manufacturing drawback rulings and should be acknowledged by field drawback offices has merit and is adopted. The petroleum general manufacturing drawback ruling (T.D. 84-49) is added to Appendix A. As already noted, language is added to § 191.7 and the General Instructions for Appendix A making clear that applications to operate under one of the general manufacturing drawback rulings in Appendix A are to be made to the field drawback offices and be acknowledged by those offices, provided that the letter of notification of intent to operate under the general manufacturing drawback ruling is complete, the general manufacturing drawback ruling is applicable, the general manufacturing drawback ruling is followed without variation, and the manufacturing or production process described meets the definition of a manufacture or production.

If there is any deviation from the general manufacturing drawback ruling, the procedures for specific manufacturing drawback rulings are applicable. Regarding the Exhibits for this general ruling, the comment about the transposition of columns in Exhibit C is correct; the columns are retransposed; Exhibits D and E are modified to state the "amount of drawback claimed" instead of "amount of drawback claim"; and the comments are correct that the numbers in Exhibit E (Combination) for the quantity in barrels of Residual Oils, and reflected therefrom in other calculations, are inconsistent with the other Exhibits.

As such, Exhibit E and Exhibit E (Combination) are modified to be consistent with the other exhibits, and the descriptions of the products in the exhibits are modified to specify whether the product is an export or a drawback delivery.

Comment: In the Inventory Procedures sections of the formats under both 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), a question was raised about the statement that accelerated payment would be denied, pending an audit, if records failed to establish drawback requirements. The deletion of this statement was recommended.

Customs Response: The described sentence is deleted, as not appropriate where stated. Accelerated payment of drawback is governed by the regulation applicable thereto (19 CFR 191.92).

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded

that the proposed amendments with the modifications above should be adopted.

Furthermore, in Appendix B, the format for a 19 U.S.C. 1313(d) specific ruling is modified by the addition of the material on principal-agent operations, as done in the formats for 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b).

Regulatory Flexibility Act and Executive Order 12866

This final rule document amends the Customs drawback regulations principally to reflect changes to the law occasioned by the Customs modernization portion of the NAFTA Implementation Act. The final rule also makes certain administrative changes to the existing regulations which are essentially intended to simplify and expedite the filing and processing of claims for the payment of drawback, and it generally revises and rearranges these regulations to improve their editorial clarity. As such, under the Regulatory Flexibility Act (5 U.S.C. 601

et seq.), it is certified that this rule does not have a significant economic impact on a substantial number of small entities. Thus, it is not subject to the requirements of 5 U.S.C. 603 or 604, nor would it result in a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1505-0213. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in §§ 191.0-191.195. This information is necessary and will be used to enforce the requirements of the drawback law and protect the revenue.

The likely respondents and/or recordkeepers are business and other for-profit institutions.

The estimated average burden associated with the collection of information in this final rule per respondent/recordkeeper is 2 hours for filing drawback-related entry documents, and 60 hours for Drawback Compliance Program participation.

Customs has submitted a copy of the revised information collection contained in 19 CFR part 191, and previously approved under OMB control number 1515-0213, and requested approval for the revision.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

PARALLEL REFERENCE TABLE

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.0	191.0.
191.0a	New.
191.1	191.1.
191.2(a)	191.2(p).
191.2(b)	New.
191.2(c)	New.
191.2(d)	New.
191.2(e)	New.
191.2(f)	191.2(b).
191.2(g)	New.
191.2(h)	191.2(j).
191.2(i)	191.2(a).
191.2(j)	191.2(i).
191.2(k)	191.2(h).
191.2(l)	191.2(g).
191.2(m)	New.
191.2(n)	New.
191.2(o)	191.2(l).
191.2(p)	191.2(f).
191.2(q)	New.
191.2(r)	New.
191.2(s)	New.
191.2(t)	New.
191.2(u)	New.
191.2(v)	191.2(n).
191.2(w)	191.2(e).
191.2(x), (x)(2), (x)(3)	New.
191.2(x)(1)	191.2(m).
191.2(y)	191.2(o).
191.3	191.3.
191.4	191.11.
191.5	191.13.
191.6	191.6.
191.7(a)	191.41.
191.7(b)(1)	191.42(a).
191.7(b)(2)	191.42(b).
191.7(c)	191.43.
191.7(d)	191.44.
191.8(a)	191.21(a).
191.8(b)	191.21(c).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.8(c)	191.21(b).
191.8(d)	191.21(d); 191.23(a).
191.8(e)	191.23(b).
191.8(f)	191.24.
191.8(g)(1)	191.25(a) & (b)(1).
191.8(g)(2)	191.25(b)(2).
191.8(g)(3)	191.25(c).
191.8(h)	191.26.
191.9	191.21(a)(2); 191.34; 191.66(b), (f).
191.10(a)	191.65(a).
191.10(b)	191.22(e).
191.10(c)(1)	191.65(b).
191.10(c)(2)	191.66(d).
191.10(d)	191.5; 191.22(e).
191.10(e)	New.
191.10(f)	191.65(d).
191.11	191.27.
191.12	New.
191.13	191.4(a)(11).
191.14	191.22(c).
191.15	191.5.
191.21	191.4(a)(1).
191.22(a)	191.4(a)(2).
191.22(b)	191.32(c).
191.22(c)	191.32(d).
191.22(d)	New.
191.22(e)	191.22(a)(5) & 191.33.
191.23(a)—(d)	New.
191.23(e)(1)	191.22(a)(2) & 191.32(b).
191.23(e)(2)	191.22(a)(1)(iv).
191.24(a)	191.66(a).
191.24(b)	New.
191.24(c)	191.22(a)(4); 191.62(a)(2)(i).
191.24(d)	New.
191.25	New.
191.26(a)(1)	191.22(a)(1).
191.26(a)(1)(iii)	191.22(a)(3).
191.26(a)(2)	191.22(b).
191.26(b)	191.32(a).
191.26(c)	191.22(a)(2) & 191.32(b).
191.26(d)	191.62(a)(2)(ii).
191.26(e)	191.62(c).
191.26(f)	191.5.
191.27(a)	191.8(a); 191.22(a)(1)(v).
191.27(b)	191.32(a).
191.27(c)	191.23(c).
191.28	New.
191.31(a)	191.4(a)(9); 191.141(a)(1).
191.31(b)	191.8(b); 191.141(a)(2).
191.31(c)	191.141(a)(3).
191.32(a)	191.141(a)(10).
191.32(b)	191.141(h).
191.32(c)	New.
191.32(d)	191.141(h).
191.32(e) & (f)	New.
191.33	New.
191.34(a)	191.65(a); 191.141(b) & (e).
191.34(b)	New.
191.34(c)	191.65(d).
191.35	191.141(b).
191.36	New.
191.37	New.
191.38(a)	191.5.
191.38(b)	191.22(b).
191.41	191.142(a)(1).
191.42	191.142(b).
191.43	191.142(a)(2).
191.44	New.
191.51(a)	191.62(a) & (b).
191.51(b), (c) & (d)	New.
191.52(a)	191.61.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.52(b) & (c)	191.64.
191.53	New.
191.61	191.10.
191.62(a)	191.9.
191.62(b)	New.
191.71	191.141(f).
191.72	191.51.
191.73	191.53.
191.74	191.54.
191.75	191.55.
191.76	191.67.
191.81	191.71.
191.82	191.73(a).
191.83	191.73(b).
191.84	191.7.
191.91	191.141(b)(2)(ii).
191.92	191.72.
191.93	New.
191.101	191.81.
191.102	191.82.
191.103	191.83.
191.104	191.84.
191.105	191.85.
191.106	191.86.
191.111	191.91.
191.112	191.92; 191.93.
191.121	191.101.
191.122	191.102.
191.123	191.103.
191.131	191.111.
191.132	191.112.
191.133	191.113.
191.141	191.121.
191.142	191.122.
191.143	191.123.
191.144	191.124.
191.151	191.131.
191.151(a)(1)	191.8(c).
191.152	191.132.
191.153	191.133.
191.154	191.134.
191.155	191.135.
191.156	191.136.
191.157	191.137.
191.158	191.138.
191.159	191.139.
191.161	191.151.
191.162	191.152.
191.163	191.153.
191.164	191.154.
191.165	191.155.
191.166	191.156.
191.167	191.157.
191.168	191.158.
191.171	New.
191.172	New.
191.173	New.
191.174	New.
191.175	New.
191.176	New.
191.181	191.161.
191.182	191.162.
191.183	191.163.
191.184	191.164.
191.185	191.165.
191.186	191.166.
191.191	New.
191.192	New.
191.193	New.
191.194	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.195	New.

PARALLEL REFERENCE TABLE

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.0	191.0.
191.1	191.1.
191.2(a)	191.2(i).
191.2(b)	191.2(f).
191.2(c)	Deleted.
191.2(d)	Deleted.
191.2(e)	191.2(w).
191.2(f)	191.2(p).
191.2(g)	191.2(l).
191.2(h)	191.2(k).
191.2(i)	191.2(j).
191.2(j)	191.2(h).
191.2(k)	Deleted.
191.2(l)	191.2(o).
191.2(m)	191.2(x)(1).
191.2(n)	191.2(v).
191.2(o)	191.2(y).
191.2(p)	191.2(a).
191.3	191.3.
191.4(a)(1)	191.21.
191.4(a)(2)	191.22(a).
191.4(a)(3)–(8)	Deleted.
191.4(a)(9)	191.31(a).
191.4(a)(10)	191.32(a).
191.4(a)(11)	191.13.
191.4(a)(12)–(14)	Deleted.
191.4(b)	Deleted.
191.5	191.10(d); 191.15; 191.26(f); 191.38(a).
191.6	191.6.
191.7	191.84.
191.8(a)	191.27(a).
191.8(b)	191.31(b).
191.8(c)	191.151(a)(1).
191.9	191.62(a).
191.10	191.61.
191.11	191.4.
191.12	Deleted.
191.13	191.5.
191.21(a)	191.8(a).
191.21(a)(1)	Deleted.
191.21(a)(2)	191.9.
191.21(b)	191.8(c).
191.21(c)	191.8(b).
191.21(d)	191.8(d).
191.21(e)	Deleted.
191.22(a)(1)	191.26(a)(1).
191.22(a)(1)(iv)	191.23(e)(2).
191.22(a)(1)(v)	191.27(a).
191.22(a)(2)	191.23(e)(1); 191.26(c).
191.22(a)(3)	191.26(a)(1)(iii).
191.22(a)(4)	191.24(c).
191.22(a)(5)	191.22(e).
191.22(b)	191.26(a)(2); 191.38(b).
191.22(c)	191.14.
191.22(d)	Deleted.
191.22(e)	191.10(b) & (d).
191.23(a)	191.8(d).
191.23(b)	191.8(e).
191.23(c)	191.27(c).
191.23(d)	Deleted.
191.24	191.8(f).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.25(a)	191.8(g)(1).
191.25(b)(1)	191.8(g)(1).
191.25(b)(2)	191.8(g)(2).
191.25(c)	191.8(g)(3).
191.26	191.8(h).
191.27	191.11.
191.31	Deleted.
191.32(a)	191.26(b); 191.27(b).
191.32(b)	191.26(c); 191.23(e)(1).
191.32(c)	191.22(b).
191.32(d)	191.22(c).
191.33	191.22(e).
191.34	191.9.
191.41	191.7(a).
191.42(a)	191.7(b)(1).
191.42(b)	191.7(b)(2).
191.43	191.7(c).
191.44	191.7(d).
191.45	Deleted.
191.51	191.72.
191.52	Deleted.
191.53	191.73.
191.54	191.74.
191.55	191.75.
191.56	Deleted.
191.57	Deleted.
191.61	191.52(a).
191.62(a)	191.51(a).
191.62(a)(2)(ii)	191.26(d).
191.62(b)	191.51(a).
191.62(c)	191.26(e).
191.62(d)	Deleted.
191.63	Deleted.
191.64	191.52(b) & (c).
191.65(a)	191.10(a).
191.65(b)	191.10(c)(1).
191.65(c)	Deleted.
191.65(d)	191.10(f); 191.34(c).
191.66(a)	191.24(a).
191.66(b)	191.9.
191.66(c)	Deleted.
191.66(d)	191.10(c)(2).
191.66(e)	Deleted.
191.66(f)	191.9.
191.67	191.76.
191.71	191.81.
191.72	191.92.
191.73(a)	191.82.
191.73(b)	191.83.
191.81	191.101.
191.82	191.102.
191.83	191.103.
191.84	191.104.
191.85	191.105.
191.86	191.106.
191.91	191.111.
191.92, 191.93	191.112.
191.101	191.121.
191.102	191.122.
191.103	191.123.
191.111	191.131.
191.112	191.132.
191.113	191.133.
191.121	191.141.
191.122	191.142.
191.123	191.143.
191.124	191.144.
191.131	191.151.
191.132	191.152.
191.133	191.153.
191.134	191.154.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.135	191.155.
191.136	191.156.
191.137	191.157.
191.138	191.158.
191.139	191.159.
191.141(a)(1)	191.31(a).
191.141(a)(2)	191.31(b).
191.141(a)(3)	191.31(c).
191.141(b)	191.34(a); 191.35.
191.141(b)(2)(ii)	191.91.
191.141(c)	191.51.
191.141(d)	191.73.
191.141(e)	Deleted.
191.141(f)	191.71.
191.141(g)	191.51; 191.52.
191.141(h)	191.32(b) & (d).
191.142(a)(1)	191.41.
191.142(a)(2)	191.43.
191.142(b)	191.42.
191.151	191.161.
191.152	191.162.
191.153	191.163.
191.154	191.164.
191.155	191.165.
191.156	191.166.
191.157	191.167.
191.158	191.168.
191.161	191.181.
191.162	191.182.
191.163	191.183.
191.164	191.184.
191.165	191.185.
191.166	191.186.

List of Subjects*19 CFR Part 7*

Customs duties and inspection,
Exports, Imports.

19 CFR Part 10

Alterations, Bonds, Customs duties
and inspection, Exports, Imports,
Preference programs, Repairs, Reporting
and recordkeeping requirements, Trade
agreements.

19 CFR Part 145

Customs duties and inspection,
Imports, Postal Service.

19 CFR Part 173

Administrative practice and
procedure, Customs duties and
inspection.

19 CFR Part 174

Administrative practice and
procedure, Customs duties and
inspection, Reporting and
recordkeeping requirements, Trade
agreements.

19 CFR Part 178

Administrative practice and
procedure, Exports, Imports, Reporting
and recordkeeping requirements.

19 CFR Part 181

Administrative practice and
procedure, Canada, Customs duties and
inspection, Exports, Imports, Mexico,
Reporting and recordkeeping
requirements, Trade agreements (North
American Free Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties
and inspection, Drawback, Mexico,
Reporting and recordkeeping
requirements, Trade agreements.

Amendments to the Regulations

Parts 7, 10, 145, 173, 174, 181 and
191, Customs Regulations (19 CFR parts
7, 10, 145, 173, 174, 181 and 191) are
amended as set forth below.

**PART 7—CUSTOMS RELATIONS WITH
INSULAR POSSESSIONS AND
GUANTANAMO BAY NAVAL STATION**

1. The general authority citation for
part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General
Note 20, Harmonized Tariff Schedule of the
United States), 1623, 1624; 48 U.S.C. 1406i.

§7.1 [Amended]

2. Section 7.1(a) is amended by
removing the reference to “§§ 191.85
and 191.86” where appearing therein,
and by adding in place thereof,
“§§ 191.105 and 191.106”.

**PART 10—ARTICLES CONDITIONALLY
FREE, SUBJECT TO A REDUCED
RATE, ETC.**

1. The general authority citation for
part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General
Note 20, Harmonized Tariff Schedule of the
United States (HTSUS)), 1321, 1481, 1484,
1498, 1508, 1623, 1624, 3314;

* * * * *

§10.38 [Amended]

2. Section 10.38(f) is amended by
removing the reference to “§ 191.10”
where appearing therein, and by adding
in place thereof, “§ 191.61”.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for
part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.72 [Amended]

2. Section 145.72(e) is amended by removing the reference to “Section 191.142” where appearing therein, and by adding in place thereof, “Section 191.42”.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

2. Section 173.4 is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(c) * * * The party requesting reliquidation under section 520(c)(1),

Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

* * * * *

PART 174—PROTESTS

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

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

2. Section 174.13 is amended by adding a new paragraph (a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) *Contents, in general.* * * *

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or

whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and § 191.81(b) of this chapter).

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the listings, respectively, for “§§ 191.0–191.166” and for “§ 191.53” together with the corresponding descriptions and OMB control numbers therefor; and by adding, in place thereof, a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
* * * * *	* * * * *	* * * * *
§§ 191.0–191.195	Recordkeeping and reporting requirements relating to drawback	1515–0213
* * * * *	* * * * *	* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.44 [Amended]

2. Section 181.44(d) is amended by removing the reference to “§ 191.2(m)” where appearing therein, and by adding in place thereof, “§ 191.2(x)(1)”.

3. The “Example” in § 181.44(f) is amended by removing the reference to “Customs Form 7575–A” where appearing therein, and by adding in its place, “Customs Form 7551”.

§ 181.45 [Amended]

§ 181.45 Goods eligible for full drawback.

4. Section 181.45 is amended by revising paragraph (b)(2)(i) to read:

* * * * *

(b) * * *

(2) * * *

(i) *General.* (A) *Inventory of other than all non-originating goods.*

Commingling of fungible originating and non-originating goods in inventory

is permissible provided that the origin of the goods and the identification of entries for designation for same condition drawback are on the basis of an approved inventory method set forth in the appendix to this part.

(B) *Inventory of the non-originating goods.* If all goods in a particular inventory are non-originating goods, identification of entries for designation for same condition drawback shall be on the basis of one of the accounting methods in § 191.14 of this chapter, as provided therein.

§ 181.46 [Amended]

5. Section 181.46(b) is amended by removing the term “port(s)” where appearing in the first sentence, and adding in place thereof, “drawback office(s)”.

§ 181.47 [Amended]

6. Section 181.47(b)(2)(i)(C) is amended by removing the words “Exporter’s” and “exporter’s” where appearing therein, and by adding in place thereof, “Export” and “export”, respectively.

7. Section 181.47(b)(2)(ii)(A) is amended by removing “Customs Form

7539J”, and adding in place thereof, “Customs Form 7551”.

8. Section 181.47(b)(2)(ii)(D) is amended by removing the phrase “The certificate of delivery portion of Customs Form 331” where appearing therein, and adding in place thereof, “A certificate of delivery on Customs Form 7552”.

9. Section 181.47(b)(2)(ii)(G) is amended by revising the first two sentences to read:

§ 181.47 Completion of claim for drawback.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. * * *

10. Section 181.47(b)(2)(iii)(A) is amended by removing “Customs Form 7539C” where appearing therein, and by

adding in place thereof, "Customs Form 7551".

11. Section 181.47(b)(2)(v) is amended by removing the reference to "subpart L" where appearing therein, and by adding in place thereof, "subpart N".

§ 181.49 [Amended]

12. Section 181.49 is amended by removing the reference to "§ 191.5" where appearing therein, and by adding in place thereof, "§ 191.15 (see also §§ 191.26(f), 191.38, 191.175(c))".

§ 181.50 [Amended]

13. Section 181.50(c) is amended by removing the reference to "§ 191.72" where appearing therein, and by adding in place thereof, "191.92".

1. Part 191 is revised to read as follows:

PART 191—DRAWBACK

Sec.

191.0 Scope.

191.0a Claims filed under NAFTA.

Subpart A—General Provisions

- 191.1 Authority of the Commissioner of Customs.
- 191.2 Definitions.
- 191.3 Duties and fees subject or not subject to drawback.
- 191.4 Merchandise in which a U.S. Government interest exists.
- 191.5 Guantanamo Bay, insular possessions, trust territories.
- 191.6 Authority to sign drawback documents.
- 191.7 General manufacturing drawback ruling.
- 191.8 Specific manufacturing drawback ruling.
- 191.9 Agency.
- 191.10 Certificate of delivery.
- 191.11 Tradeoff.
- 191.12 Claim filed under incorrect provision.
- 191.13 Packaging materials.
- 191.14 Identification of merchandise or articles by accounting method.
- 191.15 Recordkeeping.

Subpart B—Manufacturing drawback

- 191.21 Direct identification drawback.
- 191.22 Substitution drawback.
- 191.23 Methods of claiming drawback.
- 191.24 Certificate of manufacture and delivery.
- 191.25 Destruction under Customs supervision.
- 191.26 Recordkeeping for manufacturing drawback.
- 191.27 Time limitations.
- 191.28 Person entitled to claim drawback.

Subpart C—Unused Merchandise Drawback

- 191.31 Direct identification.
- 191.32 Substitution drawback.
- 191.33 Person entitled to claim drawback.
- 191.34 Certificate of delivery required.
- 191.35 Notice of intent to export; examination of merchandise.

191.36 Failure to file Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback.

191.37 Destruction under Customs supervision.

191.38 Records.

Subpart D—Rejected Merchandise

- 191.41 Rejected merchandise drawback.
- 191.42 Procedure.
- 191.43 Unused merchandise claim.
- 191.44 Destruction under Customs supervision.

Subpart E—Completion of Drawback Claims

- 191.51 Completion of drawback claims.
- 191.52 Rejecting, perfecting or amending claims.
- 191.53 Restructuring of claims.

Subpart F—Verification of Claims

- 191.61 Verification of drawback claims.
- 191.62 Penalties.

Subpart G—Exportation and Destruction

- 191.71 Drawback on articles destroyed under Customs supervision.
- 191.72 Exportation procedures.
- 191.73 Export summary procedure.
- 191.74 Certification of exportation by mail.
- 191.75 Exportation by the Government.
- 191.76 Landing certificate.

Subpart H—Liquidation and Protest of Drawback Entries

- 191.81 Liquidation.
- 191.82 Person entitled to claim drawback.
- 191.83 Person entitled to receive payment.
- 191.84 Protests.

Subpart I—Waiver of Prior Notice of Intent to Export; Accelerated Payment of Drawback

- 191.91 Waiver of notice of intent to export.
- 191.92 Accelerated payment.
- 191.93 Combined applications.

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

- 191.101 Drawback allowance.
- 191.102 Procedure.
- 191.103 Additional requirements.
- 191.104 Alcohol, Tobacco and Firearms certificates.
- 191.105 Liquidation.
- 191.106 Amount of drawback.

Subpart K—Supplies for Certain Vessels and Aircraft

- 191.111 Drawback allowance.
- 191.112 Procedure.

Subpart L—Meats Cured With Imported Salt

- 191.121 Drawback allowance.
- 191.122 Procedure.
- 191.123 Refund of duties.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

- 191.131 Drawback allowance.
- 191.132 Procedure.
- 191.133 Explanation of terms.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

- 191.141 Drawback allowance.
- 191.142 Procedure.
- 191.143 Drawback entry.
- 191.144 Refund of duties.

Subpart O—Merchandise Exported From Continuous Customs Custody

- 191.151 Drawback allowance.
- 191.152 Merchandise released from Customs custody.
- 191.153 Continuous Customs custody.
- 191.154 Filing the entry.
- 191.155 Merchandise withdrawn from warehouse for exportation.
- 191.156 Bill of lading.
- 191.157 Landing certificates.
- 191.158 Procedures.
- 191.159 Amount of drawback.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchable or Do Not Conform to Sample or Specifications

- 191.161 Refund of taxes.
- 191.162 Procedure.
- 191.163 Documentation.
- 191.164 Return to Customs custody.
- 191.165 No exportation by mail.
- 191.166 Destruction of merchandise.
- 191.167 Liquidation.
- 191.168 Time limit for exportation or destruction.

Subpart Q—Substitution of Finished Petroleum Derivatives

- 191.171 General; Drawback allowance.
- 191.172 Definitions.
- 191.173 Imported duty-paid derivatives (no manufacture).
- 191.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).
- 191.175 Drawback claimant; maintenance of records.
- 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Custody

- 191.181 Drawback allowance.
- 191.182 Zone-restricted merchandise.
- 191.183 Articles manufactured or produced in the United States.
- 191.184 Merchandise transferred from continuous Customs custody.
- 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.
- 191.186 Person entitled to claim drawback.

Subpart S—Drawback Compliance Program

- 191.191 Purpose.
- 191.192 Certification for compliance program.
- 191.193 Application procedure for compliance program.
- 191.194 Action on application to participate in compliance program.
- 191.195 Combined application for Certification in Drawback Compliance Program and waiver of prior notice and/or approval of accelerated payment of drawback.

Appendix A to Part 191—General Manufacturing Drawback Rulings

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 191.84 also issued under 19 U.S.C. 1514;

§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;

§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;

§ 191.182–191.186 also issued under 19 U.S.C. 81c;

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

For the purposes of this part:

(a) *Abstract*. *Abstract* means the summary of the actual production records of the manufacturer.

(b) *Act*. *Act*, unless indicated otherwise, means the Tariff Act of 1930, as amended.

(c) *Certificate of delivery*. *Certificate of delivery* (see § 191.10 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer from one party (transferor) to another (transferee) of:

(i) Imported merchandise;

(ii) Substituted merchandise under 19 U.S.C. 1313(j)(2);

(iii) A qualified article under 19 U.S.C. 1313(p)(2)(A)(ii) from the manufacturer or producer to the exporter or under 1313(p)(2)(A)(iv) from the importer to the exporter; or

(iv) Drawback product;

(2) The identity of such merchandise or article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the merchandise or article transferred from the transferor to the transferee.

(d) *Certificate of manufacture and delivery*. *Certificate of manufacture and delivery* (see § 191.24 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer of an article manufactured or processed under 19 U.S.C. 1313(a) or 1313(b) from one party (transferor) to another (transferee);

(2) The identity of such article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the article transferred from the transferor to the transferee.

(e) *Commercially interchangeable merchandise*. *Commercially interchangeable merchandise* means merchandise which may be substituted under the substitution unused merchandise drawback law, § 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see § 191.32(b)(2) and (c) of this part), or under the provision for the substitution of finished petroleum derivatives, § 313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise*. *Designated merchandise* means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction*. *Destruction* means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback*.

Direct identification drawback means drawback authorized either under § 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under § 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also §§ 313(c), (e), (f), (g), (h), and (q)). Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in § 191.14 of this subpart.

(i) *Drawback*. *Drawback* means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (see also § 191.3 of this subpart).

(j) *Drawback claim*. *Drawback claim* means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry*. *Drawback entry* means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 7551.

(l) *Drawback product*. A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become “drawback products” when applicable substitution provisions of the Act are met. For purposes of § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see § 1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see § 191.24 of this part).

(m) *Exportation; exporter*. (1) *Exportation*. *Exportation* means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with § 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (see §§ 10.59 through 10.65 of this chapter).

(2) *Exporter.* *Exporter* means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of "deemed exportations" (see paragraph (m)(1) of this section), the exporter means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction (in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the vessel supplies on the qualifying aircraft or vessel).

(n) *Filing.* *Filing* means the delivery to Customs of any document or documentation, as provided for in this part, and includes electronic delivery of any such document or documentation.

(o) *Fungible merchandise or articles.* *Fungible merchandise or articles* means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(p) *General manufacturing drawback ruling.* A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (see § 191.7 of this subpart).

(q) *Manufacture or production.* *Manufacture or production* means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (p)(1) of this section.

(r) *Multiple products.* *Multiple products* mean two or more products produced concurrently by a manufacture or production operation or operations.

(s) *Possession.* *Possession*, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(t) *Records.* *Records* include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to the filing of a drawback claim or to

the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which are normally kept in the ordinary course of business (see 19 U.S.C. 1508).

(u) *Relative value.* *Relative value* means the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product based on its relative value at the time of separation.

(v) *Schedule.* A *schedule* means a document filed by a drawback claimant, under § 313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(w) *Specific manufacturing drawback ruling.* A *specific manufacturing drawback ruling* means a letter of approval issued by Customs Headquarters in response to an application, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(x) *Substituted merchandise or articles.* *Substituted merchandise or articles* means merchandise or articles that may be substituted under 19 U.S.C. 1313(b), 1313(j)(2), or 1313(p) as follows:

(1) Under § 1313(b), substituted merchandise must be of the same kind and quality as the imported designated merchandise or drawback product, that is, the imported designated merchandise or drawback products and the substituted merchandise must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process;

(2) Under § 1313(j)(2), substituted merchandise must be commercially interchangeable with the imported designated merchandise; and

(3) Under § 1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS tariff classification.

(y) *Verification.* *Verification* means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 191.81(b) of this subpart;

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 191.81(c) of this part, including:

(A) Voluntary tenders (for purposes of this section, a "voluntary tender" is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 191.81 of this part are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)); and,

(3) Internal revenue taxes which attach upon importation (see § 101.1(i) of this chapter).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fee (see § 24.23 of this chapter); and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback.* If the merchandise is sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

(c) *Bond.* No bond shall be required when a United States Government entity claims drawback.

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Under 19 U.S.C. 1313, drawback of Customs duty is not allowed on articles shipped to Puerto Rico, the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island,

Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(5) Certifications of exporters on bills of lading or evidence of exportation (see §§ 191.28 and 191.82 of this part); and

(6) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

(c) The following documents (see also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 191.7 of this part;

(2) An application for a specific manufacturing drawback ruling under § 191.8 of this part;

(3) A request for a nonbinding predetermination of commercial interchangeability under § 191.32(c)(2) of this part;

(4) An application for waiver of prior notice under § 191.91 of this part;

(5) An application for approval of accelerated payment of drawback under § 191.92 of this part; and

(6) An application for certification in the Drawback Compliance Program under § 191.93 of this part.

§ 191.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are

designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures.* (i) *Publication.* General manufacturing drawback rulings are contained in appendix A to this part. As deemed necessary by Customs, new general manufacturing drawback rulings will be issued as Treasury Decisions and added to the appendix thereafter.

(2) *Submission.* (i) *Where filed.* Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted to any drawback office where drawback entries will be filed and liquidated, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation in the general manufacturing drawback ruling, the manufacturer or producer shall apply for a specific manufacturing drawback ruling under § 191.8 of this subpart.

(ii) *Copies.* Letters of notification of intent shall be submitted in duplicate unless claims are to be filed at more than one drawback office, in which case one additional copy of the letter of notification shall be filed for each additional office. Upon issuance of a letter of acknowledgment (paragraph (c)(1) of this section), the drawback office with which the letter of notification is submitted shall forward the additional copy to such additional office(s), with a copy of the letter of acknowledgment.

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in

§ 191.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by Customs.* The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted shall review the letter of notification of intent.

(1) *Acknowledgment.* The drawback office shall promptly issue a letter of acknowledgment, acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.*, containing the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer is followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production under § 191.2(q) of this subpart.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office shall include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with Customs under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent.* If the letter of

notification of intent to operate does not meet the requirements of paragraph

(c)(1) of this section in any respect, the drawback office shall promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which is not acknowledged may be resubmitted to the drawback office with which it was initially submitted with modifications and/or explanations addressing the reasons given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in § 191.8(h) for specific manufacturing drawback rulings.

§ 191.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (see § 191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 191.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, one additional copy of the application shall be filed with Customs Headquarters for each additional office.

(e) *Review and action by Customs.* Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 1 copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing number which shall be included in the letter of approval to the applicant from Customs Headquarters, appears in the published synopsis, and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, Customs Headquarters shall promptly and in writing inform the applicant that the application cannot be approved and shall specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to Customs Headquarters (Attention: Director, International Trade Compliance Division).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling.* (1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. number and unique computer-generated number) and include only those paragraphs of the application to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under § 191.9 of this chapter, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (see paragraph (g)(2)(iii) of this section); or

(H) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer shall file

with the drawback office(s) where claims are filed (with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings) a letter stating the modifications to be made. The drawback office shall promptly acknowledge, in writing, acceptance of the limited modifications, with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings.

(iii) To effect a change in the drawback office where claims will be filed, the manufacturer or producer shall file with the new drawback office where claims will be filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer shall provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

§ 191.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted other merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and § 191.2(q) of this subpart. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal shall be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (see, in particular, § 191.26 of this part).

(b) *Requirements.* (1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or

substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agent relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings.* (1) *Owner.* An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under § 191.7 of this subpart or in any application for a specific manufacturing drawback ruling filed under § 191.8 of this subpart.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(d) *Certificate; Drawback entry; Certificate of manufacture and delivery.* (1) *Contents of certificate; when filing not required.* Principals and agents operating under this section are not required to file a certificate of delivery (for the merchandise transferred from

the principal to the agent) or a certificate of manufacture and delivery (for the articles transferred from the agent to the principal). The principal for whom processing is conducted under this section shall file, with any drawback claim or certificate of manufacture and delivery based on an article manufactured or produced under the principal-agent procedures in this section, a certificate, subject to the recordkeeping requirements of §§ 191.15 of this subpart and 191.26 of this part, certifying that upon request by Customs it can establish the following:

- (i) Quantity, kind and quality of merchandise transferred from the principal to the agent;
- (ii) Date of transfer of the merchandise from the principal to the agent;
- (iii) Date of manufacturing or production operations performed by the agent;
- (iv) Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;
- (v) Total quantity and description of articles produced in manufacturing or production operations performed by the agent;
- (vi) Quantity, kind and quality of articles transferred from the agent to the principal; and
- (vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate.* The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a particular kind and quality of merchandise for a stated period.

§ 191.10 Certificate of delivery.

(a) *Purpose; when required.* A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b); may transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

- (1) Documents the transfer of that merchandise or article;

- (2) Identifies such merchandise or article as being that to which a potential right to drawback exists; and

- (3) Assigns such right to the transferee (see § 191.82 of this part).

(b) *Required information.* The certificate of delivery must include the following information:

- (1) The party to whom the merchandise or articles are delivered;
- (2) Date of delivery;
- (3) Import entry number;
- (4) Quantity delivered;
- (5) Total duty paid on, or attributable to, the delivered merchandise;
- (6) Date certificate was issued;
- (7) Date of importation;
- (8) Port where import entry filed;
- (9) Person from whom received;
- (10) Description of the merchandise delivered;

- (11) The HTSUS number with a minimum of 6 digits, for the designated imported merchandise (such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, or a certificate of manufacture and delivery, in which case such HTSUS number shall be from the other certificate); and

- (12) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the HTSUS or Schedule B commodity number, with a minimum of 6 digits.

(c) *Intermediate transfer.* (1) *Imported merchandise.* If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) *Manufactured article.* If the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) is not delivered directly from the manufacturer to the exporter (or destroyer), each transfer after the transfer from the manufacturer (which shall be documented by means of a certificate of manufacture and delivery) shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) *Retention period; supporting records.* Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be

retained by the issuing party for 3 years from the date of payment of the related claim or longer period if required by law (see 19 U.S.C. 1508(c)(3)).

(e) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§ 191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) *Exchanged merchandise.* To comply with §§ 191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in § 191.2(s) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by § 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of an exchange of same kind and quality merchandise and nothing else (the exchange may be of different quantities of same kind and quality merchandise, but may not involve the payment or receipt of cash payments or other than same kind and quality merchandise). If the quantities of merchandise exchanged are different, the lesser quantity shall be the quantity available for drawback. If the quantity of domestic merchandise received is greater than the quantity of imported merchandise exchanged, the merchandise identified for drawback shall be the portion of the domestic merchandise equal to the quantity of imported merchandise which is first received.

(c) *Application.* Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Duty and Refund

Determination Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the application for a specific manufacturing drawback ruling (§ 191.8). For those users manufacturing under the request should be made by a separate letter.

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of a general manufacturing drawback ruling (§ 191.7), § 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation or by protest.

§ 191.13 Packaging materials.

Drawback of duties is provided for in § 313(q) of the Act, as amended (19 U.S.C. 1313(q)), on imported packaging material when used to package or repack merchandise or articles exported or destroyed pursuant to § 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made shall be provided for the packaging material.

§ 191.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production (see § 191.2(h) of this subpart). This section is not applicable to situations in which the drawback law authorizes

substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see § 191.2(o) of this part);

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from

the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see § 191.61 of this part). If Customs requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) *First-in, first-out (FIFO).* (i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with \$1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with \$2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of \$75 (25 units from the receipt on the 2nd with \$1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with \$2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units (\$1 drawback/unit) results in a balance of that amount; the receipt of 50

units (\$0 drawback/unit) on the 5th results in a balance of 150 units (100 with \$1 drawback/unit and 50 with \$0 drawback/unit); the withdrawal on the 10th of 75 units (\$1 drawback/unit) results in a balance of 75 units (25 with \$1 drawback/unit and 50 with \$0 drawback/unit); the receipt of 75 units (\$2 drawback/unit) on the 15th results in a balance of 150 units (25 with \$1 drawback/unit, 50 with \$0 drawback/unit, and 75 with \$2 drawback/unit); the withdrawal on the 20th of 100 units (25 with \$1 drawback/unit, 50 with \$0 drawback/unit, and 25 with \$2 drawback/unit) results in a balance of 50 units (all 50 with \$2 drawback/unit).

(2) *Last-in, first out (LIFO)*. (i) *General*. The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example*. In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of \$175 (75 units from the receipt on the 15th with \$2 drawback attributable per unit and 25 units from the receipt on the 2nd with \$1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units (\$1 drawback/unit) results in a balance of that amount; the receipt of 50 units (\$0 drawback/unit) on the 5th results in a balance of 150 units (100 with \$1 drawback/unit and 50 with \$0 drawback/unit); the withdrawal on the 10th of 75 units (50 with \$0 drawback/unit and 25 with \$1 drawback/unit) results in a balance of 75 units (all with \$1 drawback/unit); the receipt of 75 units (\$2 drawback/unit) on the 15th results in a balance of 150 units (75 with \$1 drawback/unit and 75 with \$2 drawback/unit); the withdrawal on the 20th of 100 units (75 with \$2 drawback/unit and 25 with \$1 drawback/unit) results in a balance of 50 units (all 50 with \$1 drawback/unit).

(3) *Low-to-high*. (i) *General*. The low-to-high method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be

accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) *Ordinary*. (A) *Method*. Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example*. In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

Date	Receipt (\$ per unit)	Withdrawals
Jan. 2	100 (zero).	
Jan. 5	50 (\$1.00).	
Jan. 15 .....	.....	50 (export).
Jan. 20	50 (\$1.01).	
Jan. 25	50 (\$1.02).	
Jan. 28 .....	.....	50 (domestic).
Jan. 31	50 (\$1.03).	
Feb. 5 .....	.....	100 (export).
Feb. 10	50 (\$.95).	
Feb. 15 .....	.....	50 (export).
Feb. 20	50 (zero).	
Feb. 23 .....	.....	50 (domestic).
Feb. 25	50 (\$1.05).	
Feb. 28 .....	.....	100 (export).
Mar. 5	50 (\$1.06).	
Mar. 10	50 (\$.85).	
Mar. 15 .....	.....	50 (export).
Mar. 21 .....	.....	50 (domestic).
Mar. 20	50 (\$1.08).	
Mar. 25	50 (\$.90).	
Mar. 31 .....	.....	100 (export).

The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the

January 2 receipt), the drawback attributable to the February 5 withdrawal for export is \$100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is \$47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is \$102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is \$42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is \$52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is \$98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units (\$1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be \$381.00.

(iii) *Low-to-high method with established average inventory turn-over period*. (A) *Method*. Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals (for domestic shipments and for export)*. Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period*. For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over

period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is \$101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is \$47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is \$51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is \$42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is \$98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period. Total drawback attributable to withdrawals for export in this example would be \$331.00.

(iv) *Low-to-high blanket method.* (A) *Method.* Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the period preceding the withdrawal equal to the statutory period for export under the kind of drawback involved (e.g., 180 days under 19 U.S.C. 1313(p), 3 years under 19 U.S.C. 1313(c) and 1313(j), and 5 years otherwise under 19 U.S.C. 1313(i)).

Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for 19 U.S.C. 1313(j); more than 180 days after the date of import or after the close of the manufacturing period for 19 U.S.C. 1313(p)) before the claimed export, no drawback could be granted).

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is \$50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is \$47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is \$50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is \$42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is \$96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at \$1.03), February 25 (50 units at \$1.05), and March 20 (50 units at \$1.08) receipts. Total drawback attributable to withdrawals for export in this example would be \$276.50.

(4) *Average.* (i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in

the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of \$133 (50 units from the receipt on the 15th with \$2 drawback attributable per unit, 33 units from the receipt on the 2nd with \$1 drawback attributable per unit, and 17 units from the receipt on the 5th with \$0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units (\$1 drawback/unit) results in a balance of that amount; the receipt of 50 units (\$0 drawback/unit) on the 5th results in a balance of 150 units (100 with \$1 drawback/unit and 50 with \$0 drawback/unit); the withdrawal on the 10th of 75 units (50 with \$1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with \$0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with \$1 drawback/unit and 25 with \$0 drawback/unit, on the basis of the same ratios); the receipt of 75 units (\$2 drawback/unit) on the 15th results in a balance of 150 units (50 with \$1 drawback/unit, 25 with \$0 drawback/unit, and 75 with \$2 drawback/unit); the withdrawal on the 20th of 100 units (50 with \$2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with \$1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with \$0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with \$2 drawback/unit, 17 with \$1 drawback/unit, and 8 with \$0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

§ 191.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19 U.S.C. 1313 in connection with the filing of a drawback claim shall be retained for 3 years after payment of such claims or longer period if required by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

Subpart B—Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise and/or drawback product(s). Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(u)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

§ 191.22 Substitution drawback.

(a) *General.* If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor; 19 U.S.C. 1313(s).* (1) *General rule.* Upon

compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A “drawback successor” is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence.* (i) *Records of predecessor.*

The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3) (i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *Multiple products.* (1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback

shall be distributed to each product in accordance with its relative value (see § 191.2(u)) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see § 191.2(u) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping.* Records shall be maintained showing the relative value of each product at the time of separation.

§ 191.23 Methods of claiming drawback.

(a) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are byproducts also necessarily and concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when byproducts also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7) and

applicants for approval of specific manufacturing drawback rulings (see § 191.8) shall state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(e) *Recordkeeping.* (1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (see § 191.2(u) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the "appearing in" basis may be used (see paragraph (b) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 191.24 Certificate of manufacture and delivery.

(a) *When required.* When an article or drawback product manufactured or produced under a general manufacturing drawback ruling or a specific manufacturing drawback ruling is transferred from the manufacturer or producer to another party, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer.

(b) *Information required on certificate.* The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The person to whom the article or drawback product is delivered;

(2) If the article or drawback product was manufactured or produced under a general manufacturing drawback ruling, the unique computer-generated number assigned to the letter of acknowledgment for that ruling, and if the article or drawback product was manufactured or produced under a specific manufacturing drawback ruling, either the unique computer number or the T.D. number for that ruling;

(3) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(4) Import entry numbers, HTSUS number for the imported merchandise to at least the 6th digit (such HTSUS number shall be from the entry

summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts;

(5) Date received at factory;

(6) Date used in manufacture;

(7) Value at factory, if applicable;

(8) Quantity of waste, if any, if applicable;

(9) Market value of any waste, if applicable;

(10) Total quantity and description of merchandise appearing in or used;

(11) Total quantity and description of articles produced;

(12) Date of manufacture or production of the articles;

(13) The quantity of articles transferred; and

(14) The person from whom the article or drawback product is delivered.

(c) *Filing of certificate.* The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see § 191.51 of this part).

(d) *Effect of certificate.* A certificate of manufacture and delivery documents the delivery of articles from the manufacturer or producer to another party, identifies such articles as being those to which a potential right to drawback exists, and assigns such potential rights to the transferee (see also § 191.82 of this part).

§ 191.25 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain manufacturing drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

§ 191.26 Recordkeeping for manufacturing drawback.

(a) *Direct identification*

manufacturing. (1) *Records required.*

Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing

in (see § 191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the nondrawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in § 191.14 of this part.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, and/or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) *Substitution manufacturing.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles; and

(3) That, within 3 years after receiving the designated merchandise at its plant, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of

imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (see § 191.2(u) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured articles for exportation.* Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of manufacture and delivery as part of the claim (see § 191.51(a)(1) of this part).

(e) *Multiple claimants.* (1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under § 191.82 of this part).

(2) *Procedures.* (i) *Submission of letter.* Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket Waivers and Assignments of Drawback Rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) *Use of export summary procedure.* If the parties elect to use the export summary procedure (§ 191.73 of this part) each drawback claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will

independently claim drawback, if known at the time the drawback claim is filed. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. Each claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims shall be retained for 3 years after the date of payment of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

§ 191.27 Time limitations.

(a) *Direct identification manufacturing.* Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution manufacturing.* Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgement or approval, as appropriate.

§ 191.28 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

Subpart C—Unused Merchandise Drawback**§ 191.31 Direct identification.**

(a) *General.* Section 1313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) *Operations performed on imported merchandise.* In cases in which an operation or operations is or are performed on the imported merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise is not a use of that merchandise for purposes of this section.

§ 191.32 Substitution drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, within 3 years after the importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable

merchandise is not used in the United States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Requirements.* (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback; and

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section).

(c) *Determination of commercial interchangeability.* In determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. A party may seek a nonbinding predetermination of commercial interchangeability directly from the appropriate drawback office. A determination of commercial interchangeability can be obtained in one of two ways:

(1) A formal ruling from the Duty and Refund Determination Branch, Office of Regulations and Rulings; or

(2) A submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

(d) *Time limitations.* For substitution unused merchandise drawback:

(1) The claimant must have had possession of the exported or destroyed merchandise at some time during the 3-year period following the date of importation of the imported designated merchandise; and

(2) The merchandise to be exported or destroyed to qualify for drawback must be exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported designated merchandise.

(e) *Operations performed on substituted merchandise.* In cases in which an operation or operations is or are performed on the substituted merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the commercially interchangeable substituted merchandise is not a use of

that merchandise for purposes of this section.

(f) *Designation by successor; 19 U.S.C. 1313(s).* (1) *General rule.* Upon compliance with the requirements of this section and under 19 U.S.C.

1313(s), a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or commercially interchangeable merchandise which was transferred to the predecessor and for which the predecessor received, before the date of succession, a certificate of delivery from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor.* A “drawback successor” is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personality, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence.* (i) *Records of predecessor.*

The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or commercially interchangeable merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or commercially interchangeable merchandise as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(ies) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

§ 191.33 Person entitled to claim drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), the exporter (or destroyer) shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant shall file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

(b) *Substitution.* (1) Under 19 U.S.C. 1313(j)(2), the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party shall be entitled to claim drawback.

(ii) In situations where the exporter or destroyer receives from the person who imported and paid the duty on the imported merchandise a certificate of delivery documenting the transfer of imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise, and exports or destroys such transferred merchandise, that exporter or destroyer shall be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under § 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) shall be documented by certificate(s) of delivery, and the

exporter or destroyer shall be entitled to claim drawback (multiple substitutions are not permitted).

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant shall file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

§ 191.34 Certificate of delivery required.

(a) *Direct identification; purpose; when required.* If the exported or destroyed merchandise claimed for drawback under 19 U.S.C. 1313(j)(1) was not imported by the exporter or destroyer, a properly executed certificate of delivery must be prepared by the importer and each intermediate party. Each such transfer of the merchandise must be documented by its own certificate of delivery.

(1) *Completion.* The certificate of delivery shall be completed as provided in § 191.10 of this part. Each party must also certify on the certificate of delivery that the party did not use the transferred merchandise (see § 191.31(c) of this part).

(2) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§ 191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(b) *Substitution.* For purposes of substitution unused merchandise drawback, 19 U.S.C. 1313(j)(2), if the importer, or a party who received imported merchandise and a certificate of delivery for that imported merchandise, directly or indirectly, from the importer, transfers to another party imported merchandise, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, the transferor shall

prepare and issue in favor of such party a certificate of delivery covering the transferred merchandise. The certificate of delivery must expressly state that it is prepared pursuant to 19 U.S.C. 1313(j)(2). Merchandise so transferred for which drawback is allowed under 19 U.S.C. 1313(j)(2) may not be designated for any other drawback purposes. Each transfer, whether of the imported merchandise or of imported merchandise, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, must be documented by its own certificate of delivery. Certificates of delivery under this paragraph are subject to the provisions for completion and retention of certificates of delivery in paragraphs (a)(1) and (a)(2) of this section.

(c) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery need be prepared covering prior transfers of merchandise while in a bonded warehouse, because such transfers will be recorded in the warehouse entry (see § 144.22 of this chapter).

§ 191.35 Notice of intent to export; examination of merchandise.

(a) *Notice.* A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended examination a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 at least 2 working days prior to the date of intended exportation unless Customs approves another filing period or the claimant has been granted a waiver of prior notice (see § 191.91 of this part).

(b) *Required Information.* The notice shall certify that the merchandise has not been used in the United States before exportation. In addition, the notice shall provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and e-mail address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (see paragraph (a) of this section), Customs will notify the party designated

on the Notice in writing of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (d) of this section), but the merchandise is exported without having been presented to Customs for examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay.

(d) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine routinely (to the extent determined to be necessary) the items exported.

§ 191.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(a) *General; application.* Merchandise which has been exported without complying with the requirements of § 191.35(a) or § 191.91 of this part may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application shall include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number(s) (with suffix) of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application;

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) Estimated number of drawback claims and estimated time of filing those claims to be covered in this application;

(H) The port(s) of exportation;

(I) Estimated dollar value of potential drawback to be covered in this application; and

(J) The relationship between the parties involved in the import and export transactions;

(ii) Written declarations regarding:

(A) The reason(s) that Customs was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(1) Business records prepared in the ordinary course of business;

(2) Laboratory records prepared in the ordinary course of business; and/or

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-Time Use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) *Customs action.* In order for Customs to evaluate the application under this section, Customs may

request, and the applicant shall provide, any of the information listed in paragraph (a)(1)(iii)(A)(I) through (3) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A)(I) through (3) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) *Time for Customs action.* Customs will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application.* If Customs denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If Customs denies this initial appeal, the applicant may file a further written appeal with Customs Headquarters, Office of Field Operations, Office of Trade Operations, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. Customs may extend the 30 day period for appeal to the drawback office or to Customs Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30 day period above.

(e) *Future intent to export unused merchandise.* If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see § 191.91 of this part). If the applicant seeks waiver of prior notice under § 191.91, any documentation submitted to Customs to comply with this section will be included in the request under § 191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with § 191.35.

§ 191.37 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

§ 191.38 Records.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, shall be retained for 3 years after payment of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) shall be accounted for in a manner which will enable the claimant:

(1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;

(2) To determine, and Customs to verify, the applicable exportation or destruction; and

(3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

Subpart D—Rejected Merchandise**§ 191.41 Rejected merchandise drawback.**

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee (see subpart P for drawback of internal-revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer).

§ 191.42 Procedure.

(a) *Return to Customs custody.* The claimant must return the merchandise

to Customs custody within 3 years after the date the merchandise was originally released from Customs custody.

Drawback will be denied on merchandise returned to Customs custody after the statutory 3-year time period or exported or destroyed without return to Customs custody.

(b) *Required documentation.* The claimant shall submit documentation to the drawback office as part of the drawback claim to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation. If the claimant was not the importer, the claimant must:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter or destroyer, must file at the port of intended redelivery to Customs custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 at least 5 working days prior to the date of intended return to Customs custody.

Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (see § 191.91 of this part) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice shall provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and e-mail address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (see paragraph (c) of this section), Customs will notify, in writing, the party designated on the Notice of Customs decision to either examine the merchandise to be exported or destroyed, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (f) of this section), but the merchandise is exported or destroyed without having been

presented to Customs for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and shall be deemed to have been returned to Customs custody.

(f) *Time and place of examination.* If Customs gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if Customs fails to timely examine the merchandise after presentation to Customs, and in such case the merchandise shall be deemed to have been returned to Customs custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise shall be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (see § 191.51(b) of this part). The procedures for restructuring a claim (see § 191.53 of this part) shall apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* The claimant shall export the merchandise and shall provide documentary evidence of exportation (see subpart G of this part). The claimant may establish exportation by mail as set out in § 191.74 of this part.

§ 191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§ 191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

Subpart E—Completion of Drawback Claims**§ 191.51 Completion of drawback claims.**

(a) *General.* (1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 7551, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) *Certificates.* Additionally, at the time of the filing of the claim, the associated certificate(s) of delivery must be in the possession of the party to whom the merchandise or article covered by the certificate was delivered. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates of manufacture and delivery, if required, shall be referenced in the claim.

(b) *Drawback due.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if \$1,000 in import duties are eligible for drawback less 1 percent (\$10), the amount claimed on the drawback entry should be for \$990. Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant.) Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 191.52(c).

(c) *HTSUS number(s) or Schedule B commodity number(s) of imports and exports.* (1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the

Schedule B commodity number(s) for the exported article or articles.

(2) *Imports.* For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, otherwise. Manufacturing drawback claimants filing drawback claims based on certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) for the designated imported merchandise on such certificate(s).

(3) *Exports.* For exports, the HTSUS number(s) or Schedule B commodity number(s) shall be from the Shipper's Export Declaration(s) (SEDs), when required. If no SED is required (see, e.g., 15 CFR 30.58), the claimant shall provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED.

(4) *6-digit level for HTSUS and Schedule B commodity numbers.* The HTSUS numbers and Schedule B commodity numbers shall be stated to at least 6 digits.

(5) *Effective date.* For imports, HTSUS numbers are required for merchandise entered, or withdrawn from warehouse, for consumption on or after April 6, 1998. For exports, HTSUS numbers or Schedule B commodity numbers are required for exported merchandise or articles exported on or after the date 1 year after April 6, 1998.

(d) *Place of filing.* For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§ 191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

(e) *Time of filing.* (1) *General.* A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the merchandise or articles which are the subject of the claim. Except for landing certificates (see § 191.76 of this part), or unless this time is extended as provided in paragraph (e)(2) of this section, claims not completed within the 3-year period shall be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that

Customs was responsible for the untimely filing.

(2) *Major disaster.* The 3-year period for filing a completed drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of Customs that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with Customs within 1 year from the last day of the 3-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention.* If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) shall be extended for an additional 18 months.

§ 191.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim, if the claim is determined to be incomplete (see § 191.51(a)(1)), the claim will be rejected and Customs will notify the filer in writing. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years.

(b) *Perfecting the claim; additional evidence required.* If Customs determines that the claim is complete according to the requirements of § 191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer in writing. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) The export bill of lading or other actual evidence of exportation, as provided for in § 191.72(a) of this part, which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading,

showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Certificate(s) of delivery upon which the claim is based (see § 191.10(e) of this part).

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the original drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 191.84 of this part and part 174 of this chapter.

§ 191.53 Restructuring of claims.

(a) *General.* Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by Customs and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory

records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§ 191.61 Verification of drawback claims.

(a) *Authority.* (1) *Drawback office.* All claims shall be subject to verification by the port director where the claim is filed.

(2) *Two or more locations.* The port director selecting the claim for verification may forward copies of the claim and, as applicable, letters of notification and acknowledgement for the general manufacturing drawback ruling or application and letter of approval for a specific manufacturing drawback ruling, and request for verification, to other drawback offices when deemed necessary.

(b) *Method.* The verifying office shall verify compliance with the law and this part, the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling (as applicable), and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entries for those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate port director issues a report. In the event that a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or, in Customs discretion, all claims for that claimant.

(d) *Errors in specific or general manufacturing drawback rulings.* (1) *Specific manufacturing drawback ruling.* (i) *Action by port director.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (see § 191.8 of this part) reveals errors of deficiencies in the drawback ruling or application therefore, the port director shall promptly inform Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (see § 191.7 of this part) reveals errors or deficiencies in a general manufacturing drawback ruling, the letter of

notification of intent to operate under the general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, the port director shall promptly inform Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(3) *Action by Customs Headquarters.* Customs Headquarters shall review the stated errors or deficiencies and take appropriate action (see 19 U.S.C. 1625; 19 CFR part 177).

§ 191.62 Penalties.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be subject to the criminal provisions of 18 U.S.C. 550, 1001 or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

Subpart G—Exportation and Destruction

§ 191.71 Drawback on articles destroyed under Customs supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 shall be filed by the claimant with the Customs port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days after receipt of the Customs Form 7553, Customs shall advise the filer in writing of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under Customs supervision. Unless Customs

determines to witness the destruction, the destruction of the articles following timely notification on Customs Form 7553 shall be deemed to have occurred under Customs supervision. If Customs attends the destruction, it must certify the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(b) *Evidence of destruction.* When Customs does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the approved Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of "destruction" in § 191.2(g) (i.e., that no articles of commercial value remained after destruction).

(c) *Completion of drawback entry.* After destruction, the claimant must provide the Customs Form 7553, certified by the Customs official witnessing the destruction in accordance with paragraph (a) of this section, to Customs as part of the

completed drawback claim based on the destruction (see § 191.51(a) of this part). If Customs has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved Customs Form 7553, as provided for in paragraph (b) of this section, as part of the completed drawback claim based on the destruction (see § 191.51(a) of this part).

§ 191.72 Exportation procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the procedures provided for in this section (in addition to providing prior notice of intent to export if applicable (see §§ 191.35, 191.36, 191.42, and 191.91 of this part)). Supporting documentary evidence shall establish fully the date and fact of exportation and the identity of the exporter. The procedures for establishing exportation outlined by this section include, but are not limited to:

- (a) Actual evidence of exportation consisting of documentary evidence, such as an originally signed bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or certified copies thereof, issued by the exporting carrier;
- (b) Export summary (§ 191.73);

- (c) Certified export invoice for mail shipments (§ 191.74);
- (d) Notice of lading for supplies on certain vessels or aircraft (§ 191.112); or
- (e) Notice of transfer for articles manufactured or produced in the U.S. which are transferred to a foreign trade zone (§ 191.183).

§ 191.73 Export summary procedure.

(a) *General.* The export summary procedure consists of a Chronological Summary of Exports used to support a drawback claim. It may be submitted as part of the claim in lieu of actual documentary evidence of exportation. It may be used by any claimant for manufacturing drawback, and for unused or rejected merchandise drawback, as well as for drawback involving the substitution of finished petroleum derivatives (19 U.S.C. 1313(a), (b), (c), (j), or (p)). It is intended to improve administrative efficiency.

(b) *Format of Chronological Summary of Exports.* The Chronological Summary of Exports shall contain the data provided for in the following sample:

Chronological Summary of Exports

Drawback entry No. _____.
Claimant _____. Exporter _____ (if different from claimant)
Period from _____ to _____.

Date of export	Exporter if not claimant	Unique export identifier ¹	Description	Net quantity	Sched. B com. # or HTSUS #	Destination
(1)	(2)	(3)	(4)	(5)	(6)	(7)

AAAA¹ This number is to be used to associate the export transaction presented on the Chronological Summary of Exports to the appropriate documentary evidence of exportation (for example, Bill of Lading, Manifest no., invoice, identification of vessel or aircraft and voyage or aircraft number (see subpart K), etc.).

(c) *Documentary evidence.* (1) *Records.* The claimant, whether or not the exporter, shall maintain the Chronological Summary of Exports and such additional evidence of exportation required by Customs to establish fully the identity of the exported articles and the fact of exportation. Actual evidence of exportation, as described in § 191.72(a) of this subpart, is the primary evidence of export for drawback purposes.

(2) *Maintenance of records.* The claimant shall submit as part of the claim the Chronological Summary of Exports (see § 191.51). The claimant shall retain records supporting the Chronological Summary of Exports for 3 years after payment of the related claim, and such records are subject to review by Customs.

§ 191.74 Certification of exportation by mail.

If the merchandise on which drawback is to be claimed is exported

by mail or parcel post, the official postal records which describe the mail shipment shall be sufficient to prove exportation. The postal record shall be identified on the drawback entry, and shall be retained by the claimant and submitted as part of the drawback claim (see § 191.10(e)).

§ 191.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.72 and 191.73 of this subpart (see § 191.4 of this part).

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 191.82 of this part claims drawback, exportation shall be established under §§ 191.72 and 191.73 of this subpart.

§ 191.76 Landing certificate.

(a) *Requirement.* Prior to the liquidation of the drawback entry, Customs may require a landing certificate for every aircraft departing from the United States under its own power if drawback is claimed on the aircraft or a part thereof, except for the exportation of supplies under § 309 of the Act, as amended (19 U.S.C. 1309). The certificate shall show the exact time of landing in the foreign destination and describe the aircraft or parts subject to drawback in sufficient detail to enable Customs officers to identify them with the documentation of exportation.

(b) *Written notice of requirement and time for filing.* A landing certificate shall be filed within one year from the written Customs request, unless Customs Headquarters grants an extension.

(c) *Signature.* A landing certificate shall be signed by a revenue officer of the foreign country of the export's destination, unless the embassy of that

country certifies in writing that there is no Customs administration in that country, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unloading.

(d) *Inability to produce landing certificates.* A landing certificate shall be waived by the requiring Customs authority if the claimant demonstrates inability to obtain a certificate and offers other satisfactory evidence of export.

Subpart H—Liquidation and Protest of Drawback Entries

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the import entry becomes final; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.* (1) Drawback may be paid on estimated duties if the import entry has not been liquidated, or the liquidation has not become final (because of a protest being filed) (see also § 173.4(c) of this chapter), and the drawback claimant and any other party responsible for the payment of liquidated import duties each file a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant shall, to the best of its knowledge, identify each import entry that has been protested or that is the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)) and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties, shall not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, shall:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties.* (1) *General.* Subject to the requirements in paragraph (c)(2) of this section, drawback may be paid on voluntary tenders of the unpaid amount of lawful ordinary Customs duties or any other payment of lawful ordinary Customs duties for an entry, or withdrawal from warehouse, for consumption (see § 191.3(a)(1)(iii) of this part), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption; or

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each file a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the articles has been established, the drawback office shall determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information.

(f) *Relative value; multiple products.* (1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative value at the time of separation.

(2) *Value.* The value to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value (see § 191.2(u) of this part), unless another value is approved by Customs.

(g) *Payment.* The drawback office shall authorize the amount of the refund due as drawback to the claimant.

§ 191.82 Person entitled to claim drawback.

Unless otherwise provided in this part (see §§ 191.42(b), 191.162, 191.175(a), 191.186), the exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1) and (2), see § 191.33(a) and (b)). Such certification shall also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for in this section may be a blanket certification for a stated period.

§ 191.83 Person entitled to receive payment.

Drawback is paid to the claimant (see § 191.82).

§ 191.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry shall be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Waiver of Prior Notice of Intent To Export; Accelerated Payment of Drawback

§ 191.91 Waiver of prior notice of intent to export.

(a) *General.* (1) *Scope.* The requirement in § 191.35 of this part for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under § 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(2) *Effective date for claimants with existing approval.* For claimants approved for waiver of prior notice as of

April 6, 1998, such approval of waiver of prior notice shall remain in effect, under the Customs Regulations in effect as of the time of the approval of waiver of prior notice, for a period of 1 year after April 6, 1998. The previously approved waiver of prior notice shall terminate at the end of such 1-year period unless the claimant applies for waiver of prior notice under this section. If a claimant approved for waiver of prior notice as of April 6, 1998 applies for waiver of prior notice under this section within such 1-year period, the claimant may continue to operate under its existing waiver of prior notice until Customs approves or denies the application for waiver of prior notice under this section, subject to the provisions in this section (see, in particular, paragraphs (d) and (e) of this section).

(3) *Limited successorship for waiver of prior notice.* When a claimant (predecessor) is approved for waiver of prior notice under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of waiver of prior notice shall remain in effect for a period of 1 year after such transfer. The approval of waiver of prior notice shall terminate at the end of such 1-year period unless the successor applies for waiver of prior notice under this section. If such successor applies for waiver of prior notice under this section within such 1-year period, the successor may continue to operate under the predecessor's waiver of prior notice until Customs approves or denies the successor's application for waiver of prior notice under this section, subject to the provisions in this section (see, in particular, paragraphs (d) and (e) of this section).

(b) *Application.* (1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application with the drawback office where the claims will be filed. Such application shall include the following:

(i) Required information:

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number (with suffix) of current exporter(s) (if more than 3 exporters, such information is required only for the 3 most frequently

used exporters), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next calendar year covered by this application;

(G) Port(s) of exportation to be used during the next calendar year covered by this application;

(H) Estimated dollar value of potential drawback during the next calendar year covered by this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office, and whether the applicant has previously requested a 1-time waiver of prior notice under § 191.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(1) Business records prepared in the ordinary course of business;

(2) Laboratory records prepared in the ordinary course of business; and/or

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Any other evidence establishing compliance with other applicable drawback requirements, upon Customs request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, Customs Form 7501), sample of export document (for example, bill of lading),

and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A)(1) through (3) of this section, to be available to Customs upon request).

(c) *Action on application.* (1) *Customs review.* The drawback office shall review and verify the information submitted on and with the application. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application and the reason therefor. In order for Customs to evaluate the application, Customs may request any of the information listed in paragraph (b)(2)(iii)(A)(1) through (3) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include, but are not limited to (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to Customs for examination after Customs had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback of Customs intent to examine the merchandise (see § 191.35 of this part).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export, under this section, shall operate prospectively, applying only to those export shipments occurring after the date of the waiver. It shall be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* An approval of waiver of prior notice may be stayed, for a specified reasonable period, should

Customs desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. Customs shall provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved. Customs shall specify the reason(s) for the stay in such written notice. The stay shall take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay shall remain in effect for the period specified in the written notice, or until such earlier date as Customs notifies the person for whom waiver of prior notice was approved in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the waiver of prior notice procedure may resume for exports on or after the date the stay is lifted.

(e) *Proposed Revocation.* Customs may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (noncompliance with the drawback law and/or regulations). Customs shall give written notice of the proposed revocation of a waiver of prior notice of intent to export. The notice shall specify the reasons for Customs proposed action and provide information regarding the procedures for challenging Customs proposed revocation action as prescribed in paragraph (g) of this section. The written notice of proposed revocation may be included with a notice of stay of approval of waiver of prior notice as provided under paragraph (d) of this section. The revocation of the approval of waiver of prior notice shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (g) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (g) of this section unless the challenge is successful.

(f) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by Customs Headquarters, will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant shall refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and shall submit a copy of the approval letter with the first drawback claim filed

in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

§ 191.92 Accelerated payment.

(a) *General.* (1) *Scope.* Accelerated payment of drawback is available under this section on drawback claims under this part, unless specifically excepted from such accelerated payment. Accelerated payment of drawback consists of the payment of estimated drawback before liquidation of the drawback entry. Accelerated payment of drawback is only available when Customs review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with the requirements of the drawback law and part 191 (see, especially, subpart E of this part). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(2) *Effective date for claimants with existing approval.* For claimants approved for accelerated payment of drawback as of April 6, 1998, such approval of accelerated payment shall remain in effect, under the Customs Regulations in effect as of the time of the approval of accelerated payment, for a period of 1 year after April 6, 1998. The previously approved accelerated payment of drawback shall terminate at the end of such 1-year period unless the claimant applies for accelerated payment under this section. If a claimant approved for accelerated payment of drawback as of April 6, 1998 applies for accelerated payment under this section within such 1-year period, the claimant may continue to operate under its existing approval of accelerated payment until Customs

approves or denies the application for accelerated payment under this section, subject to the provisions in this section (see, in particular, paragraph (f) of this section).

(3) *Limited successorship for approval of accelerated payment.* When a claimant (predecessor) is approved for accelerated payment of drawback under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of accelerated payment shall remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback shall terminate at the end of such 1-year period unless the successor applies for accelerated payment of drawback under this section. If such successor applies for accelerated payment of drawback under this section within such 1-year period, the successor may continue to operate under the predecessor's approval of accelerated payment until Customs approves or denies the successor's application for accelerated payment under this section, subject to the provisions in this section (see, in particular, paragraph (f) of this section).

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

- (i) Company name and address;
- (ii) Internal Revenue Service (IRS) number (with suffix);
- (iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;
- (iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (see paragraph (d) of this section), including:
 - (A) Identity of the surety to be used;
 - (B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and
 - (C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);
- (v) Description of merchandise and/or articles covered by the application;
- (vi) Type(s) of drawback covered by the application; and
- (vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify Customs of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that Customs is

notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, shall provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application.* (1) *Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include, but are not limited to (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(2) *Notification to applicant.* Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application and the reason therefor.

(3) *Approval.* The approval of an application for accelerated payment, under this section, shall be effective as of the date of Customs written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback shall be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback shall be paid only if the claimant furnishes a properly

executed single transaction bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Revocation.* Customs may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, Customs shall give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice shall specify the reasons for Customs proposed action and the procedures for challenging Customs proposed revocation action as prescribed in paragraph (h) of this section. The revocation shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (h) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (h) of this section unless the challenge is successful.

(g) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for accelerated payment of drawback is approved, the claimant shall refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and shall submit a copy of the approval letter with the first drawback claim filed in a drawback office other than the approving office.

(h) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A

denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

(i) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was requested shall certify the drawback claim for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing, if the claim is filed manually. After liquidation, the drawback office shall certify payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not refunded within 30 days after the date of liquidation of the related drawback entry shall be considered delinquent (see §§ 24.3a and 113.65(b) of this chapter.)

§ 191.93 Combined applications.

An applicant for the procedures provided for in §§ 191.91 and 191.92 of this subpart may apply for only one procedure, both procedures separately, or both procedures in one application package (see also § 191.195 of this part regarding combined applications for certification in the drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback). In the latter instance, the intent to apply for both procedures must be clearly stated. In all instances, all of the requirements for the procedure(s) applied for must be met (for example, in a combined application for both procedures, all of the information required for each procedure, all required sample documents for each procedure, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

§ 191.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)),

provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with § 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (see subpart B of this part) shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under § 191.8 of this part, shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content.* (1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer shall apply for a new specific manufacturing drawback ruling pursuant to § 191.8 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the appropriate drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from Customs Headquarters.

(e) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in 19 U.S.C. 1313(r)(1) shall be applicable to claims for drawback under this subpart.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol stated in the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under §§ 5131, 5132, 5133 and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133 and 5134).

(b) *Manufacturer does not claim domestic drawback.* (1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

- (i) Quantity and description of the exported products;
- (ii) Identity of the alcohol used by serial number of package or tank car;
- (iii) Name and registry number of the warehouse from which the alcohol was withdrawn;
- (iv) Date of withdrawal;
- (v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Drawback office where the claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

§ 191.104 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the Customs drawback office where the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

- (1) Quantity of alcohol in taxable gallons;
- (2) Serial number of each package;
- (3) Serial number of the stamp, if any;
- (4) Amount of tax paid on the alcohol;
- (5) Name, registry number, and location of the warehouse;
- (6) Date of withdrawal;
- (7) Name of the manufacturer using the alcohol in producing the exported articles;
- (8) Address of the manufacturer and his manufacturing plant; and
- (9) Customs drawback office where the drawback claim will be processed.

(c) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that drawback office. The drawback office shall note that the copy of the extract was prepared and transmitted.

§ 191.105 Liquidation.

The drawback office shall ascertain the final amount of drawback due by reference to the certificate of manufacture and delivery and the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 191.106 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.103 of this

subpart shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.81(f) of this part.

Subpart K—Supplies for Certain Vessels and Aircraft

§ 191.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 191.112 Procedure.

(a) *General.* The provisions of this subpart shall override other conflicting provisions of this part.

(b) *Customs forms.* The drawback claimant shall file with the drawback office the drawback entry on Customs Form 7551 annotated for 19 U.S.C. 1309, and attach thereto a notice of lading on Customs Form 7514, in quadruplicate, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable, and the requirements in paragraphs (d)(1) and (f)(1) of this section shall also be complied with.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the drawback notice of lading on Customs Form 7514 may be filed either before or after the lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(d) *Contents of notice.* The notice of lading shall show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Assignment of numbers and return of one copy.* The drawback office shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(f) *Declaration.* (1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts shall complete the section of the notice entitled "Declaration of Master or Other Officer".

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the drawback office and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the drawback office both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(g) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the drawback office shall return to the exporter or the person designated by the exporter two copies of the notice, noting the absence of a requirement for clearance or permit to proceed, for subsequent filing with the drawback claim. The claimant shall file with the claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed shall require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or

used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies.* (1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading on the reverse side of Customs Form 7514, for each calendar month. The composite notice of lading shall describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions (see § 10.59 of this chapter).

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse side of Customs Form 7514 or on a continuation sheet:

- (i) The identity of the vessel or aircraft;
- (ii) A description of the fuel supplies laden;
- (iii) The quantity laden; and
- (iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of § 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured With Imported Salt

§ 191.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 191.122 Procedure.

(a) *General.* Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.123 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than \$100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

§ 191.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 191.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a "major conversion", as defined in this section, of a vessel or aircraft. Section 313(g) does not apply to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in § 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

(c) *Major conversion.* For purposes of this subpart, a "major conversion" means a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes the vessel or aircraft that it is

essentially a new vessel or aircraft, as determined by Customs (see 46 U.S.C. 2101(14a)).

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 191.142 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7551, modified to show that the entry covers jet aircraft engines processed under § 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.144 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than \$100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported From Continuous Customs Custody

§ 191.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise.* (1) *Under 19 U.S.C. 1557(a).* Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313.* Imported merchandise that has not been regularly entered or withdrawn for consumption, shall not satisfy any requirement for use, importation, exportation or

destruction, and shall not be available for drawback, under § 313 of the Act, as amended (19 U.S.C. 1313) (see 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.152 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in § 557(c) of the Act, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and satisfactory evidence of destruction is furnished to Customs (see § 191.71), in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.153 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.*

Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate Customs office shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For the purpose of this

subpart, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when estimated duty has been deposited and the appropriate Customs office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores.* (1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate Customs office shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 191.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him in writing shall file with the drawback office a direct export drawback entry on Customs Form 7551 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the drawback office an entry naming the transporting conveyance, route, and port of exit. The drawback office shall certify one copy and forward it to the Customs office at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback

entry (Customs Form 7551) shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office shall transmit the request and its accompanying evidence to the Office of Field Operations, Customs Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 191.157 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.76 of this part.

§ 191.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries shall be liquidated in accordance with the provisions of § 191.81 of this part.

§ 191.159 Amount of drawback.

Drawback due under this subpart shall not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchutable or Do Not Conform to Sample or Specifications**§ 191.161 Refund of taxes.**

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchutable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.162 Procedure.

The export procedure shall be the same as that provided in § 191.42 except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.163 Documentation.

(a) *Entry.* Customs Form 7551 shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchutable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchutable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchutable.

§ 191.164 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.165 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7551.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the drawback office where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 7553.

§ 191.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing entries under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.168 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, prior to the expiration of the 90-day period, the drawback office grants an extension of not more than 90 days.

Subpart Q—Substitution of Finished Petroleum Derivatives**§ 191.171 General; Drawback allowance.**

(a) *General.* Section 313(p), of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback on the basis of qualified articles which consist of either imported duty-paid petroleum derivatives, or petroleum derivatives manufactured or produced in the United States and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

§ 191.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article.* “Qualified article” means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of headings 3901 through 3914, the definition is limited as those headings apply to liquids, pastes, powders, granules and flakes.

(b) *Same kind and quality article.* “Same kind and quality article” means an article which is commercially interchangeable with, or which is referred to under the same 8-digit classification of the HTSUS as, the article to which it is compared. (For example, unleaded gasoline and jet fuel

(naphtha or kerosene-type), both falling under the same HTSUS classification (2710.00.15) would be considered same kind and quality articles because they fall under the same 8 digit HTSUS classification, even though they are not “commercially interchangeable”.)

(c) *Exported article.* “Exported article” means an article which has been exported and is the qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 191.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a “qualified article” as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an “exported article” as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article which serves as the basis for drawback. Drawback due under this paragraph shall not be subject to the deduction of 1 percent.

§ 191.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the basis for drawback under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C.

1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a "qualified article" as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an "exported article" as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (see § 191.8 of this part) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

§ 191.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of that article. Any of these persons may designate another person to file the drawback claim.

(b) *Certificate of manufacture and delivery or delivery.* A drawback claimant under 19 U.S.C. 1313(p) must provide a certificate of manufacture and delivery or a certificate of delivery, as applicable, establishing the drawback eligibility of the articles for which drawback is claimed.

(c) *Maintenance of records.* The manufacturer, producer, importer, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims

shall be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 191.53 of this part) shall apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives (no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on Customs Form 7551; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

(d) *Derivatives manufactured under 19 U.S.C. 1313(a) or (b).* When the basis for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on Customs Form 7551;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.181 Drawback allowance.

The fourth proviso of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides for drawback on merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), provided there is compliance with the regulations of this subpart.

§ 191.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.181 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

§ 191.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer.* (1) *Evidence of export.* The notice of zone transfer on Customs Form 214 shall be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the drawback office where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3

years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. The transferor shall verify that the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries shall be filed on Customs Form 7551 to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

Declaration of Transfer to a Foreign Trade Zone

I, _____
(member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption.

Dated: _____

Transferor or agent

§ 191.184 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part shall be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 7551

in duplicate. The drawback office shall forward one copy of Customs Form 7551 to the zone operator at the zone.

(c) *Certification by zone operator.*

After the merchandise has been received in the zone, the zone operator shall certify on the copy of Customs Form 7551 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by § 191.156.

(d) *Modification of drawback entry.*

(1) *Indication of transfer.* Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7551 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____, 19____; in Foreign

Trade Zone No. _____, (City and State)

Exceptions _____

(Name and title)

By _____

(Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7551 as follows:

Transferor's Declaration

I, _____ of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

(Transferor)

§ 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office an entry on Customs Form 7551 in duplicate. The drawback office shall forward one copy of Customs Form 7551 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7551 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by § 191.156.

(d) *Modification of drawback entry.*

(1) *Indication of transfer.* Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7551 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 19____, in Foreign Trade Zone

No. _____, (City and State).

Exceptions: _____

(Name of operator)

By _____

(Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7551 as follows:

Transferor's Declaration

I, _____, of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.
Dated: _____
Transferor

§ 191.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 191.191 Purpose.

This subpart sets forth the requirements for the Customs drawback compliance program in which claimants and other parties in interest, including Customs brokers, may participate after being certified by Customs. Participation in the program is voluntary. Under the program, Customs is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 191.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and Customs. Certification requirements shall take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed.

Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must be able to demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by Customs regarding original records, or if approved by Customs, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying Customs of variances in, or violations of, the drawback compliance or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

(c) *Broker certification.* A Customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (see § 191.194(b)). To do so, a Customs broker who is employed to assist a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker shall ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 191.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as Customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section shall be submitted to any drawback office. However, in the event the applicant is a claimant for drawback, the application shall be submitted to the drawback office where the claims will be filed.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program shall file with the applicable drawback office a written application in letter format, signed by an authorized individual (see § 191.6(c) of this part). The detail required in the application shall take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application shall contain at least the following information:

(1) Name of applicant, address, IRS number (with suffix), and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. (For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be

claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.)

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the applicant's organization who is responsible for oversight of the applicant's drawback program, and the name and title, with mailing address and, if available, fax number and e-mail address, of the person[s] in the applicant's organization responsible for the actual maintenance of the applicant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (see §§ 191.7 and 191.8 of this part), as appropriate;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying Customs of variances in, or violations of, its

drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by Customs of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

§ 191.194 Action on application to participate in compliance program.

(a) *Review by applicable drawback office.* (1) *General.* It is the responsibility of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with Customs Headquarters and with the other field drawback offices as appropriate. Customs processing of the package will consist of the review of the information contained therein as well as any additional information requested (see paragraph (a)(2) of this section).

(2) *Criteria for Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 191.193(c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs shall include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The applicable drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A Customs broker obtaining

certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (see § 191.62(b) of this part), Customs shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under § 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a Customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to Customs, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied to an applicant, the applicant shall be given written notice by the applicable drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the appropriate drawback office and then appealed to Customs Headquarters.

(e) *Revocation.* If the participant commits repeated violations of its drawback compliance program or negotiated alternative drawback compliance program, the applicable drawback office, by written notice, may propose to revoke certification from the participant, until corrective action, satisfactory to Customs, is taken to prevent such violations. The written notice will describe the cause for the proposed revocation and the corrective actions required. The revocation shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (f) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (f) of this section unless the challenge is successful.

(f) *Appeal of denial or challenge to proposed revocation.* A party may appeal a denial or challenge a proposed revocation of certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of the date of such denial or proposed revocation, with the applicable drawback office. A denial of an appeal or challenge to a proposed

revocation may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, within 30 days of receipt of the applicable drawback office's decision. The 30-day period for appeal or challenge with the applicable drawback office and/or with Customs Headquarters may be extended for good cause, upon written request by the applicant for such extension filed with the applicable drawback office or with Customs Headquarters, as the case may be, within the 30-day period.

§ 191.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.

An applicant for certification in the drawback compliance program may also, in the same application, apply for waiver of prior notice of intent to export and accelerated payment of drawback, under subpart I of this part. Alternatively, an applicant may separately apply for certification in the drawback compliance program and either or both waiver of prior notice and accelerated payment of drawback. In the former instance, the intent to apply for certification and waiver of prior notice and/or approval of accelerated payment of drawback must be clearly stated. In all instances, all of the requirements for certification and the procedure applied for must be met (for example, in a combined application for certification in the drawback compliance program and both procedures, all of the information required for certification and each procedure, all required sample documents for certification and each procedure, and all required certifications must be included in and with the application).

Appendix A to Part 191—General Manufacturing Drawback Rulings

Table of Contents

- I. General Instructions
- II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)
- III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents (T.D. 81–181)
- IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Burlap or Other Textile Material (T.D. 83–53)
- V. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts (T.D. 81–300)
- VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Flaxseed (T.D. 83–80)
- VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Fur Skins or Fur Skin Articles (T.D. 83–77)

- VIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Orange Juice (T.D. 85–110)
- IX. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives (T.D. 84–49)
- X. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Piece Goods (T.D. 83–73)
- XI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Raw Sugar (T.D. 83–59)
- XII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Steel (T.D. 81–74)
- XIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar (T.D. 81–92)
- XIV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Woven Piece Goods (T.D. 83–84)

I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person who can comply with the conditions of any one of these rulings may notify a Customs drawback office in writing of its intention to operate under the ruling (see § 191.7 of this part). Such a letter of notification shall include the following information:

1. Name and address of manufacturer or producer;
2. IRS (Internal Revenue Service) number (with suffix) of manufacturer or producer;
3. Location[s] of factory[ies] which will operate under the general ruling;
4. If a business entity, names of persons who will sign drawback documents (see § 191.6 of this part);
5. Identity (by T.D. number and title, as stated in this Appendix) of general manufacturing drawback ruling under which the manufacturer or producer intends to operate;
6. Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;
7. Only for General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, the name of each article to be exported or, if the identity of the product is not clearly evident by its name, what the product is, and the abstract period to be used for each refinery (monthly or other specified period (not to exceed 1 year)), subject to the conditions in the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, I. Procedures and Records Maintained, 4(a) or (b);
8. Basis of claim used for calculating drawback; and
9. Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling.

For the General Manufacturing Drawback Ruling under § 1313(a), the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts, and the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents, if the drawback office has doubts as

to whether there is a manufacture or production, as defined in § 191.2(q) of this part, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

B. These general manufacturing drawback rulings supersede general "contracts" previously published under the following Treasury Decisions (T.D.'s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–123, 84–49, and 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous "contract".

II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

A. Imported Merchandise or Drawback Products¹ Used

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on which Drawback will be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process Of Manufacture Or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

1. Relative Values

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process.

2. Appearing-in method

The appearing in basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise,

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations.

caused by atmospheric conditions, chemical reactions, or other factors.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that is of the same kind and quality as the imported merchandise, meeting specifications set forth in the application by the manufacturer or producer for a determination of same kind and quality (see § 191.11(c)), shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings (see 19 CFR 191.11).

H. Stock In Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

I. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

J. Procedures And Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and
2. The quantity of imported merchandise² used in producing the exported articles. (To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance)

K. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

L. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste,

and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

M. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents (T.D. 81-181)

Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2), 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 191 (see particularly, § 191.9).

A. Name and Address of Principal

B. Process of Manufacture or Production

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

C. Procedures and Records Maintained

Records will be maintained to establish:

1. Quantity, kind and quality of merchandise transferred from the principal to the agent;
2. Date of transfer of the merchandise from the principal to the agent;
3. Date of manufacturing or production operations performed by the agent;
4. Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;
5. Total quantity and description of articles produced in manufacturing or production operations performed by the agent;

6. Quantity, kind and quality of articles transferred from the agent to the principal; and

7. Date of transfer of the articles from the agent to the principal.

D. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of the principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Burlap or Other Textile Material (T.D. 83-53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of burlap or other textile material manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products¹ Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer

² If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles."

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations.

or producer for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55207(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

Not applicable.

F. Loss or Gain

Not applicable.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise² used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures and Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

Each lot of imported material received by a manufacturer or producer shall be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer shall show, as to each manufacturing lot or period of manufacture, the quantity of material used from each import lot and the number of each kind and size of bags or meat wrappers obtained. If applicable, a certificate of manufacture and delivery shall be filed covering each manufacturing lot or period of manufacture.

All bags or meat wrappers manufactured or produced for the account of the same exporter during a specified period may be designated as one manufacturing lot and, as applicable, covered by one certificate of manufacture and delivery. All exported bags or meat wrappers shall be identified by the exporter with the certificate of manufacture and delivery covering their manufacture, if applicable.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the

manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 191 of the Customs Regulations and this general ruling.

V. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts (T.D. 81-300)

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products ¹ to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Component parts identified by individual part numbers.	Component parts identified with the same individual part numbers as those in the column immediately to the left hereof.
Component parts identified identified by individual part numbers. ...	Component parts with the same individual part numbers as those in the column immediately to the left hereof.

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for Customs officers. The imported merchandise designated on drawback claims will be so similar to the merchandise used in producing the exported articles on which drawback is

claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the

account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55207(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

Not applicable.

F. Waste

² If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles."

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

H. Procedures And Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise² used to produce the exported articles;
3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced³ the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appear in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the

quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Flaxseed (T.D. 83-80)

Drawback may be allowed under the provision of 19 U.S.C. 1313(a) upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured or produced with the use of imported flaxseed, subject to the following special requirements:

A. Imported Merchandise or Drawback Products¹ Used

Imported merchandise or drawback products (flaxseed) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations.

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process (when a claim covers a manufacturing period, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see §§ 191.2(u), 191.22(e)). The "appearing in" basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise² used in producing the exported articles.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures and Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The inventory records of the manufacturer or producer shall show the inclusive dates of manufacture; the quantity, identity, and value of the imported flaxseed or screenings, scalplings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing

² If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles." To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

² If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

³ The date of production is the date an article is completed.

by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed shall not be estimated nor computed on the basis of the quantity of finished products obtained, but shall be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from Customs weights, as shown by the import entry covering such imported materials, and the Government weight certificate of analysis issued at the time of entry. The entire period covered by an abstract shall be deemed the time of separation of the oil and cake covered thereby.

If the records of the manufacturer or producer do not show the quantity of oil cake used in the manufacture or production of the exported oil meal and the quantity of oil meal obtained, the net weight of the oil meal exported shall be regarded as the weight of the oil cake used in the manufacture thereof.

If various tanks are used for the storage of imported flaxseed, the mill records shall establish the tank or tanks in which each lot or cargo is stored. If raw or processed oil manufactured or produced during different periods of manufacture is intermixed in storage, a record shall be maintained showing the quantity, identity, and kind of oil so intermixed. Identity of merchandise or articles in either instance shall be in accordance with § 191.14 of this part.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General

Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 191 of the Customs Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Fur Skins or Fur Skin Articles (T.D. 83-77)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one or a combination of the foregoing processes with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

A. Imported Merchandise or Drawback Products¹ Used

Imported merchandise or drawback products (fur skins or fur skin articles) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

Drawback shall not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or

measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise² used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures and Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer shall show, as to each lot of fur skins and/or fur skin articles used in the manufacture or production of articles for exportation with benefit of drawback, the lot number and date or inclusive dates of manufacture or production, the quantity, identity, and description of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity and description of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations.

² If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles."

would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used shall be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of such rejects and/or spoilage.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

Imported Merchandise or Drawback Products¹ To Be Designated as Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products

the Basis for Drawback on the Exported Products.

Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The imported merchandise designated on drawback claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).

2. Frozen concentrated orange juice.

3. Bulk concentrated orange juice.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice.

Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

Concentrated orange juice for manufacturing as described in the left-hand parallel column.

than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. Multiple Products, Waste, Loss or Gain Not applicable.

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

G. Procedures and Records Maintained Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise² used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the designated merchandise to produce articles. During the same 3-year period, the

² If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 191 of the Customs Regulations and this general ruling.

VIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Orange Juice (T.D. 85-110)

A. Same Kind and Quality (Parallel Columns) of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products

Concentrated orange juice for manufacturing as described in the left-hand parallel column.

manufacturer or producer produced³ the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained", and will show what components were blended with the concentrated orange juice for manufacturing. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as "cutback", it will not be included in the "pound solids" when computing the drawback due.

J. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office

³ The date of production is the date an article is completed.

which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require

all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

IX. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives (T.D. 84-49)

A. Parallel Columns—"Same Kind and Quality"

Imported Merchandise or Drawback Products¹ To Be Designated as Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products.

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The manufacturer or producer will substitute crude petroleum for crude petroleum and a petroleum derivative for the same petroleum derivative on a class-for-class basis only.

Class Designations:

- Class I—API Gravity 0—11.9
- Class II—API Gravity 12.0—24.9
- Class III—API Gravity 25.0—44.9
- Class IV—API Gravity 45—up

The imported merchandise which the manufacturer or producer will designate on its claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

B. Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquefied Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

C. Exported Articles on Which Drawback Will Be Claimed

See the General Instructions, I.A.7., for this general drawback ruling. Each article to be exported must be named. When the identity of the product is not clearly evident by its name, there must be a statement as to what the product is, *e.g.*, a herbicide.

D. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see § 191.9 of this part).

E. Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

F. Multiple Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, the manufacturer or producer agrees to record the relative values at the time of separation. The entire period covered by an abstract is to be treated at the time of separation. The value per unit of each product shall be the average market value for the abstract period.

2. Producibility

The manufacturer or producer can vary the proportionate quantity of each product. The manufacturer or producer understands that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. The records of the manufacturer or producer will show that all of the products exported for which drawback will be claimed under this general manufacturing drawback ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

The manufacturer or producer agrees to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66-16.²

There are no valuable wastes as a result of the processing.

G. Loss or Gain

Because the manufacturer or producer keeps records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show

a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the merchandise designated;
2. The quantity of merchandise of the same kind and quality as the designated merchandise used to produce the exported articles.
3. That, within 3 years after receiving it at its refinery, the manufacturer or producer used the designated merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced the exported articles.

4(a). The manufacturer or producer agrees to use a 28-31 day period (monthly) abstract period for each refinery covered by this general manufacturing drawback ruling, or

(b). The manufacturer or producer agrees to use an abstract period (not to exceed 1 year) for each refinery covered by this general manufacturing drawback ruling. The manufacturer or producer certifies that if it were to file abstracts covering each manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed, for the same class of designated merchandise, the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period

² A manufacturer who proposes to use standards other than those in T.D. 66-16 must state the proposed standards and provide sufficient information to the Customs Service in order for those proposed standards to be verified in accordance with T.D. 84-49.

chosen (not to exceed 1 year (see General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. It is understood that drawback is not payable without proof of compliance. Records will be kept in accordance with T.D. 84-49, as amended by T.D. 95-61.

J. Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights shall be

deemed waived. The procedure the manufacturer or producer shall follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E-1. It is understood that claims involving residual rights shall be filed only at the port where the Exhibit E reserving such right was filed.

K. Inventory Procedures

The manufacturer or producer realizes that inventory control is of major importance. In accordance with the normal accounting procedures of the manufacturer or producer, each refinery prepares a monthly stock and yield report, which accounts for inventories, production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to the drawback claims of the manufacturer or producer and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

L. Basis of Claim for Drawback

The amount of raw material on which drawback may be based shall be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of any one type and class of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry shall not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The

quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material of the same type and class which would be required to produce the exported products in the quantities exported.

M. Agreements

The manufacturer or producer specifically agrees that it will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

BILLING CODE 4820-02-P

EXHIBIT A

ABSTRACT OF MANUFACTURING RECORDS
 ABC OIL CO. INC. - BEAUMONT, TEXAS REFINERY
 PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Material Used (in Bbls. at 60°)

	TOTALS	CRUDES				DERIVATIVES	
		CLASS I	CLASS II	CLASS III	CLASS IV	CRUDE TOPS CLASS IV	UNFINISHED NAPHTHA CLASS IV
1) Opening Inventory	4,007,438						
2) Material Introduced*	7,450,732	- 0 -	619,473	6,367,991	-0-	101,224	362,044
3) Closing Inventory	3,671,005						
4) Total Consumption	7,787,165						

Line (1) - Stock in process at beginning of manufacturing period.

Line (2) - Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

* All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B

**ABSTRACT OF PRODUCTION
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995**

(5) Product	(6) Quantity in Bbls.	(7) Value per Bbl.	(8) Value of Product	(9) Drawback Factor per Bbl.
1. Motor Gasoline	2,699,934	\$ 6.14333	\$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	.77398
7. Residual Oils	308,002	2.51322	774,077	.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	.21583
11. Asphalt	75,231	3.59105	270,158	.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -
13. Still Gas	245,784	1.00530	247,087	.17457
14. Liquefied Refinery Gas	524,423	2.23013	1,169,531	.38726
15. Petrochemical Synthetic Rubber	- 0 -	- 0 -	- 0 -	- 0 -
16. Petrochemical Plastics & Resins	- 0 -	- 0 -	- 0 -	- 0 -
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
TOTAL	7,787,165		\$ 44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of product. (Formula for obtaining drawback factors: \$44,844,327 ÷ 7,787,165 bbls. = \$5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C.—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals, all other	
	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11-A) Receipts								
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries							696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
	278,286	4.64041						
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.

Line (11)—From production period under consideration.

Line (11-A)—Product received from other sources.

Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (see column 18).

Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.

Line (14)—From earliest on hand after lines (12) and (13) are deducted.

Line (15)—Balance on hand.

BILLING CODE 4820-02-M

EXHIBIT D

RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

(16)	(17)	(18)	(19)	(20)	(20a)
Product	Quantity in Bbls. Exported	Quantity in Bbls. in the Terms of the Abstract	Drawback Factor per Bbl.	Crude Allowed for Drawback in Bbls.	Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,218 176	1.00126 1.01300	11,232 178	
Residual Oils	125,618	21,221 104,397	.45962 .43642	9,754 45,561	
Lubricating Oils	8,875	8,774	4.52178	39,674	
Petrochemicals - Other	195	696 319 195	1.00244 1.07895 1.00244	195	698 344
TOTAL	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation - \$.1050 per bbl. (class III crude)
Amount of drawback claimed - gross - 106,594 x .1050 = \$11,192
Less 1%
Amount of drawback claimed - net \$11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col. (20) Raw materials (crude or derivatives) allowable, determined by multiplying column 18 by column 19.
Col. (20a) Raw materials (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E

PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES)

ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
 PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated -- Crude, Class III

(21) Product	(22) Quantity In Barrels	(23) Industry Standard	(24) Quantity of Raw Material Of Type and Class Designated Needed To Produce Product
Aviation Gasoline	11,394	40%	28,485
Residual Oils	125,618	83%	151,347
Lubricating Oils	8,774	50%	17,548
Petrochemicals, other	(195)		
Petrochemicals, other (drawback deliveries)	(1,015)		
Petrochemicals, other (Total)	<u>1,210</u>	29%	4,172
Total	146,996		

- A - Crude allowed (column 20: 106,594 plus column 20a: 1,042
 B - Total quantity exported (including drawback deliveries) (column 22): 107,636 bbls.
 C - Largest quantity of raw material needed to produce an individual exported product (see column 24): 146,996 "
 D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered). 151,347 "
 E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): NONE
 151,347 "

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E - 1

**PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED
AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED**

**ABC OIL CO., INC. - TULSA, OKLAHOMA REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995**

Type and Class of Raw Material Designated - Crude, Class III

(21) Product	(22) Quantity in Barrels	(23) Industry Standard	(24) Quantity of Raw Material Of Type and Class Designated Needed to Produce Product	Covered by: 1. Period 2. Refinery	(19) Drawback Factor per Barrel	(20) Crude al- lowed for drawback
Aviation Gasoline	11,394	40%	Separate 28,485		1.00126	11,232
Residual Oils	125,618	83%	151,347	1 Jan. 1995	1.01300	178
Lubricating Oils	8,774	50%	17,932	2 Beaumont	1.00244	195
Petrochemicals, Other (Drawback Deliveries)	(1,015)					
Petrochemicals, other (Total)	1,210	29%	4,172			
[Residual Rights]						
Aviation Gasoline	256	40%	640	1 Jan. 1995	1.01265	259
Lubricating Oils	192	50%	384	2 Tulsa	1.12412108	881
Petrochemicals, Other	96	29%	331			108
Distillate Oils	3807	89%	4,278		.76624	2,917
	151,347				Subtotal	4,165
					Total	110,759

A - Crude allowed (column 20): 110,759; plus crude allowed for drawback deliveries: 1,042

B - Total quantity exported (including drawback deliveries)(column 22):

Drawback Computation
4,165*bbbls. @10% = \$437.33

C - Largest quantity of raw material needed to produce an individual exported product (see col. 24):

Less 1% 4.37
Amount of Drawback
Claim - Net

D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently
on a practical operating basis, using the most efficient processing equipment existing within

\$432.96 the domestic industry, the exported articles (including drawback deliveries) in the quantities
exported (or delivered):

E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is
largest, plus D, if applicable):

See subtotal, col.20, for Residual
Rights above
151,347

NONE

CERTIFICATE

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of Imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E (COMBINATION).—PRODUCTIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

(21) Product	(22) Quantity in barrels	(23) Industry standard (%)	(24) Quantity of raw material of type and class des- ignated needed to produce product per barrel	(19) Drawback factor	(20) Crude al- lowed for drawback
Aviation Gasoline ¹	¹ 11,218	40	28,485	1.00126	11,232
	¹ 176	40	440	1.01300	178
Residual Oils ¹	¹ 21,221	83	25,567	.45962	9,754
	¹ 104,397	83	125,780	.43642	45,561
Lubricating Oils ¹	¹ 8,774	50	17,548	4.52178	39,674
Petrochemicals, Other ¹	¹ 195	29	672	1.00244	195
Petrochemicals, Other ²	² 696	29	2,400	1.00244	698
Petrochemicals, Other ²	² 319	29	1,100	1.07895	344
Total	146,996	.....	.....	.....	107,636

¹ Exports.

² Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

BILLING CODE 4820-02-M

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

\$.1050	per barrel	(Class III crude)
\$.0525	per barrel	(Class II crude)

Amount of drawback claimed-	gross: 81,638	x	.1050=\$8,571.99
	24,956	x	.0525=
			\$1,310.19
			\$9,882.18
	(Rounded Off)		9,882
	Less 1%		<u>-99</u>

Amount of drawback claimed-	net:	\$9,783
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EXHIBIT F.—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY
 [Period From January 1, 1995 to January 31, 1995]

Certificate of delivery No.	Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
3155	26192	04/13/93	Class III Crude	75,125	04/13/93	May 1993	\$.1050
	23990	08/04/94	do	37,240	08/04/94	Oct. 1994	.1050
	22517	10/05/94	do	38,982	10/05/94	Nov. 1994	.1050

X. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Piece Goods (T.D. 83-73)

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products¹ to be Designated as Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.

Piece goods Piece goods.

¹Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The piece goods used in manufacture will be the same kind and quality as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products (including, if applicable, multiple products), or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods of the same kind and quality as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;
2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.*, print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, *etc.* The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. The substituted piece goods used in the manufacture of articles for

exportation with drawback will be so similar in quality to the imported piece goods designated for the basis of allowance of drawback, that the piece goods used, if imported, would have been subject to the same or greater amount of duty as was paid on the imported designated piece goods. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s. 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the quantity of rag waste, if any, and its value. In instances where rag

waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the piece goods put into the finishing processes.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise² used to produce the exported articles;
3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced³ the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation

²If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

³The date of production is the date an article is completed.

of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

XI. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Raw Sugar (T.D. 83-59)

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

- A. The drawback allowance shall not exceed 99 percent of the duty paid on a

quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All "blackstrap," "unfiltered sirup," and "final molasses" shall be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records shall show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial

number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking shall be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract shall consist of: (1) A raw stock record (accounting for Refiner's raw lot No., Import entry No., Packages No. and kind, Pounds, Polarization, By whom imported or withdrawn, Date of importation, Date of receipt by refiner, Date of melt, Importing carrier, Country of origin); (2) A melt record [number of pounds in each lot melted] (accounting for Lot No. Pounds, and Polarization degrees and pounds sucrose); (3) Sirup stock records (accounting for Date of boiling, Refinery serial manufacture No., Quantity of sirup in gallons, and Pounds

sucrose contained therein); (4) Refined sugar stock record (accounting for Refinery serial production No., Date of manufacture, Hard or soft refined, Polarization and No., Net weight in pounds); (5) Recapitulation (consisting of (in pounds): (a) sucrose in process at beginning of period, (b) sucrose melted during period, (c) sucrose in process at end of period, (d) sucrose used in manufacture, and (e) sucrose contained in manufacture, in which item (a) plus item (b), minus item (c), should equal item (d)); and (6) A statement as follows:

I, _____, the _____ refiner at the _____ refinery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in

accordance with Treasury Decision 83-59 and Appendix A of 19 CFR Part 191 and which are at all times open to the inspection of Customs.

. Date _____
 . Signature _____

O. The refiner shall file with each abstract a statement, showing the average market values of the products specified in the abstract and including a statement as follows:

I, _____, (Official capacity) of the _____ (Refinery), do solemnly and truly declare that the values shown above are true to the best of my knowledge and belief, and can be verified by our records.

Date _____
 Signature _____
 P. At the end of each calendar month the refiner shall furnish to the drawback office a

statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling shall be in accordance with the example set forth in Treasury Decision 83-59.

R. Certificates of manufacture and delivery under this general ruling shall be in the following form:

Certificate of manufacture and delivery—
 Sugar and Sirup No. _____

Certificate of manufacture and delivery of _____ manufactured by _____ under abstract No. _____ filed at the port of _____.

Description	Quantity	Polarization

DESIGNATION OF IMPORTED SUGAR

Import entry No.	By whom imported or withdrawn from warehouse	Name of importing carrier	When imported	Where imported	Quantity of raw sugar (pounds)	Polarization	Sucrose (pounds)

I, _____, the _____ of _____, located at _____, declare that the sugar (or sirup) described in the within certificate of manufacture and delivery was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____ and was delivered to _____ on or about _____, _____, and that no other certificate of manufacture and delivery has been issued covering the above merchandise; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs.

I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup on _____.

. Date _____
 . Signature _____

S. Drawback entries under this general ruling shall be on Customs Form 7551 and, in addition to the information required thereon, shall state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling shall include a statement as follows:

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ [or, if the claim is based on a

certificate of manufacture and delivery, was manufactured by _____ at its refinery at _____ for which the accompanying certificate of manufacture and delivery was received by this company] and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. _____, Customs No. _____, on file with the port director at _____.

I further declare that the sugar or sirup specified therein was exported as stated in the entry.

. Date _____
 . Signature _____

T. General Statement. The refiner manufactures or produces for its own account. The refiner may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based

on the "appearing in" method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. Tradeoff. The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality requirements provided for in this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

X. Procedures And Records Maintained. Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
 2. The quantity of merchandise of the same kind and quality as the designated merchandise¹ used to produce the exported articles.

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to

¹ If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced.";

produce articles. During the same 3-year period, the refiner produced² the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate

organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

XII. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Steel (T.D. 81-74)

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products¹ to be Designated as the Basis for Drawback on the Exported Products.

Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.

Steel of one general class, *e.g.*, an ingot, falling within one SAE, AISI, or ASTM² specification and, if the specification contains one or more grades, falling within one grade of the specification.

Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof.

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

² Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

1. The duty-paid, duty-free, or domestic steel used instead of the imported, duty-paid steel (or drawback products) will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel (or drawback products) that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (*e.g.*, chrome content). If such variances occur, designation will be by "price extra", and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 5, *infra*, insofar as the coating or plating is concerned.

3. The duty-paid steel (or drawback products) will be so similar in quality to the steel used to manufacture the articles on which drawback will be claimed that the steel so used, if imported, would be classifiable in the same tariff subheading number and at the same rate of duty as the duty-paid imported steel.

4. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

5. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-paid, duty-free, or domestic steel used in place of the duty-paid steel (or drawback products) will have the same composition and thickness as the coating or plating on the

duty-paid steel. If the coated or plated duty-paid steel is within a SAE, AISI, ASTM specification, any duty-paid, duty-free, or domestic coated or plated steel covered by the same specification and grade (if two or more grades are in the specification) is considered to meet this criterion for "same kind and quality."

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results,

records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise³ used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced⁴ the exported articles.

³ If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

⁴ The date of production is the date an article is completed. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

² The date of production is the date an article is completed.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation

and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements

- The manufacturer or producer will:
1. Comply fully with the terms of this general ruling when claiming drawback;
 2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
 3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
 4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which

liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

XIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar (T.D. 81-92)

A. Same Kind and Quality (Parallel Columns)

Imported Merchandise or Drawback Products¹ to be Designated as the Basis for Drawback on the Exported Products.

1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be so similar in quality to the sugar used in manufacture of the products exported with drawback that the sugar used in manufacture would, if imported, be subject to the same amount of duty paid on a like quantity of designated sugar. Differences in value resulting from factors other than quality, such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances
3. Boiling with other substances,

4. Baking with other substances,
5. Additional similar processes

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained

- Records will be maintained to establish:
1. The identity and specifications of the designated merchandise;
 2. The quantity of merchandise of the same kind and quality as the designated

Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.

1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

merchandise² used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced³ the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures And Records Maintained". If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be

² If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles produced."

³ The date of production is the date an article is completed.

maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 191 of the Customs Regulations and this general ruling.

XIV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Woven Piece Goods (T.D. 83-84)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported woven piece goods, subject to the following special requirements:

A. Imported Merchandise or Drawback Products¹ Used

Imported merchandise or drawback products (woven piece goods) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer

under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

The piece goods used in manufacture or production under this general manufacturing drawback ruling may also be subjected to one or more finishing processes. Drawback shall not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the quantity of rag waste, if any, its value, and its disposition. If no waste results, records will be maintained to establish that fact. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the woven piece goods put into process.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise² used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading "Procedures and Records Maintained". If those records do not establish

satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer shall show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, and value of the imported (or drawback product) piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process or processes applied thereto, and the quantity and description of the piece goods obtained. The records shall also show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If remnants and/or spoilage occur during manufacture or production, the quantity of imported merchandise used shall be determined by deducting from the quantity of piece goods received and put into manufacture or production the quantity of such remnants and/or spoilage. The remaining quantity shall be reduced by the quantity thereof which the value of the rag waste, if any, would replace.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

¹Drawback products are those produced in the United States in accordance with the drawback law and regulations.

²If claims are to be made on an "appearing in" basis, the remainder of the sentence should read "appearing in the exported articles."

6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 191 of the Customs Regulations and this general ruling.

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

Table of Contents

- I. General.
- II. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) and 1313(b) (Combination).
- III. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b).
- IV. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(d).
- V. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(g).

I. General

These sample formats for applications for specific manufacturing drawback rulings must be submitted to and reviewed and approved by Customs Headquarters. A specific manufacturing drawback ruling consists of the letter of approval that Customs issues to the applicant, a synopsis of which is published in the Customs Bulletin, as provided in 19 CFR 191.8. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

II. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) and 1313(b) (Combination).

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund Determination Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g. Delaware) corporation (or other described

entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§ 1313 (a) & (b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to Names of Partners or Proprietor in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1) and § 191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A) or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Customs office with which claims will be filed, do not include any reference to that procedure in this application.)

PROCEDURES UNDER SECTION 1313(b) (PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS ¹ TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.
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- 1.
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¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim

drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be

substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to

enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.*, ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; *etc.* Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.* CAS number; Color Index Number, *etc.*) (In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.) (The descriptions of the "same kind and quality" merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE OR PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in § 191.2(q). In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete

explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are \$5, \$10, and \$50 respectively. The relative value of product A is \$300 divided by \$1500 or $\frac{1}{5}$. The relative value of B is $\frac{2}{5}$ and of product C is $\frac{3}{5}$, calculated in the same manner. This means that $\frac{1}{5}$ of the drawback product payments will be distributed to product A, $\frac{2}{5}$ to product B, and $\frac{3}{5}$ to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state "Not Applicable" for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state "Not Applicable" for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process,

which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the "used in" or "used in less valuable waste" methods are used (if the "appearing in" method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;
2. The quantity of merchandise of the same kind and quality as the designated

merchandise² we used to produce the exported articles;

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced³ the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS
RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without

² If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce."

³ The date of production is the date an article is completed.

specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at \$1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing in" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. "Appearing In" may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of \$.50 per

pound, then the 10 pounds of waste, having a total value of \$5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.*, a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.) (If the merchandise used under § 1313(a) is not also used under § 1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under § 1313(a). However, if the merchandise used under § 1313(a) is also used under § 1313(b) these sections need not be repeated unless they differ in some way from the § 1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and
2. The quantity of imported merchandise⁴ we used in producing the exported articles

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the § 1313(b) portion of your application. The legal requirements under § 1313(a) differ from those under § 1313(b).) (Describe your inventory procedures and state how you will identify the imported merchandise from the time it is received at your factory until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(See section with this title for procedures under § 1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under § 1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office

⁴ If claims are to be made on an "appearing In" basis, the remainder of the sentence should read "appearing in the exported articles we produce."

which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____, 19_____, makes this application binding on

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By ⁵ _____
(Signature and Title)

(Print Name)

III. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b)

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund
Determination Branch, 1300
Pennsylvania Avenue, N.W.,
Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, *e.g.* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs

⁵ Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(ies) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the

corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and § 191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the exporter? (If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS ¹ TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS.	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.
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¹ Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under § 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same

exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other

descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g. CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the "same kind and quality" merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g.,

a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in § 191.2(q). In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are \$5, \$10, and \$50 respectively. The relative value of product A is \$300 divided by \$1500 or $\frac{1}{5}$. The relative value of B is $\frac{2}{15}$ and of product C is $\frac{2}{3}$, calculated in the same manner. This means that $\frac{1}{5}$ of the drawback product payments

will be distributed to product A, $\frac{2}{15}$ to product B, and $\frac{2}{3}$ to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state "Not Applicable" for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state "Not Applicable" for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in

some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the "used in" or "used in less valuable waste" methods are used (if the "appearing in" method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provisions has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual

percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;
2. The quantity of merchandise of the same kind and quality as the designated merchandise² we used to produce the exported articles;
3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced³ the exported articles;

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS
RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC
MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY
WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.) (For example, if 100 pounds of material, valued at \$1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. "Appearing In" may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces

the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the Customs Regulations.) (Based on the previous examples, if the 10 pounds of waste had a value of \$.50 per pound, then the 10 pounds of waste, having a total value of \$.50, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering

² If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce."

³ The date of production is the date an article is completed.

changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____, 19____, makes this application binding on

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By⁴ _____

⁴ Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney

(Signature and Title)

(Print Name)

IV. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(d)

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund
Determination Branch, 1300
Pennsylvania Avenue, N.W.,
Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston,

filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for his own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of his products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and § 191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

(Regarding drawback operations conducted under § 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(d) is not allowable except where a manufacture or production exists. "Manufacture or production" is defined, for drawback purposes, in § 191.2(q). In order to obtain drawback under § 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required

whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the "used in" or "used in less valuable waste" methods are used (if the "appearing in" method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid

alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol¹ we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

Inventory Procedures

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

MANUFACTURING RECORDS FINISHED STOCK STORAGE RECORDS BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at \$1.00 per gallon, were used in

manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste would replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of \$.50 per gallon, then the 10 gallons of waste, having a total value of \$.50, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons "Used In" or the 90 gallons "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production:)

(An "abstract" is the summary of the records (which may be set forth on Customs Form

¹ If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce."

7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;
6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and
7. Issue instructions to insure proper compliance with title 19, United States Code,

section 1313, part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on _____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By ² _____
(Signature and Title)

(Print Name)

V. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(g).

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund
Determination Branch, 1300
Pennsylvania Avenue, N.W.,
Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see § 191.8(a).)

LOCATION OF FACTORY OR SHIPYARD

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

² Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings.)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the merchandise?

(If the applicant will not always be the importer, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the drawback claimant?

(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?) (There shall be included under this heading the following statement:

We are particularly aware of the terms of § 191.76(a)(1) of and subpart M of part 191 of the Customs Regulations, and shall comply with these sections where appropriate.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be

filed, do not include any reference to that procedure in this application.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported or drawback merchandise and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a "used in" or "appearing in" basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what "Basis" you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See "Basis of Claim for Drawback" section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured "by weight" unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state "Not Applicable.")

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and
2. The quantity of imported merchandise¹ we used in producing the exported article.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

CONSTRUCTION AND EQUIPMENT RECORDS

FINISHED STOCK STORAGE RECORDS SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The "Used In" basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the "Used In" basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at \$1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10

pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The "Appearing In" basis may be used regardless of whether there is waste. If the "Appearing In" basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the "Appearing In" basis. Drawback is payable on 99 percent of the duty paid on the quantity of imported material which appears in the exported articles. "Appearing In" may not be used if multiple products are involved.) (Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The "Used Less Valuable Waste" basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the "Used Less Valuable Waste" basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of \$.50 per pound, then the 10 pounds of waste, having a total value of \$.50, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material rather than on the 100 pounds "Used In" or the 90 pounds "Appearing In" as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A "schedule" shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and

¹ If claims are to be made on an "appearing in" basis, the remainder of this sentence should read "appearing in the exported articles we produce."

measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An "abstract" is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the "schedule" choice must base his claims on the "abstract" method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the "Appearing In" basis nor the "schedule" method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(g), part 191 of the Customs

Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19_____, makes this application binding on

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By² _____
(Signature and Title)

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 5, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98-5045 Filed 3-4-98; 8:45 am]

BILLING CODE 4820-02-P

² Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

Federal Register

Thursday
March 5, 1998

Part III

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Part 32, et al.

Federal Acquisition Regulation (FAR); and
Defense Federal Acquisition Regulation
Supplement (DFARS); Progress
Payments; Proposed Rule

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 32, 52, 232, and 252****Federal Acquisition Regulation (FAR);
and Defense Federal Acquisition
Regulation Supplement (DFARS);
Progress Payments**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advance notice of proposed rulemaking and public meeting.

SUMMARY: A special interagency team formed by the Director of Defense Procurement has identified potential changes to progress payment policies and solicits comments from both government and industry personnel regarding those changes.

Comments may be submitted in two formats: By letter to the address specified below, or by electronic response on the Director of Defense Procurement Office of Cost, Pricing, and Finance Internet Home Page: <http://www.acq.osd.mil/dp/cpf>. Comments may address any of the potential changes identified in this notice, as well as any other changes to existing regulations, forms, or procedures that pertain to progress payments. Comments should be accompanied by a supporting rationale for proposed changes.

In addition, a public meeting will be held to discuss the potential changes under consideration by the interagency team, as well as comments received in response to this notice.

DATES: Comments should be submitted on or before April 6, 1998.

ADDRESSES: Interested parties should submit written comments to: Chair, Progress Payments Rewrite Team, Mr. Richard Brown, PDUSD (A&T) DP/CPF, Room 3C800, The Pentagon, Washington, DC 20301-3060.

Public Meeting: A public meeting will be conducted at the Headquarters, Defense Logistics Agency, Command Conference Room (Room 2419), 8725 John J. Kingman Road, Fort Belvoir, Virginia, from 9:30 a.m. to 3:00 p.m., local time, on April 23, 1998. Those who plan to attend the public meeting are asked to pre-register, if possible. The names of expected attendees should be provided, no later than 4:00 p.m., local time, April 21, 1998, to Mr. Richard

Brown, by telephone, FAX, mail, or e-mail, at the phone number(s) and address indicated herein. Walk-in attendance will be accommodated. However, pre-registration is desired, as the names of pre-registrants will be provided to building security to facilitate building access.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Brown, by telephone at (703) 695-7197, by FAX at (703) 693-9616, or by e-mail at brownrg@acq.osd.mil.

SUPPLEMENTARY INFORMATION:**I. Draft Materials**

The potential changes to the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) discussed herein are available in draft form electronically in Microsoft Word 6.0 text format at the Cost, Pricing, and Finance Internet Office Home Page—<http://www.acq.osd.mil/dp/cpf/>

Note: The draft changes do not reflect a proposed rule, nor do they reflect agreement by all members of the interagency team; they are provided for information and discussion purposes only.

Paper copies may be obtained from Mr. Richard Brown, PDUSD (A&T) DP/CPF, Washington, DC 20301-3060.

II. Background

The Director of Defense Procurement, Department of Defense, established a special interagency team, with participants from the Office of the Under Secretary of Defense (Comptroller), the Military Departments, the Defense Logistics Agency, the Defense Contract Audit Agency, the Defense Finance and Accounting Service, the Departments of Energy and Transportation, and the National Aeronautics and Space Administration, to review and rewrite FAR Part 32 and Part 52 provisions regarding progress payments, to make them easier to understand and to minimize the burdens imposed on contractors and contracting officers. An advance notice of proposed rulemaking (ANPR), published in the **Federal Register** on May 1, 1997 (62 FR 23740), solicited comments on how FAR Subpart 32.5, Progress Payments Based on Costs, the clause at FAR 52.232.16, Progress Payments, and Standard Form 1443, Contractor's Request For Progress Payments, might be revised to improve the process of applying for and administering progress payments. The interagency team has considered public comments received in response to the ANPR, reviewed progress payment policies, and identified potential areas

for policy changes. The purpose of this notice is to provide the public with a preliminary indication of changes under consideration, and solicit comments and suggestions on those changes, via public comments and a public hearing. The interagency working group will submit a report, including a draft proposed rule, for consideration by the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council. Subsequently, a proposed rule will be published for additional public comments.

III. Overview of Policy Changes Under Consideration

The interagency team has identified the following areas for potential policy changes. Comments are requested on these areas and any other ideas interested parties may offer:

A. Elimination of the "Paid Cost Rule"

Currently, large businesses must have actually paid a subcontractor before including the payment in progress payment billings. This is the so-called "paid cost rule." In contrast, small businesses need only have incurred the subcontract cost, provided the payment will be made in the ordinary course of business. The interagency team proposes the elimination of this "paid cost rule" by revising the Progress Payments clause (FAR 52.232-16), as needed, to put large and small businesses on the same footing.

B. Subcontractor Performance-Based Payments and Commercial Financing Payments

The interagency team recommends that the Progress Payments clause (FAR 52.232-16) be revised as necessary to permit prime contractors that receive progress payments to use performance-based payments or commercial financing payments with their subcontractors, provided the subcontracts that include such payments meet the same criteria and use similar provisions that the Government uses with its prime contractors. As a consequence, prime contractors will be reimbursed 100 percent of all subcontractor financing, instead of just progress payment financing.

C. Expand Use of Performance-Based Payments to Competitive Solicitations

This would remove the limitation at FAR 32.1000(d), and allow performance-based payments to be used in competitive solicitations, provided it is practicable to do so.

D. Increase Threshold for Progress Payments

The interagency team recommends raising the threshold at FAR 32.502-1(b), for use of progress payments with large businesses, from \$1 million to \$2 million. This threshold has not been increased in over 30 years, and should be raised in order to reduce the administrative burden that small dollar actions place on the contract administration and payment process.

E. Limit Applicability of Progress Payments on Ordering Contracts

When ordering contracts are used and include a provision for progress payments, the interagency team recommends that progress payments be made applicable to only those orders that exceed the simplified acquisition threshold. This will ease the burden of administering progress payments on numerous small dollar actions.

F. Eliminate Coverage for Flexible Progress Payments

DoD has not used flexible progress payments in new contracts since fiscal year 1994. Flexible progress payments are administratively complex and burdensome, and may be replaced with performance-based payments in some situations. Consequently, the interagency team recommends

elimination of all DFARS coverage related to flexible progress payments.

G. Ensure Consideration of Performance-Based Payments

The interagency team recommends additional coverage be added to FAR 32.502-1 to ensure that use of performance-based payments is initially considered, and deemed impractical by the contracting officer, before a decision is made to provide customary progress payments. This is a more appropriate implementation of the 10 U.S.C. 2307(b) requirement that performance-based payments be used wherever practicable.

H. Clarify Purpose of the Loss Ratio

The interagency team recommends that FAR 32.503-6(f) be revised to make clear that, on a loss contract, application of the loss ratio constitutes the adjustment that ensures that progress payments do not exceed the value of work performed. This is in response to those who believe that an additional adjustment, over and above the application of the loss ratio, may be necessary to preclude overpayment of progress payments.

I. Remove the Limitation on General & Administrative Expenses

This limitation at FAR 32.503-7 applies to only those contractors that

have established an inventory suspense account under 48 CFR 9904.410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives. The provision dates from 1979 and the interagency team believes it is no longer needed.

J. Remove the Requirement for Contracting Officer Review of Quarterly Statements

This requirement at FAR 32.503-13 applies to quarterly statements submitted under price revision contracts, for comparison with progress payment requests. The interagency team has concluded that it adds little or no value to progress payment administration, provided the contracting officer is otherwise adequately administering progress payments.

List of Subjects in 48 CFR Parts 32, 52, 232, and 252

Government procurement.

Dated: February 27, 1998.

Michele P. Peterson,

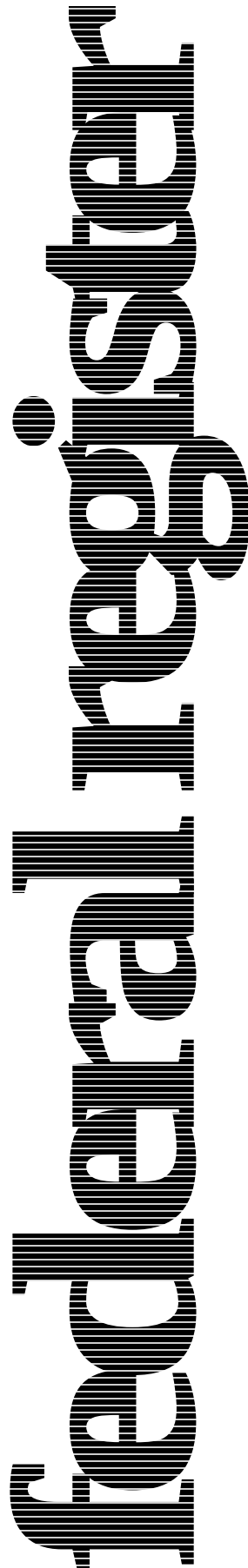
Executive Editor, Defense Acquisition, Regulations Council, Department of Defense.

Edward C. Loeb,

Director, Federal Acquisition, Policy Division, General Services Administration.

[FR Doc. 98-5607 Filed 3-4-98; 8:45 am]

BILLING CODE 6820-EP-M



Thursday
March 5, 1998

Part IV

Department of Education

Technology Innovation Challenge Grants;
Final Priority and Selection Criteria and
Applications for New Awards for Fiscal
Year (FY) 1998; Notices

DEPARTMENT OF EDUCATION

Technology Innovation Challenge Grants; Notice of Final Priority and Selection Criteria

SUMMARY: The Secretary announces a final priority for the Technology Innovation Challenge Grant Program, administered by the Office of Educational Research and Improvement (OERI). The Secretary also establishes selection criteria for evaluating and selecting applications submitted under this priority. The Secretary may use this priority only in fiscal year 1998. The Secretary takes these actions to focus Federal assistance on professional development programs that foster the use and integration of advanced technology into the curriculum in compelling and effective ways.

EFFECTIVE DATE: This priority takes effect April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Payer or Shirley Steele, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Suite 522, Washington, DC 20208-5544. Telephone: (202) 208-3882. E-mail addresses are: elizabeth__payer@ed.gov or shirley__steele@ed.gov. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to either contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Technology Innovation Challenge Grant Program is authorized in Title III, section 3136, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 6846).

Under this program the Secretary makes grants to consortia. A consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line and may include other LEAs, private schools, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, and other appropriate entities. In fiscal year 1998, the Technology Innovation Challenge Grant program will focus on professional development by providing support to consortia that have developed programs, or are adapting or expanding existing programs, for

technology training for teachers and other educators to improve instruction.

Access to computers and the use of networked, multimedia computers in the schools is on the rise. In part, this is the result of support provided by the Technology Literacy Challenge Fund, the Technology Innovation Challenge Grant Program, the National Science Foundation, the Department of Commerce, and other Federal departments and agencies. In addition, the Universal Service Program, often referred to as the "E-Rate", will help to ensure that all eligible schools and libraries have affordable access to modern telecommunications and information services.

While the numbers of computers and connections to the Information Superhighway have increased in the schools, the capacity of the teaching force to use this technology in instructional practice has not kept pace. A 1994 survey by the U.S. Department of Education shows that only 15 percent of the nation's teachers had had at least nine hours of instruction in educational technology.

It is increasingly apparent that the lack of professional development in the use of educational technology is a critical factor that limits the benefits of technology for student learning. A 1995 Office of Technology Assessment (OTA) study, *Teachers and Technology: Making the Connection*, concluded that "helping teachers use technology effectively may be the most important step to assuring that current and future investments in technology are realized." The 1997 report of the President's Committee of Advisors on Science and Technology (PCAST) has also emphasized this point by stressing that "the substantial investment in hardware, infrastructure, software, and content that is recommended by this report will be largely wasted if K-12 teachers are not provided with the preparation and support they will need to effectively integrate information technology into their teaching." According to the National Center for Education Statistics, only 15-20 percent of teachers are regularly using advanced telecommunications for curriculum development, professional development, and teaching.

Over the next ten years, two million new teachers will need to be hired to accommodate expanding enrollment and to replace retiring teachers. All of these teachers should be prepared to use advanced technology and to integrate education technology into teaching methods and content areas to help students learn. And yet, as the OTA report has pointed out, "* * * most

new teachers graduate from teacher preparation institutions with limited knowledge of the ways technology can be used in their professional practice." The Secretary believes that focusing this year's Technology Innovation Challenge Grant Program competition on professional development will help to provide the additional support that is needed for preparing teachers to teach effectively using technology. Therefore, the Secretary is establishing an absolute preference for those applications submitted by consortia that have developed or adopted innovative programs to prepare teachers, administrators, and other educators to integrate education technology into teaching methods that improve instruction.

Applications under this competition will be evaluated on the extent to which they address the most pressing *professional development* needs as reflected in statewide technology plans. Students from low income communities and other areas in need of technology must not be left behind in the acquisition of knowledge and skills for responsible citizenship and productive work in the 21st century. In awarding Technology Innovation Challenge Grants, the Secretary will evaluate the extent to which the proposed project is designed to serve areas with a high number or percentage of disadvantaged students or the greatest need for educational technology.

Because the State plays a critical role in the licensure of new teachers and recertification of experienced teachers, the Secretary believes that a strong application under this competition should propose that the State educational agency (SEA) have a significant role in the consortium that is applying. Also, the SEA has comprehensive information about the range of technology programs in school districts throughout the State and is in a unique position to coordinate a consortium initiative with other complementary efforts. Therefore, the Secretary is particularly interested in receiving applications in which the SEA has a leadership role in the consortium and is committed to the activities that are proposed. The Secretary believes that consortium activities should be designed to create new partnerships or strengthen already existing partnerships among SEAs, schools of education, LEAs, and the education technology private sector. Cooperation and collaboration among all of these partners will provide benefits to teachers, students, and the community through the improved use of

educational technology in schools and classrooms.

In addition to an SEA, there are other important stakeholders in a consortium that can influence the ability of teachers to successfully use technology in the classroom. These stakeholders include school districts that hire teachers and provide for their on-going professional development, academic content specialists, those segments of the private sector that develop and market educational technology products and services, and colleges and universities with teacher preparation programs. Institutions of higher education that are approved by the State to provide both pre-service and in-service teacher training are particularly important in these collaborative efforts. Yet, a majority of teacher preparation programs are falling far short of what needs to be done. As the 1997 National Council for the Accreditation of Teacher Education Report *Technology and the New Professional Teacher* points out, colleges of teacher education treat "technology" as a special addition to the teacher education curriculum rather than a topic that needs to be incorporated across the entire teacher education program. The Report emphasizes that "* * * teachers-in-training are provided instruction in 'computer literacy' and are shown examples of computer software, but they rarely are required to apply technology in their courses and are denied role models of faculty employing technology in their own work." It is critical that schools of education lead the way in preparing tomorrow's classroom teachers to incorporate technology into their teaching.

In submitting applications under this competition, the Secretary strongly urges applicants to use the *Mission and Principles of Professional Development* prepared by the U. S. Department of Education in 1995. The *Mission and Principles* describes those characteristics that exemplify high-quality professional development programs. A statement of the mission and principles is published as Appendix A to this notice.

Priorities

Absolute Priority

The Secretary gives an absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority (34 CFR 75.105(c)(3)).

Activities to Strengthen and Enhance Professional Development

The Secretary funds only those applications that are submitted by LEAs on behalf of consortia that have developed or adopted innovative professional development programs for teachers, administrators and other educators to use advanced technology and to integrate innovative applications of education technology into teaching methods that will directly benefit students through improved instruction. The Secretary will fund only those applications that propose to improve, expand, and disseminate those successful training models.

Invitational Priority

The Secretary is particularly interested in applications that meet the invitational priority in the next paragraph. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applications submitted by an LEA on behalf of a consortium that is dedicated to teacher training in technology should involve, as members of the consortium, the SEA, at least one college of education, private sector education technology firms, non-profit education organizations, one or more LEAs, and other appropriate entities. In addition, the Secretary is particularly interested in applications in which: (1) the SEA has a leadership role in the consortium and promises to give its full support and commitment to the activities that are being planned, (2) proposed consortium activities would strengthen or create a partnership among the SEA, schools of education, LEAs, and the education technology private sector, and (3) the model technology training programs for teachers can be adapted and replicated at other sites. Because of the key role that an SEA will play in a consortium, the Secretary is particularly interested in receiving a single application from a State. However, more than one application from within a State is allowable. Furthermore, applications involving more than one State or SEA would not be inconsistent with this invitational priority.

Selection Criteria

The Secretary establishes the following unweighted selection criteria to evaluate applications:

(a) *Significance*. The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Is designed to serve Empowerment Zones, Enterprise Communities, or other

areas with a high number or percentage of disadvantaged students or the greatest need for educational technology;

(2) Includes strategies and activities that address the most pressing professional development needs identified in the statewide educational technology plan submitted under ESEA, section 3133 for the State or States in which the applying members of the consortium are located;

(3) Involves approaches for which there is explicit evidence of innovation and effectiveness;

(4) Establishes and supports high standards for professional development in education technology and its use in schools consistent with statewide reform initiatives, including State content and performance standards;

(5) Includes specific efforts by consortium members to be publicly accountable for improving education through the use of technology; and

(6) Involves a coherent plan for improving, expanding, and disseminating a successful professional development model(s).

(b) *Feasibility*. The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will prepare teachers for successful, effective, and efficient uses of technologies for improved instruction that will be sustainable beyond the period of the grant;

(2) The members of the consortium or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project;

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination strategies; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project; and

(4) The methods of evaluation examine the effectiveness of project implementation strategies, use objective performance measures related to the intended outcomes of the project, and produce quantitative and qualitative data to the extent possible. The evaluation provides guidance on effective strategies suitable for replication in other settings.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as Appendix B to this notice.

Note: This notice of final priority and selection criteria does *not* solicit applications. A notice inviting applications under this competition is published in a separate announcement in this issue of the **Federal Register**.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this notice is 1850-0743.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the priority and selection criteria in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new program from this requirement. The Conference Report for the Department's fiscal year 1998 appropriation describes the program covered by this notice as "a new competitive grants program." The Assistant Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comment with respect to the absolute priority and selection criteria. The absolute priority and selection criteria will apply only to the fiscal year 1998 grant competition.

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<http://gcs.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1-888-293-6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Number 84.303A, Technology Innovation Challenge Grants)

Program Authority: 20 U.S.C. 6846.

Dated: February 27, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix A—Mission and Principles of Professional Development

Professional development plays an essential role in successful education reform. Professional development serves as the bridge between where prospective and experienced educators are now and where they will need to be to meet the new challenges of guiding all students in achieving to higher standards of learning and development.

High-quality professional development as envisioned here refers to rigorous and relevant content, strategies, and organizational supports that ensure the preparation and career-long development of teachers and others whose competence, expectations and actions influence the teaching and learning environment. Both pre- and in-service professional development require partnerships among schools, higher education institutions and other appropriate entities to promote inclusive learning communities of everyone who impacts students and their learning. Those within and outside schools need to work together to bring to bear the ideas, commitment and other resources that will be necessary to address important and complex educational issues in a variety of settings and for a diverse student body.

Equitable access for all educators to such professional development opportunities is imperative. Moreover, professional development works best when it is part of a systemwide effort to improve and integrate the recruitment, selection, preparation, initial licensing, induction, ongoing development and support, and advanced certification of educators.

High-quality professional development should incorporate *all* of the principles stated below. Adequately addressing each of these principles is necessary for a full realization of the potential of individuals, school

communities and institutions to improve and excel.

The mission of professional development is to prepare and support educators to help all students achieve to high standards of learning and development.

Professional Development:

- Focuses on teachers as central to student learning, yet includes all other members of the school community;

- Focuses on individual, collegial, and organizational improvement;

- Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;

- Reflects best available research and practice in teaching, learning, and leadership;

- Enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

- Promotes continuous inquiry and improvement embedded in the daily life of schools;

- Is planned collaboratively by those who will participate in and facilitate that development;

- Requires substantial time and other resources;

- Is driven by a coherent long-term plan;

- Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and this assessment guides subsequent professional development efforts.

The mission statement and principles of professional development outlined above were published in draft form in the **Federal Register** in December, 1994, and disseminated to more than 600 people and organizations with interests in education. After careful consideration of the extensive comments the Department received, the principles were revised and finalized. We share them with you in the firm belief that high-quality professional development reflecting these principles, which are grounded in the practical wisdom of leading educators across the country, will have a positive and lasting effect on teaching and learning.

Appendix B—Empowerment Zones and Enterprise Communities

Empowerment Zones

California: Los Angeles

California: Oakland

Georgia: Atlanta

Illinois: Chicago

Kentucky: Kentucky Highlands*

Maryland: Baltimore

Massachusetts: Boston

Michigan: Detroit

Mississippi: Mid Delta*

Missouri/Kansas: Kansas City, Kansas City

New York: Harlem, Bronx

Ohio: Cleveland

Pennsylvania/New Jersey: Philadelphia, Camden

Texas: Houston

Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham

Alabama: Chambers County*
 Alabama: Greene, Sumter Counties*
 Arizona: Phoenix
 Arizona: Arizona Border*
 Arkansas: East Central*
 Arkansas: Mississippi County*
 Arkansas: Pulaski County
 California: Imperial County*
 California: L.A., Huntington Park
 California: San Diego
 California: San Francisco, Bayview, Hunter's Point
 California: Watsonville*
 Colorado: Denver
 Connecticut: Bridgeport
 Connecticut: New Haven
 Delaware: Wilmington
 District of Columbia: Washington
 Florida: Jackson County*
 Florida: Tampa
 Florida: Miami, Dade County
 Georgia: Albany
 Georgia: Central Savannah*
 Georgia: Crisp, Dooley Counties*
 Illinois: East St. Louis
 Illinois: Springfield
 Indiana: Indianapolis
 Iowa: Des Moines
 Kentucky: Louisville
 Louisiana: Northeast Delta*
 Louisiana: Macon Ridge*
 Louisiana: New Orleans
 Louisiana: Ouachita Parish
 Massachusetts: Lowell
 Massachusetts: Springfield
 Michigan: Five Cap*
 Michigan: Flint
 Michigan: Muskegon
 Minnesota: Minneapolis
 Minnesota: St. Paul
 Mississippi: Jackson
 Mississippi: North Delta*
 Missouri: East Prairie*
 Missouri: St. Louis
 Nebraska: Omaha
 Nevada: Clarke County, Las Vegas
 New Hampshire: Manchester
 New Jersey: Newark
 New Mexico: Albuquerque
 New Mexico: Mora, Rio Arriba, Taos Counties*
 New York: Albany, Schenectady, Troy
 New York: Buffalo
 New York: Newburgh, Kingston
 New York: Rochester
 North Carolina: Charlotte
 North Carolina: Halifax, Edgecombe, Wilson Counties*
 North Carolina: Robeson County*
 Ohio: Akron
 Ohio: Columbus
 Ohio: Greater Portsmouth *
 Oklahoma: Choctaw, McCurtain Counties*
 Oklahoma: Oklahoma City
 Oregon: Josephine*
 Oregon: Portland
 Pennsylvania: Harrisburg
 Pennsylvania: Lock Haven*
 Pennsylvania: Pittsburgh
 Rhode Island: Providence
 South Dakota: Deadle, Spink Counties*
 South Carolina: Charleston
 South Carolina: Williamsburg County*
 Tennessee: Fayette, Haywood Counties*
 Tennessee: Memphis
 Tennessee: Nashville

Tennessee/Kentucky: Scott, McCreary Counties*
 Texas: Dallas
 Texas: El Paso
 Texas: San Antonio
 Texas: Waco
 Utah: Ogden
 Vermont: Burlington
 Virginia: Accomack*
 Virginia: Norfolk
 Washington: Lower Yakima*
 Washington: Seattle
 Washington: Tacoma
 West Virginia: West Central*
 West Virginia: Huntington
 West Virginia: McDowell*
 Wisconsin: Milwaukee

* Denotes rural designee.

[FR Doc. 98-5736 Filed 3-4-98; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No. 84.303A]

Technology Innovation Challenge Grants; Notice Inviting Applications For New Awards for Fiscal Year (FY) 1998

Purpose of Program

The Technology Innovation Challenge Grant Program provides grants to consortia that are working to improve and expand new applications of technology to strengthen school reform efforts, improve student achievement, and provide for sustained professional development of teachers, administrators, and school library media personnel. In FY 1998, the Technology Innovation Challenge Grant Program will focus on professional development by providing support to consortia that have developed programs, or are adapting or expanding existing programs, for technology training for teachers and other educators to improve instruction.

Eligible Applicants

Only consortia may receive grants under this program. A consortium must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line. A consortium may also include other LEAs, private schools, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, and other appropriate entities.

Note: In each consortium a participating LEA shall submit the application on behalf of the consortium and serve as the fiscal agent for the grant.

Deadline For Receipt of Applications: May 29, 1998.

Deadline For Intergovernmental Review: July 29, 1998.

Applications Available: March 31, 1998.

Estimated Available Funds: \$30,000,000.

Estimated Range of Awards:

\$1,000,000 to \$2,000,000 per year.

Estimated Average Size of Awards: \$1,500,000 per year.

Estimated Number of Awards: 20.

Project Period: 5 years. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Note: The Department of Education is not bound by any estimates in this notice.

Maximum Award: The Secretary will not consider an application that proposes a budget exceeding \$2,000,000 for one or more 12-month budget periods.

Applicable Regulations: (a) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except 34 CFR 75.102(b), 75.200(b)(3), 75.210, and 75.217), 77, 79, 80, 81, 82, 85, and 86, and (b) 34 CFR Part 299.

Priorities: The absolute and invitational priorities in the notice of final priority and selection criteria for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Selection Criteria

The selection criteria in the notice of final priority and selection criteria for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Other Requirements

The procedures for evaluation and selection of applications in the notice of final selection criteria, selection procedures, and application procedures for Technology Innovation Challenge Grants, published in the **Federal Register** on May 12, 1997 (62 FR 26175), apply to this competition.

SUPPLEMENTARY INFORMATION: The Technology Innovation Challenge Grant Program is authorized under Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846). The statute authorizes the use of funds for activities similar to the following activities:

(a) Developing, adapting, or expanding existing and new applications of technology to support the school reform effort.

(b) Providing ongoing professional development in the integration of quality educational technologies into school curriculum and long-term planning for implementing educational technologies.

(c) Funding projects of sufficient size and scope to improve student learning and, as appropriate, support professional development, and provide administrative support.

(d) Acquiring connectivity linkages, resources, and services, including the acquisition of hardware and software, for use by teachers, students, and school library media personnel in the classroom or in school library media centers, in order to improve student learning by supporting the instructional program offered and to ensure that students in schools will have meaningful access on a regular basis to such linkages, resources, and services.

(e) Acquiring connectivity with wide area networks for purposes of accessing information and educational programming sources, particularly with institutions of higher education and public libraries.

(f) Providing educational services for adults and families.

Note: Section 14503 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 8893), is applicable to the Technology Innovation Challenge Grant Program. Section 14503 requires that an LEA, SEA, or educational service agency receiving financial assistance under this program must provide private school children and teachers, on an equitable basis, special educational services or other program benefits under this program. The section further requires SEAs, LEAs, and educational service agencies to consult with private school officials during the design and development of the Technology Innovation Challenge Grant projects. Each application must describe the ways in which the proposed project will address the needs of private school children and teachers.

Application Deadline

In order to ensure timely receipt and processing of applications, an application must be received on or before the deadline date announced in

this application notice. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was: (1) sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:30 p.m. (Eastern Time) on the deadline date. For the purposes of this program competition, the Secretary does not apply 34 CFR 75.102(a) and (b)(1) which require an application to be mailed, rather than received, by the deadline date.

Note: All applications must be received on or before the deadline date unless one of the mailing conditions noted in the previous paragraph applies. This requirement takes exception to EDGAR, 34 CFR 75.102(a) and (b)(1). In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553 (b)(A), proposed rulemaking is not required.

FOR APPLICATIONS OR INFORMATION

CONTACT: For applications, telephone 1-800-USA-LEARN (1-800-872-5327) or fax requests to Sharon Morgan at (202) 208-4042.

The application package is also available from the Technology Innovation Challenge Grant web site at: <http://www.ed.gov/Technology/chalgrnt.html>. For information contact Technology Innovation Challenge Grants, U.S. Department of Education, Washington, D.C. 20208-5544. Telephone (202) 208-3882.

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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person identified in this notice.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Number 84.303A, Technology Innovation Challenge Grants)

Program Authority: 20 U.S.C. 6846.

Dated: February 27, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 98-5735 Filed 3-4-98; 8:45 am]

BILLING CODE 4000-01-P

Final Rule

Thursday
March 5, 1998

Part V

**Environmental
Protection Agency**

40 CFR Part 82

**Protection of Stratospheric Ozone:
Manufacture of Halon Blends, Intentional
Release of Halon, Technician Training
and Disposal of Halon and Halon-
Containing Equipment; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 82****[FRL-5974-1]****RIN 2060-AH44****Protection of Stratospheric Ozone: Manufacture of Halon Blends, Intentional Release of Halon, Technician Training and Disposal of Halon and Halon-Containing Equipment****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: This final rule bans the manufacture of halon blends; prohibits the intentional release of halons during training of technicians and during testing, repair, and disposal of halon-containing equipment; requires appropriate training of technicians regarding emissions reduction; and requires proper disposal of halon and of halon-containing equipment. Release of halons to the environment contributes significantly to the depletion of the stratospheric ozone layer which, in turn, can lead to increased incidences of skin cancer and other ill effects. EPA proposed these requirements in response to a lawsuit filed by the Sierra Club. EPA understands that the manufacturers which have in recent years been engaged in the manufacture of halon blends will be minimally impacted by the ban, or may meet criteria for exemption from this ban. Furthermore, EPA understands that that entities using halons, driven in part by the economic value of halons, currently widely practice the kinds of precautions codified in this rule. This rule will more fully extend these practices throughout the industry and will ensure their continued implementation in the event of changes in halon market conditions. Thus, this rule will assure continued significant environmental benefits, while placing only minimal burdens on industry.

EFFECTIVE DATE: April 6, 1998.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-98-02 at: U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. The Public Docket is located in Room M-1500, Waterside Mall (Ground Floor). Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Lisa Chang, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation, Mail Code 6205J, 401 M Street SW, Washington, D.C. 20460, 202/564-9742.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Regulated Entities
- II. Background
 - a. Stratospheric Protection
 - b. Section 608(a) of the Clean Air Act
 - c. Sierra Club Suit
 - d. Halons
 - e. Notice of Proposed Rulemaking
- III. Today's Action
 - a. Summary of Major Public Comments
 - b. Responses to Public Comments
 - 1. Banning the Manufacture of Halon Blends
 - (i) Support for the ban on the new manufacture of halon blends
 - (ii) Change from a ban on the sale to a ban on the manufacture of halon blends
 - (iii) Clarification of terms "Halon", "Halon product", and "Halon blend"
 - (iv) Exemptions from ban on manufacture of halon blends
 - 2. Intentional Release of Halons
 - (i) Clarification of meaning of "intentional releases"
 - (ii) Clarification of meaning of "de minimis releases"
 - (iii) Exemptions from ban on intentional releases during testing
 - (iv) Exemption for R&D
 - (v) Questioning of aviation exemption from ban on intentional releases during testing
 - (vi) Owner responsibility regarding emissions due to equipment disrepair and venting of halon
 - 3. Technician Training
 - (i) Increased time to institute training requirement

- (ii) Clarification of training requirements
- (iii) Clarification of persons considered technicians
- 4. Disposal of Halons and Halon-Containing Equipment
 - (i) Clarification of meaning of equipment disposal
 - (ii) Clarification of meaning of halon-containing equipment
 - (iii) Clarification of meaning of halon disposal
 - (iv) Clarification of "recycler" and compliance with NFPA guidance
 - (v) Request for clarification of the term "fire equipment dealer"
- 5. Other Comments
 - (i) Importations of used halons from Article 5 countries
 - (ii) Criticism of rule basis
 - (iii) Coordination of federal policy on aviation halon use
 - (iv) Support for rulemaking
 - (v) Certification of halon recycling and recovery equipment
 - (vi) Long-term halon policy
 - (vii) Discussion of "essential use" concept
 - (viii) Simulant agents
 - (ix) Savannah River Halon Repository
 - (x) Clarification of applicability of rule
 - (xi) Lack of necessity for several major provisions of the rule
- 6. References
- IV. Summary of Changes from Proposed Rule
- V. Administrative Requirements
 - a. Executive Order 12866
 - b. Regulatory Flexibility
 - c. Unfunded Mandates Act
 - d. Paperwork Reduction Act
 - e. Submission to Congress and the Comptroller General
 - f. Executive Order 12875
 - g. National Technology Transfer and Advancement Act

I. Regulated Entities

Entities potentially regulated by this action are those that manufacture halon blends, owners of halon-containing equipment, and persons who test, repair, or dispose of total flooding systems or hand-held fire extinguishers or who employ technicians to service such equipment. Other entities potentially impacted by the prohibition of the intentional release of halons during technician training and during testing, repair, and disposal of equipment are U.S. military institutions. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of halon blends; owners of halon-containing equipment; persons who test, maintain, service, repair, or dispose of halon-containing equipment, who employ technicians to perform such services, or who use such equipment for technician training.
Military	Military entities that dispose of halon-containing equipment, that employ technicians who service halon-containing equipment, or that release halons during technician training or during testing, repair, or disposal of equipment.

This table is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be regulated by this action. This table lists

the types of entities that EPA is now aware could potentially be affected. To

determine whether your company is regulated by this action, you should carefully examine the applicability criteria discussed below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

a. Stratospheric Protection

The stratospheric ozone layer protects the Earth from penetration of harmful ultraviolet (UV-B) radiation. National and international consensus exists that releases of certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide contribute to the depletion of the stratospheric ozone layer and should be controlled. Ozone depletion harms human health and the environment through increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics. Ozone-depleting substances have been designated as either class I or class II substances (see 40 CFR part 82, appendices A and B to subpart A). Class I substances include chlorofluorocarbons, halons, carbon tetrachloride, methyl chloroform, methyl bromide and hydrobromofluorocarbons; class II substances include hydrochlorofluorocarbons. Halon is commonly used in fire suppression. Halon blends consisting of halon 1211 and halon 1301 were once widely manufactured for use in hand-held portable extinguishers and aerosol containers. However, since January 1, 1994, in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), halon production in, and importation of virgin halon into the U.S. has been prohibited (40 CFR 82.4(b), 82.7; 58 FR 65018). There are limited exceptions to this ban for production for export to countries covered under Article V of the Montreal Protocol (Section 82.9(a)(1)); production/import for essential uses (Section 82.4(r)); and production using destruction/transformation credits under Section 82.9(f) (for persons nominated for essential use exemptions only).

b. Section 608(a) of the Clean Air Act

Section 608 of the Clean Air Act Amendments of 1990 ("the Act" or "CAA") requires EPA to establish a

comprehensive program to limit emissions of ozone-depleting substances during their use and disposal.

Section 608(a) requires EPA to promulgate regulations "establishing standards and requirements regarding the use and disposal" of both class I and class II substances. The regulations are to "reduce the use and emission of such substances to the lowest achievable level" and to "maximize the recapture and recycling of such substances."

On May 14, 1993, EPA promulgated regulations under section 608(a) of the Act, establishing standards and requirements for the use and disposal of class I and II substances during the servicing, repair and disposal of air-conditioning and refrigeration equipment (58 FR 28660). Statutory authority for today's proposal is found in section 608(a)(2) of the Act, which directs EPA to establish standards and requirements regarding use and disposal of class I and II substances other than refrigerants. Section 608(a)(2) requires EPA to promulgate additional regulations that establish standards and requirements regarding the use and disposal of both class I and class II substances not covered by the initial set of regulations, i.e., non-refrigerant uses of class I and class II substances.

The goal of subsection 608(a) is to reduce the use and emission of ozone-depleting substances to the lowest achievable level and maximize the recapture and recycling of such substances. Today's requirements regarding disposal of halon-containing equipment and technician training, together with the bans on the manufacture of halon blends and the intentional release of halon during repair, testing, and disposal of equipment, and during technician training, are designed to meet the intent of section 608(a) by reducing potential emissions of halon, a significant ozone depleter.

c. Sierra Club Suit

On March 31, 1995, the Sierra Club filed a complaint against EPA, claiming that EPA had not met the requirements of section 608(a)(2) of the Act by taking regulatory steps to minimize use and emissions of ozone-depleting substances other than refrigerants. This action resulted in negotiations between EPA and the Sierra Club that led to a consent decree of which notice was published on September 17, 1996, in the **Federal Register** (61 FR 48950). In the consent decree, EPA agreed to take the following actions with regard to halons: (1) To issue a proposed rule regarding a ban of the sale of all halon blends and to take final action on the proposal; (2) to issue

a proposed rule or rules regarding the intentional release of halons during repair and testing of equipment containing halons; training concerning the use of such equipment; disposal of halons; and removal or disposal of equipment containing halons at the end of the life of such equipment; and to take final action on the proposal; and (3) to issue either a proposed rule requiring the certification of recycling and recovery equipment for halons and allowing the removal of halons only through use of certified equipment or a direct final determination that no such rule is necessary or appropriate; and to take final action if a proposal is issued or if adverse comment is received on the direct final determination. EPA will address the third of these commitments in a separate action from today's.

d. Halons

Halons are gaseous or easily vaporized halocarbons used primarily for putting out fires, but also for explosion protection. The two halons most widely used in the United States are Halon 1211 and Halon 1301. Halon 1211 is used primarily in streaming applications and Halon 1301 is typically used in total flooding applications. Some limited use of Halon 2402 also exists in the United States, but only as an extinguishant in engine nacelles (the streamlined enclosure surrounding the engine) on older aircraft and in the guidance system of Minuteman missiles. Today's action is not expected to affect the supply of unblended halons for these important uses.

Halons are used in a wide range of fire protection applications because they combine four characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires (referred to as Class A, B, and C fires, respectively). Second, they dissipate rapidly, leaving no residue, and thereby avoid secondary damage to the property they are protecting. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment where they can penetrate to and around physical objects to extinguish fires in otherwise inaccessible areas. Finally, halons are generally safe for limited human exposure when used with proper exposure controls.

Despite these advantages, halons are among the most ozone-depleting chemicals in use today. With 0.2 ozone-depleting potential (ODP) representing the threshold for classification as a class I substance, Halon 1301 has an estimated ODP of 10; Halon 1211 has an estimated ODP of 3. Thus, while total halon production (measured in metric tons) comprised just 2 percent of the

total production of class I substances in 1986, halons represented 23 percent of the total estimated ozone depletion attributable to class I substances produced during that year.

Prior to the early 1990's, the greatest releases of halon into the atmosphere occurred not in extinguishing fires, but during testing and training, service and repair, and accidental discharges. Data generated as part of the Montreal Protocol's technology assessment indicated that only 15 percent of annual Halon 1211 emissions and 18 percent of annual Halon 1301 emissions occur as a result of use to extinguish actual fires. These figures indicated that significant gains could be made in protecting the ozone layer by revising testing and training procedures and by limiting unnecessary discharges through better detection and dispensing systems for halon and halon alternatives. The fire protection community began to conserve halon reserves in response to the impending ban of the production and import of halons 1211, 1301, and 2402 that occurred January 1, 1994. Through standards, research, and field practice, the fire protection community eliminated most discharge testing with halons and minimized use of halon for testing and training. Additionally, fire equipment distributors began to service and maintain fire suppression equipment regularly to avoid leaks, false discharges, and other unnecessary emissions.

e. Notice of Proposed Rulemaking

On July 7, 1997, EPA issued a notice of proposed rulemaking proposing several actions relative to the sale and emission of halon as mandated by the Sierra Club consent decree (62 FR 36428). First, EPA proposed to ban the sale of halon blends. The proposed ban did not affect the sale of unblended halons.

Second, EPA proposed a ban on the intentional release of halons during repair, testing, and disposal of equipment that contains halon and during technician training. For safety reasons, EPA proposed to grant an exemption from this ban for halon release used as part of the test of fire extinguishing systems in class C and class D compartments aboard aircraft when such a test is required by the Federal Aviation Administration (FAA) under its Airworthiness Standards.

Third, EPA proposed to require halon equipment service companies, halon recyclers, halon equipment manufacturers, and other organizations that employ technicians who service halon-containing equipment to provide training regarding halon emission

reduction during the servicing of halon-containing equipment.

Finally, EPA proposed to require owners of equipment containing halon to dispose of this equipment by returning the halon-containing equipment to the manufacturer, a fire equipment distributor or halon recycler for halon recovery. EPA also proposed to require persons disposing of halon to send it to a halon recycler.

The proposed action was consistent with the provisions in the consent decree agreed to by EPA and the Sierra Club, which obligate EPA to take certain actions in regard to the requirements contained in section 608(a)(2) of the CAA. EPA developed the provisions of the proposal with input from representatives of the halon industry, fire protection community, environmental groups and affected trade associations. Since the halon industry has successfully been making significant strides towards reducing halon emission through the use of technician training and efficient halon removal and disposal practices for halon-containing equipment, EPA believed that the proposal generally reflected existing industry standards and practices. EPA had also understood that only one manufacturer of halon blends existed and that entity claimed it would be willing to end its minimal production of halon blends. As a result, EPA also believed that the proposal would not significantly impact members of the fire protection community.

III. Today's Action

a. Summary of Major Public Comments

EPA received a total of 25 written comments on the proposed rule during the 30-day public comment period. These comments are contained in Docket A-98-02. EPA also received supplementary materials from some commenters clarifying or elaborating on issues raised in their comments. These materials are also contained in Docket A-98-02. Several commenters requested exemptions from two of the chief provisions of the proposed rule (the ban on the sale of halon blends, and the ban on intentional releases of halons during testing). Many commenters requested important clarifications of terms used in the proposed rule or clarifications of the intended scope of certain provisions. Numerous requests for minor clarifications were received. Comments were also received to the effect that some of the major provisions of the rule were unnecessary as the practices they required had already been instituted. In addition, numerous commenters from industries using halons in fire

extinguishing systems, from the halon recycling industry, and from other parties, expressed support and commendation for the purpose and intent of the rule.

b. Responses to Public Comments

1. Banning the Manufacture of Halon Blends

The proposed ban on the sale of halon blends was expected to reduce the use of such blends in accordance with section 608(a)(3) of the Act by preventing newly manufactured blends from being introduced into the marketplace.

Halon blends are extremely effective fire suppression agents primarily used in portable fire extinguishers and also in some total flooding fire extinguisher systems. Although the market for these blends is small, the inability to recycle and reuse halon blends economically represents a significant environmental risk. Recycled halon is necessary to bridge the gap between the end of halon production in 1994 and the commercial availability of replacements, and to provide for critical uses for which satisfactory substitutes or alternative fire protection measures cannot be found. Prior to the 1994 ban on the production of halons, the Halon Alternatives Research Corporation (HARC) helped to sponsor a study on issues related to halon recycling and the establishment of a national recycling program. This program included the creation of a national halon bank. Currently, this halon bank brokers transfers of halon between users and may eventually arrange for storage facilities to accommodate fluctuations in supply and demand of halon. Halon blends can be recycled adequately, but only at significant cost. Therefore, halon blends are not commonly recycled or forwarded to a halon bank for critical uses.

Portable halon fire extinguishers are sold, distributed, installed, and maintained by fire equipment dealers and distributors; accidental release and leakage can be reduced through regular maintenance by the distributor. Fire extinguishers that contain halon blends can be returned to equipment dealers or recyclers for halon recovery but generally not for halon recycling. The proposed ban on the sale of halon blends was designed to prevent the development of a widely distributed pool of complex halon mixtures which could not readily be recycled. As stated earlier, such a pool represents a significant environmental risk because the costs of recycling are very high. Members of the halon recycling

industry, contacted during EPA research for the drafting of the proposed and final rule stated that, while technically feasible, halon blend recycling capacity does not currently exist as a conventional, commercially available option for halon product users. EPA has learned of a single exception where the manufacturer of fire extinguishing equipment which employs a halon blend extinguishing agent recovers halon blends both from portable fire extinguishers as well as its own decommissioned units and purportedly separates the individual halons solely for reuse in its units. However, the overwhelming majority of the estimated hundreds to thousands of entities engaged in halon recycling have not invested in the fractional distillation technology necessary to separate and reclaim halon blends because the halon blend market has been deemed so small that recycling halon blends has been held to be unprofitable. Thus, the ability to recycle halon blends is generally not commercially available.

It could be argued that if the market value for unblended halons declines, unblended halons as well may be widely distributed, with little economic incentive for their recovery and recycling. However, a critical difference between the halon blend and unblended halon situations is that with respect to unblended halons, an extensively developed recovery and recycling infrastructure exists, with a history of proven effectiveness in coordinating environmentally responsible halon management. No such community or history has been established with respect to halon blends.

Furthermore, EPA believes that there is only one other U.S. manufacturer currently producing halon blends. EPA had contacted this manufacturer to determine the impact, if any, a ban of the sale of all halon blends may have on this manufacturer. This manufacturer claimed that halon blends represent less than 2% of its business and that a ban on the sale of halon blends would minimally impact this organization's profitability. Furthermore, this manufacturer stated that because the fire protection community has made considerable progress in identifying and using alternatives or unblended halons that use nitrogen as a propellant, consumer demand for halon blend extinguishers and aerosol containers has already been significantly reduced. Thus, EPA believes that a ban on the manufacture of halon blends is necessary to avert the environmental risk associated with the lack of availability of halon blend recycling capability, described above, and will

generally have minimal impact on manufacturers, distributors or consumers.

(i) *Support for the ban on the new manufacture of halon blends.* A major association of halon users, recyclers, equipment manufacturers, and distributors expressed support for the intent of the ban on the sale of halon blends, stating that "the blending of halons makes them difficult to separate, removes them from normal recycling channels, and decreases the supply of recycled halon available to meet critical fire/explosion protection needs. The responsible management of the existing halon supply (bank) is critical to achieving a successful transition from halons to alternative agents".

(ii) *Change from a ban on the sale to a ban on the manufacture of halon blends.* Comments received regarding this prohibition have led EPA to change the language of the prohibition from a ban on the sale to a ban on the manufacture of halon blends. EPA believes this change clarifies the scope of the prohibition, and is more strictly consistent with the intent of the prohibition, as discussed more fully below.

Two commenters inquired whether the ban on the sale of halon blends applied to pre-existing stores of halon blends, and requested that this be clarified in the rule. Pre-existing stores might include halon blends contained in previously manufactured portable fire extinguishers.

The intent of the ban, as stated in the previous section, was to prevent newly manufactured blends from being introduced into the marketplace, and was not intended to affect pre-existing stocks of blends. EPA concurs with the need, indicated by the above comments, to clarify the scope of the ban, and believes that modifying the ban to apply to the new manufacture of halon blends clarifies that the ban does not prohibit transactions involving existing stores of blends. This modification does not diminish the environmental benefit of the ban, as releases of existing halon blends would have equal environmental impacts, regardless of the ownership of the blends.

(iii) *Clarification of terms "Halon," "Halon product," and "Halon blend."* Several commenters requested that the terms "halon," "halon product," and "halon blend" be clarified. A chief complaint was that although in the Preamble, it was stated that the term "halon" referred only to the three common Halons (Halon 1211, 1301, and 2402), this was nowhere made explicit in the rule; as a result, "halon" could be taken to mean any halogenated

hydrocarbon. Furthermore, it was pointed out that although "halon blend" was defined in the Preamble as a blend of two or more "halon products," the latter term was also not explicitly defined in the rule itself.

With respect to the first point, EPA recognizes that the term "halon" can have a much broader scope.¹ Today's rule, however, is issued under the authority of Section 608 of the CAA, which concerns Class I and Class II substances. Halons 1211, 1301, and 2402 and their isomers are the only halons listed as ODSs in the CAA or in EPA's implementing regulations (see CAA section 602(a) and 40 CFR Part 82, Subpart A, App. A). Therefore, this rule applies only to Halons 1211, 1301, and 2402. The term "halon product" refers to any mixture or combination of substances which contains only one halon; e.g., the common fire extinguishing mixture of Halon 1301 plus dinitrogen (N₂) gas. Definitions of the terms "halon", "halon product", and "halon blend" have been added to the final rule.

(iv) *Exemptions from ban on manufacture of halon blends.* Two commenters requested an exemption from the ban on the sale (now the ban on manufacture) of halon blends for a specific product—a patented fire extinguishing agent containing, among other substances, both Halon 1211 and Halon 1301. One of these commenters is the sole licensee of the product, the other is the sole distributor. The principal basis for their request for an exemption revolves around two points. The companies propose that their product is more "environmentally friendly" relative to other halon-containing fire extinguishing products; for example, they assert that the fire extinguishing capacity of their halon product is equivalent to approximately four times as much of other commercially available, unblended halon products used in comparable fire extinguishing equipment. As a result, they assert, (a) smaller quantities of halons are employed in fire extinguishing, thus releasing less halon to the atmosphere, and (b) their fire extinguishing systems are relatively lightweight, making them highly attractive to the aviation industry. Second, the companies assert that their

¹ "Halon" is an abbreviation for "halogenated hydrocarbon" coined by the U.S. Army Corps of Engineers. Halon nomenclature follows the following rule: if a hydrocarbon compound contains the elements C_aF_bCl_cBr_dI_e, it is designated as Halon abcde (terminal zeros are dropped). Thus, Halon 1211 is chlorobromodifluoromethane, etc. (Gann, 1975).

fire extinguishing agent can be adequately recycled.

In evaluating this request for exemption, EPA held discussions with the companies requesting the exemption; with the Federal Aviation Administration (FAA), as well as members of the aviation industry; with technical experts listed as references by the companies requesting the exemption; and with other halon recycling industry and government technical experts.

Because the industry as a whole is not ready to accommodate halon blend recycling, as discussed in detail in a previous section, EPA cannot abandon the proposed ban on the manufacture of halon blends. However, in consideration of the possible safety, health, and environmental advantages that this product may bring to the aviation community, as suggested in supporting material provided by the commenters to EPA, and as expressed to EPA by members, including federal authorities, within the aviation community; and in consideration of evidence received by EPA suggesting the manufacturer's technical ability to adequately recycle this specific product, EPA is creating an exemption to the ban on the manufacture of halon blends solely for aviation applications provided that (1) the manufacturer or its designee is capable of recycling the blend to the relevant industry standards for the chemical purity of each individual halon, (2) the manufacturer includes in all sales contracts for blends produced by it on or after April 6, 1998 the provision that the blend must be returned to it or its designee for recycling, and (3) the manufacturer or its designee in fact recycles blends produced by the manufacturer on or after April 6, 1998 and returned to it for recycling to the relevant industry standards for the chemical purity of each individual halon. Section 82.270(a) has been modified to reflect this exemption.

2. Intentional Release of Halons

EPA proposed banning the intentional release of halons (including halon blends) during technician training and during testing, repair and disposal of halon-containing equipment, and requiring technician training regarding halon emission reduction. Historically, the greatest release of halon into the atmosphere used to occur during testing and training, service and repair, and accidental discharges. However, emissions from Halon 1211 and Halon 1301 applications have decreased substantially over the last five years due to a change in industry practices

concerning the release of halon as outlined in the National Fire Protection Association (NFPA) Technical Standards (NFPA 12A) and Underwriters Laboratories (UL) 1058. These standards require proper leak testing and prohibit the release of halon during system testing.

(i) *Clarification of meaning of "intentional releases"*. One commenter stated that the ban on releases during testing, maintaining, servicing, repairing, or disposing of halon-containing equipment, or during the use of such equipment for technician training, could be taken to mean that releases for the purposes of extinguishing fires and inerting and suppressing explosions are also prohibited.

EPA recognizes that halons are still used in many fire extinguishing and explosion inerting/suppressing applications; halons' value in these applications supports the current active market for recycled halons. It is not EPA's intent to affect halon usage for these purposes. Section 82.270(b)(6) has been added to make this clarification.

(ii) *Clarification of meaning of "de minimis releases"*. One major federal agency commenter requested clarification of the "de minimis" provision in section 82.270(b) of the proposed rule. As proposed, a *de minimis* release (i.e., a very small or trifling release) associated with a good faith attempt to recycle or recover halon is exempt from the prohibition on intentional halon releases during testing, maintenance, servicing, repair, or disposal of halon-containing equipment and during technician training.

There are several types of halon-containing equipment: (1) total flooding fire extinguishing systems, and (2) other types of halon-containing equipment, including halon-containing gas cylinders and portable fire extinguishers. Total flooding systems are generally designed to fully discharge their contents upon being activated. These systems are therefore either full or empty (unless their content is altered due to a leak). After discharge of a total flooding system, the content of the halon container is generally reduced to atmospheric pressure, and a negligibly small amount of halon vapor, compared to the initial mass, remains. A fully discharged total flooding system therefore can reasonably be considered to be empty, and release of the residual halon vapor contained within can be considered a *de minimis* release. Section 82.270(b)(2) has been added to establish this type of *de minimis* release.

Other types of halon-containing equipment, however, such as portable fire extinguishers and compressed gas cylinders can be partially discharged. A determination of a *de minimis* release for these other types of equipment must be made on a case-by-case basis. At the present time, however, industry standard recycling equipment generally meets or exceeds a minimum recovery efficiency of 98%. Therefore a release from halon-containing equipment which contains less than 2% of its original installed charge could be currently considered a *de minimis* release of halon.

(iii) *Exemptions from ban on intentional releases during testing*. EPA initially proposed granting an exemption from the intentional release ban for halon used to test fire suppression systems in class C and class D compartments aboard airplanes. That exemption was based on FAA requirements relating to aircraft safety. Current Federal Aviation Administration (FAA) Airworthiness Standards for transport category airplanes include a number of classifications for cargo or baggage compartments. Class C cargo or baggage compartments must contain approved built-in fire-extinguishing systems (14 CFR 25.857(c)(2)). The compartments must be designed so that hazardous quantities of extinguishing agent (as well as smoke or flames) can be excluded from areas occupied by the crew or passengers (14 CFR 25.857(c)(3)). In addition, ventilation and drafts must not interfere with the ability of the fire extinguishing agent to control any fire that starts within the compartment (14 CFR 25.857(c)(4)). Flight tests of the fire-extinguishing systems must be conducted to show compliance with these requirements (14 CFR 25.855(h)(2),(3)). These systems typically contain halons as the fire-extinguishing agent. Thus, a ban on intentional release of halons during testing would conflict with these vital safety requirements if no exemption were permitted.

Class D compartments are defined in part as aircraft cargo or baggage compartments not exceeding 1,000 cubic feet that use restriction of available oxygen, as opposed to a fire-extinguishing agent, to control fires (14 CFR 25.857(d)). In light of recent tragedies involving fires that originated in the cargo or baggage compartments of aircraft, EPA believes that class D compartments, in addition to class C compartments, should be exempted from the ban on intentional release of halon during testing of halon-containing systems. As alternative fire suppression

systems for class D compartments are explored to improve aircraft safety, FAA is considering halon systems as an interim viable option.

EPA believes that fires aboard aircraft pose such a great risk to human safety that an exemption from the ban on the intentional release of halons in accordance with FAA's Airworthiness Standards is necessary and appropriate.

Several commenters brought forward additional examples of intentional releases of halons which, they believe, also merit exemption from the proposed ban on intentional releases during testing. For example, the Federal Aviation Administration (FAA) cited the need to release halons during testing of not only class C and D cargo compartment fire extinguishing systems, but also systems in compartment classes yet to be defined, as well as systems protecting engine and auxiliary power units. It was argued that Halon 1301 is currently the best available agent in these areas, that system performance can be ensured only through testing by release of agent, and that simulant agents for use in testing purposes are not yet operationally available.

Similarly, the Department of Defense (DoD) stated that DoD aircraft, which are not subject to FAA Airworthiness Standards and thus would not be exempt from the intentional release ban if the rule were to be promulgated as proposed, likewise require an exemption for the reasons presented above. Moreover, DoD brought forth the case of fire and explosion protection systems on new military weapon systems and major modifications to existing systems which are required by law (Title 10 U.S.C. § 2366) to undergo live fire lethality testing and evaluation. Live fire lethality testing involves subjecting military equipment to live fire conditions and subsequent possible release of fire extinguishing agent in order to extinguish fires, should they occur. Suitable simulants and alternate agents are not currently available for these applications. Furthermore, the Department of Energy (DOE) raised the issue of potential necessary releases of halons for fire and explosion protection systems testing purposes at unique sites critical to national security such as the National Ignition Facility and hazardous waste management sites associated with DOE's Radiological Waste Remediation effort. No acceptable alternative agents are available, from a human safety and environmental perspective, and halon releases during testing of these systems may be required. These cases present examples in which, systems using alternative fire extinguishing agents are currently unavailable; release of agent is

currently necessary during system testing; failure of the system would pose great risk to human safety or the environment; and there are no suitable simulant agents available to be used as testing substitutes at this time.

Based on these examples, EPA recognizes that when certain conditions exist, intentional releases of halon during testing will be necessary to verify system performance, which is essential to prevent loss of life and environmental damage. Therefore, today's action exempts from the ban on intentional releases halon applications meeting the following four criteria: (1) Systems or equipment employing suitable alternative fire extinguishing agents are not available, (2) system or equipment testing requiring release of extinguishing agent is essential to demonstrate the functionality of the system, (3) failure of the system or equipment would pose great risk to human safety or the environment, and (4) a simulant agent cannot be used in place of the halon during system or equipment testing for technical reasons. Should conditions change such that an application currently meeting these criteria no longer met these criteria, then that application would no longer be exempt from the ban on intentional releases of halons during testing. It should also be noted that many applications will not be covered under this exemption. For example, numerous industry fire suppression systems for electronics rooms and computer rooms no longer require field/install testing. Testing has been adequately performed through computer simulation, with supplemental in-lab halon system testing to verify computer simulations.

(iv) *Exemption for R&D.* A number of commenters argued for the need to exempt halon released during testing for research and development (R&D) efforts. Several types of R&D-related halon release were identified. Some halon is released in research to identify and test substances under development as alternatives to halons. Such releases from halon-containing equipment are necessary to establish performance benchmarks for halon alternatives. In addition, releases of small quantities of halon from halon-containing equipment such as storage cylinders are routinely performed by halon recyclers in order to obtain samples which will be chemically analyzed to establish the identity and degree of contamination of the equipment contents. This testing is an essential step in the responsible management of halon stocks.

EPA recognizes that the use of small quantities of halon to test sample purity and to conduct research and

development on halon alternatives are indispensable to maintaining the quality of existing supplies as well as for finding alternatives with comparable performance characteristics. Therefore, EPA concurs in today's action that there is a legitimate need to exempt from the ban on intentional releases during testing the above-mentioned R&D releases, and §§ 82.270(b)(4) has been added to respond to this need.

In addition, an industry commenter engaged in developing fire extinguishing systems for aviation and defense applications noted that qualification and development testing involving release of halons is necessary during the fire extinguishing systems product development process, and requested an exemption from the ban on the intentional release of halons during testing for this purpose.

EPA recognizes that in the design and development stages of fire and explosion suppression and inertion equipment and systems, releases of agent may be necessary to determine, for example, whether critical design criteria are met. However, EPA is aware that it may be possible in many cases to employ a halon simulant agent (discussed in Preamble § 5(viii)) for such testing purposes. Moreover, EPA is aware that in some testing situations, release of agent may not be necessary to demonstrate system or equipment functionality. Therefore, because product design and development may legitimately require releases of agent during product qualification and development testing, as the commenter attests, but because such releases may in many other cases be avoidable as described above, EPA is providing an exemption from the ban on intentional releases of halons during testing for the design and development of fire and explosion protection and inertion systems and equipment only when (a) system or equipment testing requiring release of agent is essential to demonstrate system or equipment functionality, and (b) when a suitable simulant agent cannot be used in place of the halon. Section 82.270(b)(5) has been added to reflect this exemption.

(v) *Questioning of aviation exemption from ban on intentional releases during testing.* A major fire protection industry association questioned the consequences of an exemption from the ban on intentional releases for FAA Airworthiness Standards testing. The commenter suggested that the exemption would be tantamount to "proposing a new application for [Halon 1301] which would require extensive testing (i.e., release of halon into the atmosphere * * *) [and] seems ill-

advised.” It must be noted that this rule does not introduce any new halon applications. The rule bans intentional releases during testing of existing and potential halon applications, but provides limited exceptions to this ban, as described elsewhere in this Preamble. These exceptions do not introduce new sources of halon releases to the atmosphere; rather, the ban reduces many sources of releases, while it provides for a narrowly-defined set of excepted releases.

(vi) *Owner responsibility regarding emissions due to equipment disrepair and venting of halon.* A commenter suggested that EPA provide an explicit statement regarding the responsibility of owners of halon-containing equipment to the effect that halon emissions caused by faulty (e.g., leaking or malfunctioning) halon-containing equipment are banned by this rule. For safety reasons, the fire protection community already observes standards and practices to ensure the maintenance of fire protection systems in properly functioning conditions. It might therefore be argued that current practices within the fire protection community, in theory, would prevent halon emissions due to equipment allowed to fall into a state of disrepair. EPA, however, concurs with the need to codify this aspect of owner responsibility, and has added § 82.270(f) to address this issue explicitly.

A second issue regarding equipment owner responsibility was raised in material submitted by another commenter. It was suggested that if reclamation of halon blends is not economically advantageous, then halon losses via “midnight venting” by equipment owners and recyclers who have been storing such blends will be encouraged. EPA recognizes that certain circumstances might encourage “midnight venting”, as the commenter suggests; further recognizes that, currently, there are no prohibitions to such losses; and also notes that the same arguments may be made for unblended halons as well. Therefore, to discourage the disposal of halon by venting, the definition of “halon disposal” has been slightly broadened in today’s final rule to ensure that it covers the loss of halon via venting. That is, the definition has been changed from “the discarding of halon recovered from halon-containing equipment” to “the process leading to and including the discarding of halon from halon-containing equipment”.

3. Technician Training

In an effort to reduce unnecessary emissions, distributors and service companies sponsor technician training

programs that are primarily administered by representatives of equipment manufacturers. Additionally, distributors and service companies augment this training through the use of videos and in-house training about the reduction of emissions through the use of standards and codes. These standards and codes are developed by organizations such as the NFPA and UL, which provide minimum requirements for the design, selection, installation, inspection, and maintenance of halon-containing equipment. This additional training may also include information regarding applicable state and local codes and standards. EPA believes that the fire protection community has responded responsibly to the following tangible incentives to reduce emissions and provide adequate training. First, the value of halon has increased dramatically as it has become less available since the ban on halon production in 1994. Second, in an effort to be responsive to environmental concerns, the fire protection community has developed self-imposed service standards and practices to reduce emissions and increase recycling. Because these positive incentives directly impact industry profitability, EPA believes that more stringent requirements for minimizing halon emissions or for technician training are not necessary and would produce very little environmental benefit. Today’s final rule therefore is based on the practices the industry has already voluntarily developed and implemented.

Several commenters urged that the scope and documentation requirements associated with the technician training provisions be clarified, and that the proposed time frame (30 days) for implementation of the training requirement be extended. Specific suggestions were (a) to allow 180 days, not 30, following promulgation date, for all technicians to be trained, (b) to allow 90 days for the training of new technicians, (c) to refer to published industry standard service practices to provide guidance regarding the nature of the training expected by EPA under this rule, (d) to state explicitly that a record of training is required in order to facilitate the enforceability of this rule.

(i) *Increased time to institute training requirement.* EPA recognizes that a training program requires time to develop training materials and to offer training to all required personnel. EPA concurs that a period of 180 days instead of 30 days is needed to be able to provide training for all relevant current employees, and further concurs with the need to specify the timing of

the training requirement for new personnel (personnel hired after the promulgation date of this rule). However, once training programs are established, given the limited complexity of the envisioned training, it should be possible, and is important to the objective of the rule, to train technicians who test, maintain, service, repair, or dispose of halon-containing equipment, within 30 days.

(ii) *Clarification of training requirements.* EPA agrees with the usefulness of looking to industry’s extensive experience and investment in responsible halon management, and published industry standards, for guidance as to training material. Accordingly, EPA inquired within the halon recycling industry and with other technical experts regarding suitable guidance documents. During these discussions, the following list of documents was developed, and is provided below as a suggested list of suitable materials that may be helpful in developing training regarding halon emission reduction. These documents describe practices for handling, testing, servicing, maintaining, and transporting fire extinguishing systems. These manuals reflect and emphasize the importance of halon emissions minimization.

Regarding the commenter who urged that EPA explicitly require training documentation, EPA believes that most facilities instituting training will maintain training records for their own record-keeping purposes. Therefore, EPA believes that no such requirement is necessary.

Another commenter requested that technicians who will have been trained prior to the promulgation date of the rule should be considered as having satisfied the training requirement. As written, the final rule requires that organizations will take appropriate steps to ensure that technicians hired on or before 30 days following the publication date of this rule shall be trained regarding emissions reductions by 180 days from the rule publication date. EPA believes that the final rule language addresses the commenter’s suggestion since training regarding emissions reduction received prior to the promulgation date of the rule would satisfy the requirement to occur by 180 days from the rule publication date.

Industry standards

National Fire Protection Association (NFPA) 10. Standard for Portable Fire Extinguishers.
NFPA 12A. Halon 1301 Fire Extinguishing Systems.

Industry standards

International Organization for Standardization (ISO)—7201—1. Fire protection—Fire extinguishing media—Halogenated hydrocarbons—Part 1: Specifications for halon 1211 and halon 1301.

ISO—7201—2. Fire extinguishing media—Halogenated hydrocarbons—Part 2: Code of practice for safe handling and transfer procedures of halon 1211 and halon 1301.

American Society for Testing and Materials (ASTM) D5632—94a. Standard Specification for Halon 1301, Bromotrifluoromethane (CF₃Br).

ASTM D5631—94. Standard Practice for Handling Transportation and Storage of Halon 1301 Bromotrifluoromethane (CF₃Br).

(iii) *Clarification of persons considered technicians.* A commenter requested that the last sentence of the definition of technician in § 82.260 (“Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners”) be deleted, as it might imply that training for these individuals is required as for other technicians. However, it is indeed EPA’s intent to require training for these individuals, and all others who perform tasks on halon-containing equipment that might reasonably be expected to release halons from the equipment into the atmosphere. The individuals identified in the sentence to which the commenter refers are simply illustrative examples of the term “technician” defined in the two sentences preceding the referenced sentence.

4. Disposal of Halons and Halon-Containing Equipment

The proposed rule required owners of equipment containing halon (including a halon blend) to dispose of the equipment by sending the equipment for halon recovery to a fire equipment distributor, a manufacturer, or a halon recycler operating in accordance with NFPA 10 and 12 A standards. The proposal also required halon (including a halon blend) to be disposed of by sending it to a halon recycler for recycling.

Due to industry outreach efforts, owners of halon-containing equipment and those disposing of halon are already aware of the importance of halon recycling and banking. Industry trade organizations have already been encouraging owners of halon-containing equipment and those disposing of halon to contact manufacturers, halon fire equipment distributors or halon recyclers to ensure that halon is safely removed and recovered for future use. Therefore, today’s final action is consistent with current industry

practices and would not create an additional burden for equipment owners. Most halon systems and extinguishers in use today are purchased, installed, and serviced by fire equipment distributors. Because of the efficiency of these established distribution channels, industry representatives indicate that the simplest way to assure proper recycling of halon is simply to require equipment owners to return halon-containing equipment to distributors. In many cases owners may receive a payment for the halon contained in the equipment because of the current market value of halon. The market value of halon has provided an incentive to industry to consistently recover and recycle halons. These regulations will ensure proper handling at such point that halon supply exceeds the demand.

(i) *Clarification of meaning of equipment disposal.* EPA’s objective in Section 82.270(d) is to ensure that any halons currently deployed in equipment or storage are, at the end of the equipment’s useful life, properly recovered and made available for recycling (or safely stored for eventual destruction, e.g. when economic incentive no longer exists to use recycled halons), and not simply released to the atmosphere. However, EPA received numerous comments regarding these disposal requirements indicating that the proposed scope of the requirements was unclear. Several commenters stated that § 82.270(d) could be interpreted to require the disposal of the equipment itself, together with the halon it contains. Other commenters stated that § 82.270(d) could be taken as a complete recall of all currently deployed halon-containing equipment within 30 days following promulgation of the rule and not, as stated in the Preamble to the proposed rule, only “at the end of [the] useful life” of such equipment. Two fire protection industry commenters further suggested that the “useful life” concept itself involves a number of factors (e.g., manufacturer’s warranty, extinguisher usage, the number of times the extinguisher has been recharged, repair parts used, and cylinder condition) and requires more precise definition.

With respect to the first comment, EPA in the rule as proposed provided for both the situations in which (a) halon-containing equipment, together with the halon it contains, is to be disposed, and (b) only the halon that has been contained in equipment, but not the equipment itself, is to be disposed. Therefore, the disposal requirement as proposed clearly does not unconditionally require the disposal

of the halon-containing equipment itself.

The second and third comments raise a question of precisely when (e.g., within 30 days; at the end of the equipment’s useful life) equipment disposal is required by the rule. It is not the intent of the rule, however, to establish requirements regarding the point at which the disposal of halon-containing equipment occurs. Rather, EPA’s intent is to establish requirements regarding the proper recovery of halon from halon-containing equipment at such time as the equipment disposal would normally occur. To clarify this intent, the regulatory language has been changed from “Effective 30 days following promulgation, owners of halon-containing equipment shall dispose of that equipment by forwarding it for halon recovery * * *” to “Effective 30 days (following publication), no person shall dispose of halon-containing equipment except by sending it for halon recovery * * *”.

One additional commenter noted that the definition of “disposal of halon-containing equipment” did not appear to include the sale, for reuse in its entirety, of halon-containing equipment, and thus the rule does not restrict sales, for reuse in its entirety, of halon-containing equipment. The commenter’s observation is consistent with the intended meaning of the rule. The definition of “disposal of halon-containing equipment” does not in fact include the sale, for reuse in its entirety, of such equipment.

Finally, one commenter urged that EPA clarify that empty equipment which formerly contained halon, but which has been fully discharged, is not affected by the requirement that no person shall dispose of halon-containing equipment except by sending it for halon recovery to appropriate facilities. EPA concurs with the comment that little or no environmental benefit would be gained from requiring halon recovery from empty equipment or equipment containing only *de minimis* quantities of halon. As described in Preamble § 2(ii), EPA has clarified the meaning of *de minimis* quantities of halon. EPA in today’s final action has exempted equipment containing *de minimis* quantities of halon from the equipment disposal provision and has specified that that provision does not apply to fully discharged total flooding systems. These changes are reflected in § 82.270(d) of the regulatory text.

(ii) *Clarification of meaning of halon-containing equipment.* EPA received several comments indicating that the term, “halon-containing equipment” requires more detailed definition in the

regulatory text. One commenter stated that it is necessary to define the precise equipment covered under this provision, suggesting the language, "cylinders or containers and materials or parts thereof, which are necessary for servicing the safe and secure containment of the halon within the cylinder or container". The commenter, a member of the fire protection system industry, further explained that equipment manufacturers, fire suppression system distributors and halon recycling services do not typically dispose of the entire system associated with halon containment (such as electrical detection control components), but deal more strictly with the proper handling and disposal of parts and materials associated with safe and secure halon containment. Other commenters proposed language for defining "halon-containing equipment" in § 82.260, which defines terms used in the rule.

In the context of the halon-containing equipment disposal provision, EPA believes that the term "halon-containing equipment" both implicitly has the intended meaning suggested in the commenter's language and also implicitly excludes fire protection or suppression system components which are ancillary to halon containment. Had the intent been to include such ancillary system components, a term such as "entire system associated with halon-containing equipment," or "fire protection system utilizing halon", would have been used.

However, in order to ensure the clarity of the intended scope of the halon-containing equipment disposal provision, and the meaning of halon-containing equipment throughout the rule, a general definition of halon-containing equipment ("equipment used to store, transfer, and/or disperse halon") has been added to the definitions section of the final rule. This definition does not include small scale laboratory equipment used solely for scientific research; an example of such research equipment is a gas chromatograph which might contain, in tubing or piping, residual quantities of samples of halon gases injected for analysis. Furthermore, the following clarification has been added to § 82.270(d): "This provision does not apply to ancillary system devices such as electrical detection control components that are not necessary to the safe and secure containment of the halon within the equipment."

(iii) *Clarification of meaning of halon disposal.* One commenter stated that the term "halon disposal" could be interpreted to mean "halon

destruction." Halon destruction in the current context means a process that destroys halon's ozone-depleting properties. The term "halon disposal" is explicitly defined as the process leading to and including discarding of halon from halon-containing equipment. In the rule as proposed, in contrast with the commenter's interpretation, recycling is presented as the only available halon disposal option, and halon destruction is not presented as a disposal option. However, in reality, halon destruction by one of the destruction technologies approved by the Parties to the Montreal Protocol is a disposal option which EPA does not wish to preclude. As discussed later in this Preamble (§ 5(vi)), another commenter urged that the safe destruction of halon be part of a long-term management plan for U.S. halon supplies. Therefore, § 82.270(e) has been changed to include this disposal option. The destruction technologies currently approved by the Parties to the Protocol are liquid injection incineration; reactor cracking; gaseous /fume oxidation; rotary kiln incineration; cement kiln; and radiofrequency plasma destruction. In the future, the Parties may approve of other destruction technologies; thus there is the possibility that such other technologies would, if approved by EPA, present other destruction options.

(iv) *Clarification of "recycler" and compliance with NFPA guidance.* Several commenters raised questions regarding the extent to which halon recycling facilities, including in-house recycling facilities, must demonstrate compliance with the NFPA industry standards referenced in the regulatory text. A major industry commenter requested clarification of the extent to which halon equipment owners are obligated to verify compliance of their recyclers' procedures with the NFPA industry standards prescribed in the rule. The commenter further asserted that imposition of obligation on the equipment owner, beyond requiring a contractual assertion from the disposer that they do in fact operate in compliance with the prescribed industry standards, would be inappropriate. A second commenter sought confirmation that the term "recycler" could encompass in-house recycling facilities operating in accordance with the cited NFPA standards.

The industry association responsible for developing the standards cited in the rule has no power or authority to police or enforce compliance with its published standards, and states that "any certification of products stating compliance with requirements of this

document is made at the peril of the certifier." While EPA seeks to ensure compliance with industry recycling standards, EPA concurs that a contractual agreement between the equipment owner and the recycler that the recycling is performed in compliance with the prescribed standards will achieve the desired objective.

Regarding the second comment, EPA concurs that the term "recycler" encompasses in-house facilities which perform halon recycling in accordance with NFPA 10 and 12A standards. That is, in § 82.270(d), the expression "no person shall dispose of halon-containing equipment except by sending it for halon recovery * * *" and in § 82.270(e), the expression "no person shall dispose of halon except by sending it for recycling* * *" are not meant to preclude halon recovery or recycling by in-house facilities which perform these functions in accordance with NFPA 10 and 12A standards.

(v) *Request for clarification of the term "fire equipment dealer".* Two fire protection industry associations requested that the term, "fire equipment dealer", be defined as a "qualified, properly trained person or organization engaged in the business of servicing and disposing of halon-containing equipment." Because it has been specified that the fire equipment dealers referenced in the rule must be ones who operate in accordance with the NFPA standards relevant to halon-containing equipment, the additional definition is deemed unnecessary.

5. Other Comments

(i) *Importations of used halons from Article 5 countries.* A major halon industry commenter proposed that all imports of used halons from countries operating under Article 5 of the Montreal Protocol be prohibited. The commenter cited a recent solicitation from an Article 5 country to regularly supply massive quantities, far in excess of the current aggregate U.S. demand, of Halon 1301 to the United States. The commenter identified possible adverse economic and environmental consequences such an influx might have, discussing its impact on management of U.S. halon stocks and on the world requirement for new halon production.

EPA recognizes the substantial influence that market conditions have exerted upon ODS handling in this country and elsewhere, and is accordingly concerned with the appropriate management of halon stocks and flows. However, the authority under which today's rule is developed does

not extend to issues of ODS importation, but rather directs the Agency to establish requirements regarding the use and disposal of ODSs with the goal of reducing their use and emissions, and maximizing their recapture and recycling; the Agency has taken the commenter's issue under advisement under a different authority (Sections 604 and 606 of the CAA).

(ii) *Criticism of rule basis.* A former manufacturer of fire extinguishers employing an extinguishing agent containing a blend of Halons 1211 and 1301 questioned whether the proposed ban on the sale of halon blends would promote or hinder the goal of reducing halon emissions. He suggested that the proposed ban would not reduce halon emissions because: (1) Halon blends are not manufactured any more in the United States, (2) a ban could result in encouraging midnight venting (presumably because the value and market for blends would vanish following such a ban), (3) blends technically can be recycled, despite the fact that it is currently impracticable to do so, and (4) most halon emissions arise during the recharging of fire extinguisher units with Halon 1211, and not from use and handling associated with equipment containing halon blends.

The points made by the commenter have some merit; however, EPA believes that the arguments above do not weaken the basis for this regulatory action for the following reasons. First, halon blends are currently manufactured within the United States at very low levels. However, it is not possible to forecast with certainty that the manufacture of blends will vanish in the future. EPA's concern with continued, even low-level, production of halon blends is the potential accumulation of a distributed pool of halon blends for which insufficient incentive exists to recover. Because of the low market volume of the blends, recycling infrastructure is not currently equipped to economically recycle blended products. Therefore, in recent years, because of the increased value of halons, use of halon blends has diminished further. The possibility of midnight venting exists with or without a formal ban, if current market trends for the product continue. EPA, in this rulemaking, has specifically included provisions governing the proper disposal of all halon products, thus providing a regulatory incentive not to vent. Finally, the fact that most halon emissions arise during testing and training, service and repair, and accidental discharges does not preclude the necessity to avoid other possible

releases such as from the existence of a pool of non-recyclable halon blends. It should also be noted that EPA has included in this rulemaking provisions governing the release of halons during servicing of halon-containing equipment.

(iii) *Coordination of Federal policy on aviation halon use.* A national fire protection association, while recognizing the need to exempt aviation halon applications from the ban on releases for testing, criticized the current collective federal policy on halon use as being "far too disjointed and piecemeal * * * with far too little emphasis on the prompt identification and certification of effective alternative suppression agents." This association urged coordinated and timely federal policy making on halon alternatives for aviation to assure public safety in the face of a possible requirement among the Parties to the Montreal Protocol to destroy halons. The commenter suggested that the aviation exemption contained in this rule be handled as part of a more comprehensive policy moving toward prompt replacement of halons used in aviation.

EPA concurs with the idea that a coordinated Federal effort to promote halon alternatives is the optimal approach toward this goal. Section 613 of the CAA directs all federal agencies to promulgate regulations conforming their procurement regulations to the provisions of Title VI (Stratospheric Protection) of the CAA and to maximize the substitution of safe alternatives to class I (encompassing halons) and class II substances. Federal agencies have in response devoted considerable resources to developing relevant regulations and guidance.

EPA and FAA further recognize the specific importance of coordinated federal, as well as industry, effort in halon replacement in aviation (see, for example, the section, "Halon Considerations," in the FAA NPRM at 62 FR 32412, 32417, June 13, 1997. EPA support for FAA's continued use of halons in aviation is conditional on the aviation industry efforts to develop halon alternatives, and on FAA's accelerated efforts to develop criteria for certification of alternatives. FAA has participated in an extensive program to develop criteria on which to evaluate possible alternatives. Thus, EPA believes that the goal of coordinated federal effort is being pursued, and that today's aviation-related exemptions from the ban on intentional halon releases during testing will not set this effort back.

(iv) *Support for rulemaking.* Many commenters expressed support for the

intent and motivation of the rule—to minimize halon emissions and thereby reduce damage to the Earth's stratospheric ozone layer.

(v) *Certification of halon recycling and recovery equipment.* Based upon its experience with a program to promote the recovery of halons in businesses, schools, and communities throughout the U.S. mid-Atlantic area, an environmental group observed a need to require certification of recycling and recovery equipment used in halon recovery. EPA also recognizes the merit in considering a certification requirement as a potentially important element of halon regulation, and is revising a study on the merits of such a requirement. EPA will address this issue in a separate action.

(vi) *Long-term halon policy.* An environmental group urged the EPA, in cooperation with the DoD halon bank, industry, environmental groups, and the fire protection community, to develop a long-term management plan for U.S. halon supplies. Such a plan, they commented, should enable halon use in essential applications, or the safe destruction of halon, while preventing further ozone depletion.

EPA concurs with the need to consider long-term halon supply situations, and to develop plans, in conjunction with industry, environmental groups, the fire protection industry, and federal agencies, such that the complete halon life cycle is properly managed. This need has to a large extent been met through the successful development and management of a domestic halon banking system, overseen by the Halon Recovery Corporation (HRC), in addition to a military bank operated by the Defense Logistics Agency. Furthermore, EPA routinely participates in meetings with various stakeholders, formal and informal research and information exchange among all parties, monitoring of key research and development regarding halon destruction technologies, and assistance, when appropriate, in research relating to federal rulemaking.

In recent years the regulation of halons and other ODSs has led to economic incentives to conserve halon supplies and has driven the community of halon users to minimize losses of this commodity. Nevertheless, since the future dynamics of the halon market cannot be known with certainty, today's rulemaking is a necessary strengthening and codification of these environmentally friendly practices that have become standard practice within the U.S. fire protection community.

(vii) *Discussion of "essential use" concept.* Two commenters, in discussing the need for a broader set of exemptions from the ban on intentional release during testing, specifically suggested applying the "critical use" [sic] criteria, contained in Decision IV/25 of the Parties to the Montreal Protocol ("Parties"), as EPA's basis for granting exemptions to the intentional release ban.

Article 2 of the Protocol states that Parties may create exemptions to the phaseout of an ODS for uses agreed by them to be "essential." Decision IV/25 contains the criteria to be applied in making "essential use" determinations. The only uses deemed essential under the Protocol to date are metered dose inhalers, the space shuttle and Titan rocket, and certain laboratory uses. No use of halons (other than laboratory use) has been approved as essential.

Consequently, a more appropriate basis for an exemption from the ban on intentional release during testing, as discussed above, requires that (1) Systems or equipment employing suitable alternative fire extinguishing agents are not available, (2) system or equipment testing requiring release of extinguishing agent is essential to demonstrate the functionality of the system or equipment, (3) failure of the system or equipment would pose great risk to human safety or the environment, and (4) a simulant agent cannot be used in place of the halon during system or equipment testing for technical reasons.

(viii) *Simulant agents.* Several commenters raised the subject of simulant agents—less or non-ozone-depleting substances with similar enough physical properties to allow them to be used as proxies for the halon agent during fire suppression system testing. The research to develop such simulants is promising, and some of these substances are approaching acceptance for some of the applications mentioned in the preceding paragraph. HFC-125, in particular, was identified in a major Navy research program as an excellent halon simulant. One commenter suggested that the exemption for aviation applications may delay the adoption of simulants for use in aviation system testing. EPA acknowledges that an exemption from the ban on intentional releases of halons during testing for a class of halon applications, when a suitable simulant is available, might counteract the regulatory objective of this rule. However, in establishing the non-availability of a suitable simulant as a condition for an exemption (see

previous section), EPA has avoided a delay in the adoption of simulants.

(ix) *Savannah River Halon Repository.* The DOE states that the proposed rule could have economically significant impacts on procedures at its Savannah River halon repository. The rule, it was stated, could "require potential training, installation of release prevention devices, loss of revenue from the sale of portable fire extinguishers, additional costs for sending halon and equipment offsite for recovery, recycling, and disposal, and additional record keeping costs."

With respect to the sale of portable fire extinguishers, as clarified in this Supplementary Information to today's rule, EPA does not ban the sale of pre-existing stores of halon blends such as those in previously manufactured portable fire extinguishers. In addition, this rule does not impose specific recordkeeping requirements. Furthermore, as clarified above, no additional costs need be incurred for off-site halon recovery if appropriate recovery procedures can be performed on-site in a manner consistent with industry standards.

With respect to training, installation of release prevention devices, and other measures related to this rulemaking that might be necessary at DOE's Savannah River halon repository, EPA concurs that such measures could have economic impacts. However, EPA does not concur that such impacts would result directly from this rule. The practices codified in today's rule, as explained earlier, reflect practices already currently widely adopted by industry. Moreover, responsible management of halon stocks has been a Federal objective for 7 years. Section 613 of the CAA, as discussed elsewhere, directs all Federal agencies to promulgate regulations conforming their procurement regulations to the provisions of Title VI (Stratospheric Protection) of the CAA and to maximize the substitution of safe alternatives to ozone-depleting substances (ODS), both class I (encompassing halons) and class II. Federal agencies have in response devoted considerable resources to developing relevant regulations and guidance. In response to the CAA, DOE, among other federal agencies, initiated programs to accomplish optimal ODS management. The DOE in particular developed a guidance document on this subject, "Guidance on the DOE Facility Phaseout of Ozone-Depleting Substances," published in October 1995. In the section of this document devoted to fire suppression (pp. 10–12), the DOE specifically recommends training programs to accomplish

essentially the same objective that today's training requirement is designed to achieve (i.e., "All Department Elements should take steps to avoid inadvertent discharge of Halon systems and extinguishers through timely maintenance of fire detection equipment, proper use of recovery/recycling equipment, attention during servicing, and suitable personnel training"). Therefore, EPA believes that today's rule does not impose additional costs or burdens on the Savannah River site that did not already exist.

(x) *Clarification of applicability of rule.* One commenter suggested that the language of § 82.250(b), describing the applicability of the rule, is too broad. The commenter stated that the applicability of the rule should be strictly limited to equipment used to store and hold halon, and not the entire fire suppression system including such ancillary components as control panels. EPA does not concur with the comment because § 82.250(b) is meant to broadly identify the possible universe of entities to which the rule applies. In later sections of the rule that enumerate specific prohibitions and provisions, the scope of applicability is much more strictly defined. Since not all provisions of the rule apply to the same set of entities, it is necessary in the "Purpose and Scope" section of this rule to broadly encompass all affected populations.

(xi) *Lack of necessity for several major provisions of the rule.* Two commenters from an industry with well-known halon requirements stated that some of the chief provisions of the proposed rule (e.g., requirements for technician training, and for proper halon and halon-containing equipment disposal), were unnecessary because they were already practiced at their companies; in fact, rather than provide additional environmental benefit, it was argued in one case that the rule would simply impose unnecessary record-keeping burdens.

EPA concurs that technician training and proper halon and halon-containing equipment disposal is widely practiced throughout industry, based on industry research conducted in developing this rule. Nevertheless, EPA believes that it is necessary to codify these practices in order to ensure their continued implementation should the market conditions, currently conducive to halon emissions reduction and halon recycling, change. Regarding the suggestion that this rule imposes unnecessary record-keeping burdens, EPA points out that this final rule does not establish any record-keeping requirements.

6. References

Gann, R.G., editor, 1975. Halogenated Fire Suppressants. A Symposium Hosted by the Southwest Research Institute, San Antonio, TX, April 23–24, 1975. ACS Symposium Series 16, American Chemical Society, Washington, D.C. 453 pp.

IV. Summary of Changes From Proposed Rule

In this final action, EPA is promulgating regulations relative to halons under CAA section 608. Several additional exemptions and clarifications have been made to provisions of this rule. Definitions of halon, halon product, halon blend, and halon-containing equipment have been added. In addition, *de minimis* releases have been discussed in greater detail. Because the intent of the ban on the sale of halon blends was to prevent the manufacture of new halon blends, the ban has accordingly been revised to focus on manufacture, rather than on sale. The time frame for implementing the training requirements has been extended. Disposal requirements have been further clarified, with a specific provision addressing equipment owners' responsibilities regarding loss of halon due to equipment disrepair, and with modifications to the definition of halon disposal. An exemption from the ban on the new manufacture of halon blends has been added for situations in which (1) the manufacturer or its designee is capable of recycling the blend to the relevant industry standards for the chemical purity of each individual halon, (2) the manufacturer includes in all sales contracts for blends produced by it on or after April 6, 1998 the provision that the blend must be returned to it or its designee for recycling, and (3) the manufacturer or its designee in fact recycles blends produced by the manufacturer on or after April 6, 1998 and returned to it for recycling to the relevant industry standards for the chemical purity of each individual halon. Finally, additional exemptions have been provided for halon releases during testing of halon fire and explosion protection systems when the application meets a set of criteria enumerated in the rule.

V. Administrative Requirements

a. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this proposed regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

b. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The rule will not have a significant impact in the area of intentional release because it closely models current industry standards for prevention of intentional release of halon during repair, testing, and disposal of halon-containing equipment, and during technician training. The rule also will not have a significant impact in the areas of technician training and disposal of halons and halon-containing equipment because it closely models current industry standards, including the practice of recovering halons for reuse or recycling. Because the use of halon blends has already declined substantially, there will not be a substantial number of entities affected by the requirement to dispose of halon blends through recycling or destruction. Because the market for halon blends is so small, and because alternatives to halon blends are available for distribution and sale, the ban on the manufacture of halon blends will not have a significant impact on a substantial number of small entities. Businesses that manufacture halon blends will be subject to the ban;

however, there will not be a significant impact on these businesses and these businesses are not substantial in number. One of the two U.S. manufacturers of halon blends of which EPA is aware has stated that the ban on halon blends will minimally impact the business' profitability; and the other manufacturer will be exempted from the ban providing that its product will be adequately recycled and thus pose no environmental risk.

c. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

d. Paperwork Reduction Act

This action requires no information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore no information collection request will be submitted to OMB for review.

e. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

f. Executive Order 12875

Today's action does not impose any unfunded mandate upon any State, local, or tribal government; therefore, Executive Order 12875 does not apply to this rulemaking.

g. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104-113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This final rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

List of Subjects in 40 CFR Part 82

Environmental protection,
Administrative practice and procedure,
Air pollution control.

Dated: February 27, 1998.

Carol Browner,
Administrator.

40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Part 82 is amended by adding subpart H consisting of §§ 82.250, 82.260 and 82.270 to read as follows:

Subpart H—Halon Emissions Reduction

Sec.	
82.250	Purpose and scope.
82.260	Definitions.
82.270	Prohibitions

Subpart H—Halon Emissions Reduction**§ 82.250. Purpose and scope.**

(a) The purpose of this subpart is to reduce the emissions of halon in accordance with section 608 of the Clean Air Act by banning the manufacture of halon blends; banning the intentional release of halons during repair, testing, and disposal of equipment containing halons and during technician training; requiring organizations that employ technicians to provide emissions reduction training; and requiring proper disposal of halons and equipment containing halons.

(b) This subpart applies to any person testing, servicing, maintaining, repairing or disposing of equipment that contains halons or using such equipment during technician training. This subpart also applies to any person disposing of halons; to manufacturers of halon blends; and to organizations that employ technicians who service halon-containing equipment.

§ 82.260 Definitions.

Halon-containing equipment means equipment used to store, transfer, and/or disperse halon.

Disposal of halon means the process leading to and including discarding of halon from halon-containing equipment.

Disposal of halon-containing equipment means the process leading to and including:

(1) The discharge, deposit, dumping or placing of any discarded halon-containing equipment into or on any land or water;

(2) The disassembly of any halon-containing equipment for discharge, deposit, or dumping or placing of its

discarded component parts into or on any land or water; or

(3) The disassembly of any halon-containing equipment for reuse of its component parts.

Halon means any of the Class I, Group II substances listed in subpart A, Appendix A of 40 CFR Part 82. This group consists of the three halogenated hydrocarbons known as Halon 1211, Halon 1301, and Halon 2402, and all isomers of these chemicals.

Halon product means any mixture or combination of substances that contains only one halon (e.g., Halon 1301 plus dinitrogen gas (N₂)).

Halon blend means any mixture or combination of substances that contains two or more halons.

Manufacturer means any person engaged in the direct manufacture of halon, halon blends or halon-containing equipment.

Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

Technician means any person who performs testing, maintenance, service, or repair that could reasonably be expected to release halons from equipment into the atmosphere. Technician also means any person who performs disposal of equipment that could reasonably be expected to release halons from the equipment into the atmosphere. Technician includes but is not limited to installers, contractor employees, in-house service personnel, and in some cases, owners.

§ 82.270 Prohibitions.

(a) Effective April 6, 1998 no person may newly manufacture any halon blend. Halon blends manufactured solely for the purpose of aviation fire protection are not subject to this prohibition, provided that:

(1) The manufacturer or its designee is capable of recycling the blend to the relevant industry standards for the chemical purity of each individual halon;

(2) The manufacturer includes in all sales contracts for blends produced by it on or after April 6, 1998 the provision that the blend must be returned to it or its designee for recycling; and

(3) The manufacturer or its designee in fact recycles blends produced by the manufacturer on or after April 6, 1998 and returned to it for recycling to the relevant industry standards for the chemical purity of each individual halon.

(b) Effective April 6, 1998, no person testing, maintaining, servicing, repairing, or disposing of halon-containing equipment or using such equipment for technician training may knowingly vent or otherwise release into the environment any halons used in such equipment.

(1) De minimis releases associated with good faith attempts to recycle or recover halon are not subject to this prohibition.

(2) Release of residual halon contained in fully discharged total flooding fire extinguishing systems would be considered a *de minimis* release associated with good faith attempts to recycle or recover halon.

(3) Release of halons during testing of fire extinguishing systems is not subject to this prohibition if the following four conditions are met:

(i) Systems or equipment employing suitable alternative fire extinguishing agents are not available;

(ii) System or equipment testing requiring release of extinguishing agent is essential to demonstrate system or equipment functionality;

(iii) Failure of the system or equipment would pose great risk to human safety or the environment; and

(iv) A simulant agent cannot be used in place of the halon during system or equipment testing for technical reasons.

(4) Releases of halons associated with research and development of halon alternatives, and releases of halons

necessary during analytical determination of halon purity using established laboratory practices are exempt from this prohibition.

(5) This prohibition does not apply to qualification and development testing during the design and development process of halon-containing systems or equipment when such tests are essential to demonstrate system or equipment functionality and when a suitable simulant agent can not be used in place of the halon for technical reasons.

(6) This prohibition does not apply to the emergency release of halons for the legitimate purpose of fire extinguishing, explosion inertion, or other emergency applications for which the equipment or systems were designed.

(c) Effective April 6, 1998, organizations that employ technicians who test, maintain, service, repair or dispose of halon-containing equipment shall take appropriate steps to ensure that technicians hired on or before April 6, 1998 will be trained regarding halon emissions reduction by September 1, 1998. Technicians hired after April 6, 1998 shall be trained regarding halon emissions reduction within 30 days of hiring, or by September 1, 1998, whichever is later.

(d) Effective April 6, 1998, no person shall dispose of halon-containing equipment except by sending it for halon recovery to a manufacturer operating in accordance with NFPA 10 and NFPA 12A standards, a fire

equipment dealer operating in accordance with NFPA 10 and NFPA 12A standards or a recycler operating in accordance with NFPA 10 and NFPA 12A standards. This provision does not apply to ancillary system devices such as electrical detection control components which are not necessary to the safe and secure containment of the halon within the equipment, to fully discharged total flooding systems, or to equipment containing only de minimis quantities of halons.

(e) Effective April 6, 1998, no person shall dispose of halon except by sending it for recycling to a recycler operating in accordance with NFPA 10 and NFPA 12A standards, or by arranging for its destruction using one of the following controlled processes:

(1) Liquid injection incineration;

(2) Reactor cracking;

(3) Faseous/fume oxidation;

(4) Rotary kiln incineration;

(5) Cement kiln;

(6) Radiofrequency plasma destruction; or

(7) An EPA-approved destruction technology that achieves a destruction efficiency of 98% or greater.

(f) Effective April 6, 1998, no owner of halon-containing equipment shall allow halon release to occur as a result of failure to maintain such equipment. [FR Doc. 98-5720 Filed 3-4-98; 8:45 am]

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Federal Register

Vol. 63, No. 43

Thursday, March 5, 1998

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FEDERAL REGISTER PAGES AND DATES, MARCH

10123-10288.....	2
10289-10490.....	3
10491-10742.....	4
10743-11098.....	5

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7068.....	10289
7069.....	10487
7070.....	10489
7071.....	10741

5 CFR

880.....	10291
----------	-------

7 CFR

900.....	10491
929.....	10491
982.....	10491
989.....	10491

9 CFR

2.....	10493
3.....	10493

10 CFR

600.....	10499
----------	-------

Proposed Rules:

430.....	10571
----------	-------

11 CFR

Proposed Rules:

100.....	10783
114.....	10783

12 CFR

357.....	10293
614.....	10515
701.....	10743
704.....	10743
708.....	10515, 10518
712.....	10743
740.....	10743

Proposed Rules:

357.....	10349
----------	-------

14 CFR

71.....	10758
39.....	10295, 10297, 10299, 10301, 10519, 10523, 10527
91.....	10123
97.....	10760, 10761, 10763
382.....	10528

Proposed Rules:

39.....	10156, 10157, 10349, 10572, 10573, 10576, 10579, 10783
---------	--

15 CFR

70.....	10303
---------	-------

Proposed Rules:

960.....	10785
2004.....	10159

17 CFR

Proposed Rules:

230.....	10785
----------	-------

19 CFR

7.....	10970
10.....	10970
145.....	10970
173.....	10970
174.....	10970
178.....	10970
181.....	10970
191.....	10970

21 CFR

514.....	10765
558.....	10303

Proposed Rules:

809.....	10792
864.....	10792

22 CFR

41.....	10304
---------	-------

24 CFR

597.....	10714
----------	-------

25 CFR

256.....	10124
----------	-------

Proposed Rules:

Ch. III.....	10798
--------------	-------

26 CFR

1.....	10305, 10772
--------	--------------

Proposed Rules:

301.....	10798
----------	-------

29 CFR

Proposed Rules:

2200.....	10166
-----------	-------

30 CFR

870.....	10307
916.....	10309
943.....	10317

31 CFR

500.....	10321
505.....	10321
515.....	10321

33 CFR

117.....	10139, 10777
----------	--------------

40 CFR

82.....	11084
131.....	10140
180.....	10537, 10543, 10545, 10718

Proposed Rules:

131.....	10799
180.....	10352, 10722
300.....	10582

42 CFR

441.....	10730
----------	-------

489.....10730

Proposed Rules:

Ch. IV.....10732

44 CFR

65.....10144, 10147

67.....10150

Proposed Rules:

67.....10168

206.....10816

45 CFR

Proposed Rules:

283.....10264

307.....10173

46 CFR

56.....10547

71.....10777

47 CFR

1.....10153, 10780

22.....10338

24.....10153, 10338

27.....10338

73.....10345, 10346

90.....10338

101.....10338, 10778, 10780

Proposed Rules:

1.....10180

73.....10354, 10355

48 CFR

915.....10499

927.....10499

952.....10499

970.....10499

1511.....10548

1515.....10548

1552.....10548

Proposed Rules:

32.....11074

52.....11074

232.....11074

252.....11074

49 CFR

1.....10781

194.....10347

Proposed Rules:

383.....10180

384.....10180

571.....10355

653.....10183

654.....10183

50 CFR

21.....10550

600.....10677

622.....10154, 10561

660.....10677

679.....10569

697.....10154

Proposed Rules:

17.....10817

679.....10583

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 5, 1998**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Marketing orders and agreements; general regulations; miscellaneous amendments; published 3-4-98

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Telecommunications Act of 1996; implementation:

Accessibility, usability, and compatibility of equipment and customer premises equipment; guidelines; published 2-3-98

ENERGY DEPARTMENT**Federal Energy Regulatory Commission**

Freedom of Information Act; implementation; published 2-3-98

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Common carrier and private operational fixed microwave services; conditional authorization authority; published 3-5-98

Fixed microwave services—38.6-40.0 GHz frequency band; service and auction rules; correction; published 3-5-98

TRANSPORTATION DEPARTMENT**Coast Guard**

Drawbridge operations:

Washington; published 3-5-98

Vessel inspection alternatives:

Passenger vessels; hull examination; published 3-5-98

TRANSPORTATION DEPARTMENT

Organization, functions, and authority delegations:

Saint Lawrence Seaway Development Corp., Administrator; published 3-5-98

TREASURY DEPARTMENT**Fiscal Service**

Treasury tax and loan depositories and payment of Federal taxes:

Electronic Federal Tax Payment System operation; financial institutions and Federal Reserve Banks; published 2-3-98

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Grapes grown in—

California; comments due by 3-9-98; published 1-7-98

Limes and avocados grown in Florida; comments due by 3-12-98; published 2-10-98

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Horses from contagious equine metritis (CEM)-affected countries—

Oklahoma; receipt authorization; comments due by 3-9-98; published 2-6-98

Ruminants, meat and meat products from ruminants, and other ruminant products from countries where bovine spongiform encephalopathy exist; restrictions; comments due by 3-9-98; published 1-6-98

AGRICULTURE DEPARTMENT**Food Safety and Inspection Service**

Meat and poultry inspection:

Inspection services; refusal, suspension, or withdrawal; comments due by 3-13-98; published 1-12-98

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration**

Ocean and coastal resource management:

Marine sanctuaries—

Florida Keys National Marine Sanctuary; comments due by 3-13-98; published 2-11-98

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Eligible bunched orders, account identification; comments due by 3-9-98; published 1-7-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Contractor purchasing system review exclusions; comments due by 3-9-98; published 1-6-98

Preaward survey of prospective contractor; quality assurance

Correction; comments due by 3-9-98; published 1-6-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

New nonroad spark-ignition engines at or below 19 kilowatts; phase 2 emission standards; comments due by 3-13-98; published 1-27-98

Air programs:

Stratospheric ozone protection—

Methyl bromide emissions; control through use of tarps; comments due by 3-9-98; published 2-5-98

Methyl bromide emissions; control through use of tarps; comments due by 3-9-98; published 2-5-98

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 3-11-98; published 2-9-98

Connecticut; comments due by 3-11-98; published 2-9-98

Michigan; comments due by 3-12-98; published 2-10-98

Ozone Transport Assessment Group Region; comments due by 3-9-98; published 11-7-97

Texas; comments due by 3-11-98; published 2-9-98

Clean Air Act:

Acid rain provisions—

Allowances for utility units in 1998; revision methodology; comments due by 3-9-98; published 1-7-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bifenthrin; comments due by 3-10-98; published 1-9-98

Fenoxaprop-ethyl; comments due by 3-10-98; published 1-9-98

Gamma aminobutyric acid; comments due by 3-9-98; published 1-7-98

Glutamic acid; comments due by 3-9-98; published 1-7-98

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Freedom of Information Act; implementation:

Regional Attorney; comments due by 3-10-98; published 1-9-98

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal claims collection:

Administrative offset; comments due by 3-9-98; published 1-8-98

FEDERAL RESERVE SYSTEM

Truth in lending (Regulation Z);

Consumer disclosures; simplification and improvement; comments due by 3-9-98; published 2-6-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor purchasing system review exclusions; comments due by 3-9-98; published 1-6-98

Preaward survey of prospective contractor; quality assurance

Correction; comments due by 3-9-98; published 1-6-98

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Radiological health:

Diagnostic x-ray systems and major components; performance standard; comments and information request; comments due by 3-11-98; published 12-11-97

HEALTH AND HUMAN SERVICES DEPARTMENT**Health Care Financing Administration**

Medicare and medicaid:

Physicians' referrals to health care entities with which they have financial relationships; comments due by 3-10-98; published 1-9-98

Medicare:

End stage renal disease—

Optional prospectively determined payment rates for skilled nursing

facilities; comments due by 3-10-98; published 1-9-98

Physicians' referrals; advisory opinions; comments due by 3-10-98; published 1-9-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

HUD building products standards and certification program; use of materials bulletins; comments due by 3-12-98; published 2-10-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Immigration examination fee account; adjustment; comments due by 3-13-98; published 1-12-98

JUSTICE DEPARTMENT

Justice Acquisition Regulations (JAR):

Federal Acquisition Streamlining Act and the National Performance Review Recommendations; implementation; comments due by 3-10-98; published 1-9-98

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine and coal mine safety and health: Underground mines—
Roof-bolting machines use; safety standards;

comments due by 3-9-98; published 2-12-98

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards, etc.:

Respiratory protection; comments due by 3-9-98; published 1-8-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Contractor purchasing system review exclusions; comments due by 3-9-98; published 1-6-98

Preaward survey of prospective contractor; quality assurance
Correction; comments due by 3-9-98; published 1-6-98

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 3-11-98; published 2-9-98

STATE DEPARTMENT

Consular services; fee schedule:

Decedent estate procedures; comments due by 3-11-98; published 2-9-98

Visas; nonimmigrant documentation:

Aliens, inadmissibility, nonimmigrants, passports, and visas; place of application; comments due

by 3-9-98; published 1-7-98

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

Logan International Airport, MA; dignitary arrival and departure security zone; comments due by 3-9-98; published 1-8-98

San Juan Harbor, PR; safety zone; comments due by 3-9-98; published 2-6-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Commercial passenger-carrying operations in single-engine aircraft; gyroscopic instrumentation redundant power; instrument flight rule clarification; comments due by 3-12-98; published 2-10-98

Airworthiness directives:

AERMACCI S.p.A.; comments due by 3-9-98; published 2-2-98

Aerospatiale; comments due by 3-9-98; published 2-5-98

Airbus; comments due by 3-9-98; published 2-12-98

Alexander Schleicher GmbH; comments due by 3-9-98; published 2-2-98

British Aerospace; comments due by 3-9-98; published 2-6-98

EXTRA Flugzeugbau GmbH; comments due by 3-10-98; published 2-10-98

Fokker; comments due by 3-9-98; published 2-5-98

Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A.; comments due by 3-9-98; published 2-2-98

McDonnell Douglas; comments due by 3-9-98; published 1-22-98

Saab; comments due by 3-9-98; published 2-5-98

Class E airspace; comments due by 3-12-98; published 1-26-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Rear impact guards; petition denied; comments due by 3-12-98; published 1-26-98

TREASURY DEPARTMENT

Thrift Supervision Office

Capital distributions; comments due by 3-9-98; published 1-7-98

Lending and investment:

Adjustable-rate mortgage loans; disclosure requirements; comments due by 3-9-98; published 1-8-98